

United States International Trade Commission

# **U.S.-Peru Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects**

Investigation No. TA-2104-20  
USITC Publication 3855  
May 2006



# U.S. International Trade Commission

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# U.S. International Trade Commission

Washington, DC 20436

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June 2006

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# PREFACE

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On December 7, 2005, the United States and Peru concluded negotiations on a free trade agreement. On January 6, 2006, President Bush signed a letter notifying Congress of his intent to enter into the U.S.-Peru Trade Promotion Agreement (TPA). In a letter dated January 13, 2006, the United States Trade Representative requested this investigation under section 2104(f)(a) of the Trade Act of 2002, which requires that the U.S. International Trade Commission submit a report to the President and the Congress not later than 90 calendar days after the President enters into a trade agreement.

The purpose of this report is to assess the likely effect of the U.S.-Peru TPA on the U.S. economy as a whole and on specific industry sectors. Section 2104(f)(3) of the act requires that the Commission, in preparing its assessment, review available economic assessments regarding the agreement. The Commission's assessment should include literature regarding any substantially equivalent proposed agreement, and provide a description of the analyses used, the conclusions drawn in such literature, and a discussion of areas of consensus and divergence between the various analyses and conclusions regarding the free trade agreement.

The United States and Peru signed the trade promotion agreement on April 12, 2006. A copy of the request letter for this investigation is in appendix A; the Commission's notice of institution, published in the *Federal Register* of February 10, 2006, is in appendix B. The Commission held a public hearing for this investigation on March 15, 2006. A calendar of the hearing is included in appendix C of this report, and a summary of hearing testimony and written submissions is provided in chapter 7.



# ABSTRACT

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This report assesses the possible effect of the U.S.-Peru Trade Promotion Agreement (TPA) on the U.S. economy as a whole and on specific industry sectors. If implemented, the TPA may spur U.S. trade with Peru in goods and services by eliminating tariff and nontariff barriers. The expected growth in U.S. trade with Peru under the TPA may have a positive effect on the U.S. economy, but this positive effect will likely be small because Peru's economy is small relative to the U.S. economy, its share of total U.S. trade is small, and Peru has existing duty-free access to the U.S. market under the Andean Trade Preference Act (ATPA). The TPA will immediately eliminate duties on a wide range of originating goods, while phasing out duties on other goods over differing transitional periods of up to 17 years. More than 99 percent of U.S. industrial and textiles tariff lines and 80 percent of Peruvian industrial and textiles tariff lines are already duty free or will be duty free immediately upon entry into the TPA. More than 89 percent of U.S. agricultural tariff lines and 56 percent of Peruvian agricultural tariff lines are already duty free or will be duty free immediately upon entry into the TPA. The TPA provides for a permanent preferential tariff-rate quota for sugar from Peru.

Given Peru's access to tariff preferences under ATPA, Peruvian exporters generally face substantially lower tariffs in the U.S. market than do U.S. exporters in the Peruvian market. Consequently, the TPA is likely to result in a larger increase in U.S. exports to Peru than in U.S. imports from Peru. As most of the effects of tariff elimination on goods are driven by Peru's removal of tariffs facing U.S. exports, the economy-wide model used by the Commission indicates that, as a result of full implementation of the market access provisions (tariff elimination) of the TPA, U.S. imports from Peru may be higher by approximately \$439 million, U.S. exports to Peru higher by \$1.1 billion, and U.S. GDP higher by more than \$2.1 billion. Only three U.S. sectors—metals n.e.c. (mainly gold, copper, and aluminum), crops n.e.c. (e.g., cut flowers, live plants, and seeds), and paddy rice—are estimated to experience a decline in output, revenue, or employment of more than 0.10 percent.

Although the TPA may have a perceptible effect on U.S.-Peru bilateral trade in certain sectors, the overall effect is likely to be small because of the small size of U.S.-Peru trade relative to total U.S. trade and U.S. sector-specific markets. The U.S. International Trade Commission identified eight sectors for additional sector-specific analysis in this report: grain (wheat, rice, and corn), cotton, sugar and sugar-containing products, asparagus, meat (including beef and pork), textiles and apparel, leather goods and footwear, and pharmaceuticals.

The TPA may also increase trade and investment through enhanced logistics, an improved regulatory environment, and increased transparency. Trade facilitation measures are designed to expedite the movement of goods and the provision of services. Investment provisions are intended to strengthen protections for U.S. investors operating in Peru. Provisions on intellectual property rights, government procurement, labor, environment, and dispute settlement are designed to improve the regulatory climate for bilateral trade and investment. The effects of these trade facilitation and regulatory environment provisions are more difficult to quantify, but may be larger in the medium to long term than in the short term.



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# ABBREVIATIONS AND ACRONYMS

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ALADI	Latin American Integration Association
APEC	Asia-Pacific Economic Cooperation
ATC	Agreement on Textiles and Clothing
ATPA	Andean Trade Preference Act
ATPDEA	Andean Trade Promotion and Drug Eradication Act
AVE	ad valorem equivalent
BEA	Bureau of Economic Analysis (USDOC)
BSE	bovine spongiform encephalopathy
CAFTA-DR	U.S.-Central American-Dominican Republic Free Trade Agreement
CGE	computable general equilibrium
ERS	Economic Research Service (USDA)
EU	European Union
FDI	foreign direct investment
FSIS	Food Safety and Inspection Service (USDA)
FTA	free trade agreement
FTAA	Free Trade Area of the Americas
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GSP	Generalized System of Preferences
GTAP	Global Trade Analysis Project
HFCS	high-fructose corn syrup
HS	Harmonized System
HTS	Harmonized Tariff Schedule of the United States
IPR	intellectual property rights
ITA	Information Technology Agreement
MFN	most-favored-nation
MT	metric tons
MY	marketing year
NAFTA	North American Free Trade Agreement
n.e.c.	not elsewhere classified
n.e.s.o.i.	not elsewhere specified or otherwise included
NTR	normal trade relations
OECD	Organization for Economic Cooperation and Development
OIE	World Organization of Animal Health
SCP	sugar-containing products
SME	square meters equivalent
SPS	sanitary and phytosanitary
TBT	technical barriers to trade
TK	traditional knowledge
TPA	trade promotion agreement
TPL	tariff preference level
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TRQ	tariff-rate quota
UN	United Nations
USDA	U.S. Department of Agriculture
USDOC	U.S. Department of Commerce
USITC	United States International Trade Commission
USTR	United States Trade Representative

# ABBREVIATIONS AND ACRONYMS—

## *Continued*

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VAT	value-added tax
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

### **U.S. Trade Advisory Groups**

ACTPN	Advisory Committee for Trade Policy and Negotiations
APAC	Agricultural Policy Advisory Committee for Trade
ATAC	Agricultural Technical Advisory Committee
IGPAC	Intergovernmental Policy Advisory Committee
ITAC 1	Industry Trade Advisory Committee on Aerospace Equipment
ITAC 2	Industry Trade Advisory Committee on Automotive Equipment and Capital Goods
ITAC 3	Industry Trade Advisory Committee for Chemicals, Pharmaceuticals, Biotech and Health/Science Products and Services
ITAC 4	Industry Trade Advisory Committee on Consumer Goods
ITAC 5	Industry Trade Advisory Committee on Distribution Services for Trade Policy Matters
ITAC 6	Industry Trade Advisory Committee on Energy and Energy Services
ITAC 7	Industry Trade Advisory Committee on Forest Products for Trade Policy Matters
ITAC 8	Industry Trade Advisory Committee for Information and Communications Technologies, Services and Electronic Commerce
ITAC 9	Industry Trade Advisory Committee on Non-Ferrous Metals and Building Materials
ITAC 10	Industry Trade Advisory Committee on Services and Finance Industries
ITAC 11	Industry Trade Advisory Committee on Small and Minority Business
ITAC 12	Industry Trade Advisory Committee on Steel
ITAC 13	Industry Trade Advisory Committee on Textiles and Clothing
ITAC 14	Industry Trade Advisory Committee on Customs and Trade Facilitation
ITAC 15	Industry Trade Advisory Committee on Intellectual Property
ITAC 16	Industry Trade Advisory Committee on Standards and Technical Trade Barriers
LAC	Labor Advisory Committee for Trade Negotiations and Trade Policy
TEPAC	Trade and Environment Policy Advisory Committee

# Executive Summary

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The U.S.-Peru Trade Promotion Agreement (TPA) will grant immediate duty-free access for 90 percent of tariff lines (combined U.S. and Peru), addresses many nontariff barriers,<sup>1</sup> and liberalizes trade in services between the United States and Peru. Ninety-two percent of qualifying “industrial and textile” goods tariff lines and 78 percent of tariff lines covering agricultural products will be duty free upon implementation of the TPA. Because of Peru’s access to tariff preferences under the Andean Trade Preference Act (ATPA), Peruvian exporters generally face substantially lower tariffs in the U.S. market than do U.S. exporters in the Peruvian market. This tariff asymmetry implies a larger increase in U.S. exports to Peru than U.S. imports from Peru as a result of the TPA. The TPA also contains provisions intended to expedite the movement of goods and the provision of services between the two countries and improve the regulatory climate for bilateral trade and investment.

This report provides a quantitative assessment of the effect of tariff and tariff-rate quota elimination on trade in goods and a qualitative assessment of the effects of all TPA provisions, including those on trade in services, trade facilitation, and the regulatory environment. A summary of the key TPA provisions appears in table ES-1 at the end of this executive summary.

## Summary of Findings on Market Access

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The U.S.-Peru TPA may have a small, positive effect on the U.S. economy. The benefits will likely be moderated by the relatively small size of Peru’s economy in relation to the U.S. economy, Peru’s small share of U.S. trade—Peru accounted for approximately 0.3 percent of total U.S. goods trade in 2005—and Peru’s access to duty-free entry under ATPA and the Generalized System of Preferences. With the exception of sugar, all eligible goods traded will be duty free after 17 years. For example, while the United States will grant immediate duty-free access for most tariff lines, tariff lines covering certain tuna, footwear, dairy products, bovine products, peanuts, and tobacco will be phased out over 10 to 17 years. U.S. tariff lines subject to 3-year staging cover certain wool products.<sup>2</sup>

Most of the economy-wide and sector-specific effects of tariff elimination on goods are driven by Peru’s removal of tariffs facing U.S. exports and the subsequent improvement in Peru’s terms of trade. Given the substantially larger tariffs faced by U.S. exporters to Peru than Peruvian exporters to the United States, the TPA is likely to result in a much larger increase in U.S. exports than in U.S. imports. Economy-wide analysis estimates U.S. imports from Peru will increase by \$439 million and U.S. exports to Peru will increase by \$1.1 billion, an 8 percent and 25 percent increase, respectively. As a result of tariff elimination in the TPA, U.S. GDP will be higher by over \$2.1 billion, or approximately 0.02 percent. Three U.S. sectors—metals n.e.c. (mainly gold, copper, and aluminum), crops n.e.c. (e.g., cut flowers, live plants, and seeds), and paddy rice—would experience reductions in output, revenue, or employment of more than 0.10 percent.

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<sup>1</sup> U.S. quotas will remain on sugar imports after full implementation of the TPA.

<sup>2</sup> See tables 2-1 and 2-2 in chap. 2 of this report for further information on the tariff commitments of the United States and Peru under the TPA.

The U.S. International Trade Commission (Commission) identified eight sectors for additional sector-specific analysis. Textiles and apparel, leather goods and footwear, and asparagus are sectors in which Peru has benefited substantially from the ATPA program and that may experience increased U.S. imports from Peru as a result of the TPA spurred by additional investment stemming from permanent market access. Grains, meat (including beef and pork), and pharmaceuticals are sectors that may experience increased U.S. exports to Peru as a result of the TPA. Cotton and sugar are sectors for which the TPA is not expected to substantially affect U.S.-Peru trade, but for which the TPA reflects a substantial change in U.S. trade policy with respect to Peru.

The U.S.-Peru TPA would provide U.S. service firms levels of market access, national treatment, and regulatory transparency that generally exceed those afforded by Peru's commitments under the General Agreement on Trade in Services (GATS). Improved access for U.S. service firms in Peru is largely attributable to the "negative list" approach in the agreement. This approach extends the trade disciplines found in the services chapters of the TPA to many services for which Peru made no commitments under the GATS, such as computer and related services, real estate services, construction services, environmental services, and pipeline transport services. Nevertheless, the TPA is expected to generate only a small increase in U.S. services exports to Peru. The U.S.-Peru TPA is not likely to have an observable effect on U.S. imports of services from Peru largely because the U.S. service sectors are already generally open to foreign firms and because the Peruvian service industries are small.

## **Summary of Findings on Trade Facilitation and the Regulatory Environment**

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The TPA provisions on trade facilitation are designed to expedite the movement of goods and the provision of services between the United States and Peru. This effort is addressed through specific improvements in technical barriers to trade, customs administration, and sanitary and phytosanitary measures, as well as facilitation of electronic commerce. The regulatory climate for bilateral trade and investment will be improved by the provisions on transparency, trade remedies, government procurement, investment, intellectual property rights, labor, the environment, and dispute settlement.

Although the economic effects of the TPA provisions on trade facilitation and the regulatory environment cannot be quantified for this study, their overall effect on the U.S. economy and industry is likely to be small, largely reflecting the relatively small size of Peru's economy. Nevertheless, U.S.-based firms are likely to benefit from the application of the TPA trade facilitation provisions by Peru, which are intended to establish a secure, predictable legal framework for U.S. firms operating in Peru.

The provisions on trade facilitation are likely to expand export opportunities for U.S. firms, particularly for goods often subject to technical and regulatory standards and requirements, and are likely to develop a more stable and reliable trading environment, further buttressing U.S.-Peru trade and investment. Benefits directly attributable to the TPA are tempered, however, by past and ongoing improvements that Peru has made in the areas of customs administration, sanitary and phytosanitary measures, technical barriers to trade, and electronic commerce.

Benefits from provisions related to the regulatory environment are likely to be marginal because of the relative size of the Peruvian market and the relatively high level of transparency already existing in Peru's current regulatory regime, as well as the country's structural changes resulting from economic reforms and privatization programs already in place. The TPA provisions on investment, though expected to have a small effect on the level of U.S. direct investment in Peru and the level of Peru's direct investment in the United States, are likely to provide U.S. investors operating in Peru greater opportunities and equal treatment with Peruvian investors. Additionally, the protection of intellectual property in Peru is expected to be significantly improved if the intellectual property rights provisions of the TPA are fully and effectively implemented and enforced through appropriate legislation, regulations, and procedures.

**Table ES-1 U.S.-Peru TPA: Summary of key provisions on market access, trade facilitation, and regulatory environment**

<p>Market access for trade in goods and services</p> <p><i>Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Textiles and Apparel), and Chapter 4 (Rules of Origin)</i></p> <ul style="list-style-type: none"> <li>• Liberalizes all qualifying goods trade, with the exception of sugar, immediately or phased in over periods of up to 17 years.</li> <li>• Makes permanent the duty-free access currently provided to most imports from Peru under ATPA and the GSP.</li> <li>• Establishes a Committee on Trade in Goods to consider matters arising under Chapter 4 (Rules of Origin) and Chapter 5 (Customs Administration).</li> <li>• Enhances and makes permanent ATPA trade preferences for apparel and makes them reciprocal; for the first time, extends trade preferences to textiles.</li> <li>• Grants duty-free treatment to unlimited quantities of apparel made in Peru of Peruvian yarn and fabric.</li> <li>• Contains a cumulation-style specific rule that allows the use of nylon filament yarn only from the United States, Canada, Mexico, and Israel in originating apparel from Peru.</li> <li>• Makes textiles and apparel duty free and quota free immediately if the products meet the TPA rules of origin requirements.</li> <li>• Does not provide trade preference levels.</li> <li>• Requires a "yarn-forward" rule of origin for most textiles and apparel to qualify for duty preferences.</li> </ul> <p><i>Chapter 11 (Cross-border Trade in Services), Chapter 12 (Financial Services), and Chapter 14 (Telecommunications)</i></p> <ul style="list-style-type: none"> <li>• Provides national treatment and nondiscriminatory guarantees in most service sectors, guarantees market access in most service sectors, and improves regulatory transparency in Peru.</li> <li>• Improves upon Peru's commitments under the WTO General Agreement on Trade in Services.</li> </ul>
<p>Trade facilitation</p> <p><i>Chapter 5 (Customs Administration and Trade Facilitation)</i></p> <ul style="list-style-type: none"> <li>• Improves transparency, efficiency, accountability, and predictability of customs regulations and procedures.</li> <li>• Provides special measures to liberalize express shipments.</li> </ul> <p><i>Chapter 6 (Sanitary and Phytosanitary Measures)</i></p> <ul style="list-style-type: none"> <li>• Follows existing WTO Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures.</li> <li>• Establishes a bilateral Standing Committee to address relevant SPS issues, as outlined in letters of exchange on SPS/TBT issues.</li> </ul> <p><i>Chapter 7 (Technical Barriers to Trade)</i></p> <ul style="list-style-type: none"> <li>• Improves implementation of WTO Technical Barriers to Trade (TBT) Agreement by intensifying efforts to improve transparency, enhance bilateral cooperation, and increase mutual acceptance of each party's technical regulations and conformity assessment procedures.</li> <li>• Establishes a committee comprising representatives of each party to monitor implementation of the TPA's TBT chapter and address any issues arising from each party's standards, technical regulations, and conformity assessment procedures.</li> </ul> <p><i>Chapter 15 (Electronic Commerce)</i></p> <ul style="list-style-type: none"> <li>• Provides nondiscriminatory treatment of digital products.</li> <li>• Requires parties to agree not to impose customs duties, fees, and other charges on digital products (parties are not prevented from imposing internal taxes, charges, or other fees on the domestic sale of such products); and to agree on a method of valuation for physically delivered digital products.</li> </ul>
<p>Regulatory environment</p> <p><i>Chapter 8 (Trade Remedies)</i></p> <ul style="list-style-type: none"> <li>• Provides a framework for procedures covering the application of safeguards.</li> </ul> <p><i>Chapter 9 (Government Procurement)</i></p> <ul style="list-style-type: none"> <li>• Provides nondiscriminatory treatment for covered government purchases in excess of agreed monetary thresholds.</li> <li>• Includes transparent disciplines on government procurement procedures.</li> <li>• Maintains criminal and other penalties for bribery in government procurement.</li> </ul> <p><i>Chapter 10 (Investment)</i></p> <ul style="list-style-type: none"> <li>• Provides national treatment, most-favored-nation treatment, and nondiscriminatory treatment.</li> <li>• Includes a secure, predictable legal framework and an investor-state dispute settlement process.</li> </ul> <p><i>Chapter 13 (Competition Policy)</i></p> <ul style="list-style-type: none"> <li>• Addresses issues of anticompetitive business practices, state monopolies, and state enterprises.</li> <li>• Provides for cooperation and consultation on competition law, policy, and enforcement matters.</li> </ul> <p><i>Chapter 16 (Intellectual Property Rights, including Biodiversity and Traditional Knowledge)</i></p> <ul style="list-style-type: none"> <li>• Includes state-of-the-art protection for copyrights, patents, trademarks, and trade secrets, and addresses Internet and digital piracy issues.</li> <li>• Strengthens enforcement measures and civil and criminal penalties for piracy and counterfeiting.</li> <li>• Recognizes the importance of traditional knowledge and biodiversity and their potential contribution to cultural, economic, and social development.</li> </ul> <p><i>Chapter 17 (Labor) and Chapter 18 (Environment)</i></p> <ul style="list-style-type: none"> <li>• Requires that parties agree to effectively enforce respective domestic labor and environmental laws.</li> <li>• Includes cooperative mechanisms for labor and environmental issues.</li> </ul> <p><i>Chapter 19 (Transparency)</i></p> <ul style="list-style-type: none"> <li>• Requires that each party make publicly available all laws, regulations, and procedures regarding any and all matters covered by the agreement.</li> <li>• Provides for anticorruption provisions that require parties to establish criminal prosecution and penalty procedures for bribery and corruption.</li> </ul> <p><i>Chapter 21 (Dispute Settlement)</i></p> <ul style="list-style-type: none"> <li>• Establishes standards of transparency, requires the use of special labor or environmental expertise for disputes in these areas, and emphasizes the use of consultations and trade-enhancing remedies to promote compliance.</li> <li>• Includes enforcement mechanism that provides for the use of monetary assessments and trade retaliatory measures.</li> </ul>

Source: Compiled from the text of the *U.S.-Peru TPA*, available at <http://www.ustr.gov>.

# CHAPTER 1

## Introduction

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### Scope and Approach of the Report

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This report assesses the likely effect of the U.S.-Peru Trade Promotion Agreement (TPA) on the U.S. economy as a whole and on specific industry sectors, including the effect of the TPA on gross domestic product; exports and imports; aggregate employment and employment opportunities; and the production, employment, and competitive position of industries likely to be significantly affected by the TPA. The report also assesses the likely effect of the TPA on U.S. consumers. The assessment is based on a review of all 23 chapters of the final text of the TPA, including its annexes and associated side letters. Table 1-1 identifies the chapters of the U.S.-Peru TPA and where they are analyzed in this report.

To quantitatively assess the TPA, the U.S. International Trade Commission (Commission) employed the Global Trade Analysis Project (GTAP) model and database. The GTAP is a multicountry model with economy-wide coverage of merchandise and service sectors (a global computable general equilibrium (CGE) model) used in this report to estimate the likely trade and economic effects of the U.S.-Peru TPA.<sup>1</sup> The 56 commodity and services aggregations adopted here cover all sectors, including those with relatively high domestic-world price gaps as a result of tariffs and tariff-rate quotas (TRQs) and relatively large trade flows. The economies covered in the analysis include the United States and Peru, the three other Andean<sup>2</sup> countries (Bolivia, Colombia, and Ecuador), as well as three regional aggregates representing the rest of the world.

The GTAP database, which represents the global economy in 2001, was adjusted to reflect expected economic growth in the world and in the two TPA partners through 2007, the year the proposed U.S.-Peru TPA is expected to enter into force. The adjusted database reflects the removal of textile and apparel quotas under the Agreement on Textiles and Clothing, as well as other international agreements.<sup>3</sup> The analysis is comparative static and assumes the U.S.-Peru TPA is fully implemented and its effects are felt on January 1, 2007. The TPA's provisions are not phased in over time, nor are its effects assumed to be gradually realized over time. The analysis does not completely model rules of origin, but the concept is reflected in the model's product differentiation by country source. In addition, although services trade is included in the model, changes in services trade are not estimated in the

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<sup>1</sup> The GTAP database and CGE model are described more fully in app. D of this report; the general effects of trade agreements are described in app. E of this report.

<sup>2</sup> In this report, "Andean" refers only to Bolivia, Ecuador, Colombia, and Peru.

<sup>3</sup> The adjusted database also reflects Uruguay Round tariff reductions insofar as they are reflected in trade data projected to 2005. Moreover, the free trade agreements (FTAs) between Peru and its trading partners are modeled for selected products where necessary data are available. Benchmark adjustments specifically incorporate provisions of NAFTA and ATPA, as well as liberalized sugar import quotas under CAFTA-DR. Other bilateral trade agreements, such as U.S. FTAs with Chile, Singapore, and Australia, are reflected in the overall update of the model with current trade statistics. Trade with these partners is included in trade with large aggregates (rest of the Americas and rest of the world), in which their specific tariffs do not have an observable effect.

**Table 1-1 U.S.-Peru TPA: Location of analysis of TPA chapters in the Commission report<sup>1</sup>**

TPA chapter and brief description	Chapter of Commission report where analyzed
1. Initial Provisions and General Definitions	Chapter 1
2. National Treatment and Market Access for Goods	Chapter 2
3. Textiles and Apparel	Chapter 2
4. Rules of Origin Procedures	Chapter 2
5. Customs Administration and Trade Facilitation	Chapter 5
6. Sanitary and Phytosanitary Measures	Chapter 5
7. Technical Barriers to Trade	Chapter 5
8. Trade Remedies	Chapter 6
9. Government Procurement	Chapter 6
10. Investment	Chapter 6
11. Cross-Border Trade in Services	Chapter 4
12. Financial Services	Chapter 4
13. Competition Policy	Chapter 6
14. Telecommunications	Chapter 4
15. Electronic Commerce	Chapter 5
16. Intellectual Property Rights	Chapter 6
17. Labor	Chapter 6
18. Environment	Chapter 6
19. Transparency	Chapter 6
20. Administration of the Agreement and Trade Capacity Building	Chapter 1
21. Dispute Settlement	Chapter 6
22. Exceptions	Chapter 1
23. Final Provisions	Chapter 1
Biodiversity-Traditional Knowledge Understanding	Chapter 6 (included with IPR)

<sup>1</sup> Chaps. 1, 20, 22, and 23 of the U.S.-Peru TPA address primarily administrative and legal matters with respect to the agreement and, hence, are summarized in this chapter but not analyzed in this report.

model because of the lack of quantitative data on the ad valorem equivalent (AVE) values of services sector barriers.

The Commission also used qualitative analysis to assess the effect of the market access provisions of the U.S.-Peru TPA on U.S. product sectors, including grain, cotton, sugar and sugar-containing products, asparagus, meat, textiles and apparel, leather goods and footwear, and pharmaceuticals. Initial review of product sectors involved a comprehensive examination and consideration of the TPA's trade liberalization schedules for tariff and nontariff measures and U.S.-Peru bilateral trade flows, and drew on the expertise of Commission industry analysts. Sectors were selected for analysis in this chapter on the basis of a number of criteria, including the importance of the sector in terms of bilateral trade; the likelihood of increased export opportunities for U.S. producers relative to other foreign suppliers; the extent and speed of trade liberalization under the TPA and its potential for increasing U.S. trade; the opinions of industry representatives; and the apparent sensitivity of certain U.S. industries to trade liberalization. The Commission's assessments in this chapter are based on industry knowledge and expertise of USITC industry analysts, industry sources, reports by U.S. industry and functional trade advisory committees on the TPA, and written submissions

received in response to the Commission's *Federal Register* notice of institution for this investigation.<sup>4</sup>

Other effects of the TPA are associated with provisions on trade in services, trade facilitation (e.g., customs administration, technical barriers to trade, and electronic commerce), and the regulatory environment (e.g., government procurement, investment, competition policy, and intellectual property rights). The effects of these provisions are more difficult to quantify because of their intangible nature and data limitations. The limited ability to quantify the effects of trade facilitation and regulatory environment-related provisions does not diminish the potential effect these provisions can have on increasing U.S.-Peru trade in goods and services. Nontariff issues, which hamper trade with and investment in Peru, have been cited as areas of concern by the U.S. government and international organizations. Various chapters of the TPA seek to address some of these issues, which are listed in table 1-2.

Four Andean countries—Bolivia, Colombia, Ecuador, and Peru—are beneficiaries of the Andean Trade Preference Act (ATPA), as amended by the Andean Trade Promotion and Drug Eradication Act (ATPDEA).<sup>5</sup> As this unilateral trade preferences program is set to expire at the end of 2006, two policy scenarios are assessed in this report with regard to market access provisions.<sup>6</sup> Given that ATPA expired in 2001 and was renewed retroactively in 2002, the first policy scenario, referred to as “ATPA preferences continue,” assumes implementation of a U.S.-Peru TPA and continued ATPA preferences for the remaining three Andean countries. The second policy scenario, referred to as “ATPA preferences expire,” assumes implementation of the U.S.-Peru TPA and the simultaneous expiration of ATPA preferences for the remaining three Andean countries. The economy-wide and sector-specific analyses identify the policy scenario assumptions, as appropriate. For example, the effect of the different policy scenarios on potential increases in U.S. exports is minimal. Consequently, U.S. export-oriented discussions do not analyze different policy scenarios.<sup>7</sup>

Data and other information for the study were obtained from industry reports, interviews with government and industry contacts, official reports of the trade advisory committees, hearing testimony,<sup>8</sup> written submissions to the Commission, and the GTAP database. Other sources include the U.S. Department of Agriculture, the U.S. Department of Commerce, the U.S. Department of State, the World Trade Organization, the World Bank, and the Global Trade Atlas.

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<sup>4</sup> A copy of the *Federal Register* notice is in app. B.

<sup>5</sup> Use of the acronym “ATPA” in this report refers to ATPA as amended by ATPDEA.

<sup>6</sup> “Market access” provisions in this report refer to those provisions primarily reflected in chaps. 2–4 of the TPA.

<sup>7</sup> Given the minimal difference in most information in the associated CGE/GTAP results, tables for the “ATPA preferences expire” scenario are provided in app. F.

<sup>8</sup> The Commission held a public hearing for this investigation on Mar. 15, 2006. A calendar of the hearing is included in app. C of this report, and a summary of hearing testimony and written submissions is provided in chap. 7.

**Table 1-2** Selected nontariff impediments in Peru

Topic	Selected nontariff issue	Source year	TPA-relevant chapter(s) <sup>a</sup>
Agriculture	Five percent "temporary" surcharge on agricultural products	2005 <sup>b</sup>	2
Agriculture	Peru maintains local-content requirements in relation to various government nutrition programmes, as well as a trade-related investment measure in dairy.	2000 <sup>h</sup>	9
Agriculture	Import surcharges (variable levy) introduced in 1991 on some basic agricultural commodities of which rice, corn, sugar and dairy products remain taxed (surcharges were replaced by a price-band system in 2001).	2005 <sup>b, d</sup>	2
Agriculture	Of 330 tariff items, 23 items are also subject to variable specific duties intended as a price stabilization and protection mechanism. These duties affected five product groups: milk, maize, sorghum, rice, and sugar.	2000 <sup>h</sup>	2
Government procurement	Government procurement concerns, including 20-point (on a 100-point scale) preferential treatment for national companies	2005 <sup>b</sup>	9
Government procurement	A number of provisions favor domestic suppliers in government procurement.	2000 <sup>h</sup>	9
IPR	Infringement of intellectual property remains a serious problem in Peru, especially in the area of e-commerce.	2005 <sup>f</sup>	16
IPR	Concerns about continued high rates of copyright piracy and inadequate enforcement of IPR laws	2005 <sup>d</sup>	16
IPR	IPR concerns, including enforcement, copyright piracy, protection of confidential test data, and patent protection on second uses	2005 <sup>b</sup>	16
Regulatory	Private investment is undermined by uncertainties about economic policies, laws, government regulations, the resolution of commercial disputes, and contract enforcement.	2004 <sup>g</sup>	10, 19, 21
Regulatory	Complaints about regulatory administration and predictability of dispute settlement	2005 <sup>b</sup>	10, 19, 21
Regulatory	Dispute settlement continues to be problematic in Peru, although the government of Peru has taken steps in 2005 to improve the dispute settlement process.	2005 <sup>d</sup>	10, 21
Regulatory	Current law limits foreign employees to no more than 20 percent of the total number of employees in a local company, however, there are a variety of exceptions to these limits, including foreign banks and service companies, and international transport companies.	2005 <sup>b, d</sup>	10, 11, 12, 14
Regulatory	Concerns of lack of transparency in telecommunications regulatory decision-making process	2005 <sup>b</sup>	14, 19
Regulatory	Although Peru eliminated most restrictions and requirements on imports in the 1990s, the system is, nevertheless, dynamic, and decisions are often made on an ad hoc basis.	2005 <sup>f</sup>	5, 19
Remanufacture	Prohibition on the importation of remanufactured goods	2005 <sup>b, e</sup>	2
SPS	SPS bans, import requirements and permits, e.g., on poultry (lifted 2004), live animals, beef and beef products, and paddy rice	2005 <sup>b</sup>	2, 6
SPS	SPS measures banning live bovines, bovine products, and derivatives.	2005 <sup>c</sup>	2, 6
Used vehicles	A discriminatory system giving certain tax advantages to second-hand cars imported to Peru for re-conditioning in the CETICOS (and the ZOTAC) has been in operation since 1996.	2005 <sup>c</sup>	2
Used vehicles	Import ban on used cars and parts (though imports of used industrial machinery and equipment is permitted).	2005 <sup>f</sup>	2

Sources: As cited.

Note: Examples selected based on survey of standard sources regarding nontariff trade impediments. Citations represent the Peruvian environment in the year of publication; no assumptions are made as to whether these represent the current environment.

<sup>a</sup> Including annexes and side letters. *U.S.-Peru TPA*, available at <http://www.ustr.gov>.

<sup>b</sup> USTR, *2005 National Trade Estimate Report on Foreign Trade Barriers*.

<sup>c</sup> European Commission, EU Market Access Sectoral and Trade Barriers Database.

<sup>d</sup> US&FCS and U.S. Department of State, *Doing Business in Peru*.

<sup>e</sup> USDOC, ITA, Industry Trade Policy reports 2005.

<sup>f</sup> EIU, *Country Commerce: Peru*.

<sup>g</sup> IMF, *Country Report, Peru: Selected Issues*.

<sup>h</sup> WTO, "Trade Policy Review, Peru."

The remainder of this report is organized as follows: chapter 1 provides an overview of U.S.-Peru trade, a literature review, and a country profile for Peru; chapter 2 provides a summary of market access provisions for goods and the economy-wide analysis; chapter 3 presents selected sector-specific analyses; chapter 4 covers the effect of market access for services sector-related provisions; chapter 5 covers the effect of trade facilitation-related provisions; chapter 6 covers the effects of regulatory-related provisions, including investment; and chapter 7 summarizes the views of interested parties. This report also includes the following appendices: (A) the request letter from the USTR; (B) the *Federal Register* notice announcing the institution of the investigation and scheduling a hearing; (C) a list of hearing participants; (D) a technical appendix that explains the methodology used in chapter 2; (E) general effects of trade agreements based on economic theory; (F) GTAP tables for the economy-wide analysis; and (G) a chapter-by-chapter review of the provisions of the TPA.

## Overview of the U.S.-Peru TPA

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Like other free trade agreements (FTAs) to which the United States is a party,<sup>9</sup> the agreement with Peru would create a preferential trade regime with a specific, negotiated range of goods and services measures of mutual benefit or interest to the parties, with commitments covering other trade-related matters. Under this TPA, duties on categories of originating goods will be phased out over periods of up to 17 years.<sup>10</sup> It also will provide a set of commitments on matters that were not previously subject to the World Trade Organization (WTO) regime or that are covered by agreements to which one or the other of the partners is not a party. The TPA will not cover every aspect of bilateral trade or give preferences for all goods under any tariff category, but will accord benefits to originating goods. The TPA's rules of origin grant special tariff treatment to particular goods upon importer claim, and certain sensitive agricultural products are subject to TRQs for a specific time period. Among the TPA's objectives, the preamble states that the pact is meant to strengthen cooperation, help expand trade within a structure of rules, and simplify regional trade.

The text of the U.S.-Peru TPA<sup>11</sup> is largely modeled on other recent U.S. FTAs, particularly the U.S.-Central American-Dominican Republic Free Trade Agreement (CAFTA-DR). The TPA contains separate commitments of each party set forth in schedules and annexes on market access, rules of origin, services, and procurement, as well as general disciplines that apply to both parties. Some provisions also draw upon multilateral instruments of the WTO or other treaties, or state that the same obligations apply under the TPA. These obligations exist separately, even if the corresponding WTO agreement provision is eliminated. Some TPA commitments deal with specific aspects of trade relations between the parties, and side letters provide for ongoing cooperation or cover other specific matters. Below is a summary of the text of TPA chapters that address primarily administrative and legal matters regarding

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<sup>9</sup> To date, the United States has implemented FTAs with Israel, Canada, Mexico, Jordan, Singapore, Chile, Australia, Morocco, and Central America and the Dominican Republic (as of the date of this report, only El Salvador, Honduras, and Nicaragua have implemented CAFTA-DR). The U.S. Congress has approved implementing legislation for an FTA with Bahrain; however, to date, it has not been implemented. Although signed, Congress has not approved implementing legislation for the U.S.-Oman FTA. On Feb. 27, 2006, the United States announced the conclusion of FTA negotiations with Colombia. In addition, the United States is negotiating FTAs with Korea, Malaysia, Panama, Thailand, the United Arab Emirates, and the five nations of the Southern African Customs Union.

<sup>10</sup> Information on the tariff commitments of the United States and Peru is available in chap. 2 of this report.

<sup>11</sup> The text of the U.S.-Peru TPA is available at <http://www.ustr.gov>.

the TPA (TPA chapters 1, 20, 22, and 23); these are not further analyzed in this report.<sup>12</sup> For a chapter-by-chapter review of the TPA provisions, see appendix G of this report.

### ***TPA Chapter 1—Initial Provisions and General Definitions***

The text states that the parties agree to set up the TPA in a way that is consistent with the 1994 General Agreement on Tariffs and Trade (GATT), and that reaffirms the existing application of bilateral rights and obligations continue to apply. The text also states that nothing in the TPA is to be read as altering any legal obligation under another international pact. Among the general definitions in the TPA, the term "territory" is defined by both parties to cover the "land, maritime, and air space under its sovereignty and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law" without any mention of free trade zones or other areas.

### ***TPA Chapter 20—Administration of the Agreement and Trade Capacity Building***

This chapter sets up a Free Trade Commission of cabinet-level representatives to supervise the implementation of the TPA, consider all types of matters raised under it, resolve disputes that may arise regarding the interpretation or application of this agreement, establish and task working groups, and fulfill other similar duties. The Free Trade Commission comprises the USTR and the Peruvian Ministro de Comercio Exterior y Turismo. Under this chapter, each party shall also designate a TPA coordinator to prepare for Free Trade Commission meetings and follow up on its decisions. The chapter also includes provisions on administering dispute settlement proceedings.

In recognition that trade capacity building is a catalyst for the reforms and investments needed to foster trade-driven economic growth and reduce poverty, section B of this chapter establishes a Committee on Trade Capacity Building. This committee will seek to prioritize trade capacity-building projects and invite the participation of international donor organizations, private-sector entities, and nongovernmental organizations to encourage trade and reform. The committee also will provide oversight to a working group on customs administration and trade facilitation created under the provisions of this chapter, but tasked to implement the provisions of Chapter 5—Customs Administration and Trade Facilitation.

### ***TPA Chapter 22—Exceptions***

This chapter discusses general exceptions to various chapters of the TPA and mentions specific provisions of various WTO agreements, which are incorporated by reference. This chapter also exempts the disclosure of essential security, taxation, or other information, which would impede law enforcement or be contrary to the public interest.

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<sup>12</sup> Other chapters of the TPA are summarized and analyzed in chaps. 2–6 of this report. Summaries are not intended to interpret them or to identify the negotiators' intent.

## ***TPA Chapter 23—Final Provisions***

This chapter contains the mechanisms for acceding to the TPA and putting it into force as well as an article on the legal significance of annexes. The parties must consult on any changes made to provisions of the WTO agreement incorporated in this text to determine if the same principle will apply herein. If the parties agree, any country or group of countries may accede to the TPA. The TPA will enter into force on or after the exchange of written notifications by the United States and Peru that each has completed its respective domestic legal procedures. “The English and Spanish texts of the Agreement are to be equally authentic.”<sup>13</sup> Any withdrawal from the TPA will take effect 6 months after written notice.

## **U.S.-Peru Trade Overview**

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### ***Andean Trade Preference Act***

The U.S. Congress enacted ATPA in 1991<sup>14</sup> to grant the Andean nations of Bolivia, Colombia, Ecuador, and Peru certain unilateral trade preferences to promote broad-based economic development and viable economic alternatives to coca cultivation and cocaine production in the region. ATPA expired in December 2001, but was renewed retroactively and amended on August 6, 2002, by ATPDEA.<sup>15</sup>

ATPA, as amended by ATPDEA, provides duty-free treatment to qualifying products from the four designated beneficiary countries. ATPDEA expanded preferential treatment to additional products previously ineligible under the original ATPA, namely certain textiles and apparel, footwear, tuna in foil or other flexible airtight packages (not cans), petroleum and petroleum derivatives, and certain watches and watch parts. In all, nearly 6,300 tariff rate lines or products are covered by ATPA trade preferences, of which about 700 were added by ATPDEA.<sup>16</sup> The following products are excluded from preferential tariff treatment under ATPA: textile and apparel articles not otherwise eligible for preferential treatment under ATPDEA; canned tuna; above-quota imports of certain agricultural products subject to tariff-rate quotas, including sugars, syrups, and sugar-containing products; and rum and tafia.

The four ATPA beneficiary countries are also GSP beneficiaries.<sup>17</sup> ATPA and GSP provisions are similar in many ways, and many products can enter the United States free of duty under either program. However, Andean producers tend to prefer the more comprehensive ATPA for three reasons. First, ATPA authorizes duty-free treatment on more tariff categories than the GSP, including some textile and apparel articles ineligible for the GSP. Second, unlike the GSP, imports under ATPA are not subject to competitive-need

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<sup>13</sup> *U.S.-Peru TPA*, article 23.7.

<sup>14</sup> Public Law 102-182, title II; 105 STAT. 1236, 19 U.S.C. 3201–3102.

<sup>15</sup> Public Law 107-210, title XXXI. ATPDEA duty-free treatment became effective for all four beneficiary countries on Oct. 31, 2002 (Presidential Proclamation 7616, 67 F.R. 67283).

<sup>16</sup> USTR, “Fact Sheet: New Andean Trade Benefits.” Accordingly, approximately 90 percent of rate lines provide duty-free treatment to U.S. imports from the ATPA region (60 percent under ATPA and 30 percent have normal trade relations (NTR) rates of free). U.S. imports under the remaining approximately 10 percent of tariff rate lines are dutiable.

<sup>17</sup> The U.S. GSP program originally was enacted for 10 years pursuant to title V of the Trade Act of 1974 (Public Law 93-618, 88 Stat. 2066 et seq.). The program has expired and been renewed several times.

limits and country income restrictions. This provision means that preferential treatment is not forfeited if imports of a product or national income exceed a certain threshold.<sup>18</sup> Third, ATPA-qualifying rules of origin for products are more liberal than those of the GSP; the GSP requires that 35 percent of the value of the product be added in a single beneficiary country or in a specified association of GSP-eligible countries, whereas ATPA allows regional aggregation within ATPA plus U.S. and Caribbean content. Duty-free treatment under both the ATPA (as amended by ATPDEA) and GSP programs is due to expire on December 31, 2006.

### ***Bilateral Trade***

Peru accounted for 0.31 percent, or \$5.1 billion, of the \$1.7 trillion total U.S. imports in 2005. Between 1991 (when ATPA was signed into law) and 2005, U.S. imports from Peru increased at a compound annual growth rate of 15.0 percent (figure 1-1). Imports from Peru have increased even more rapidly since the 2002 renewal and expansion of ATPA by ATPDEA. Since the expansion of these trade preferences, imports from Peru increased by a compound annual growth rate of 37.9 percent from 2002 to 2005; however, this growth is largely the result of increasing values (driven by price increases) of mineral and energy-related imports.

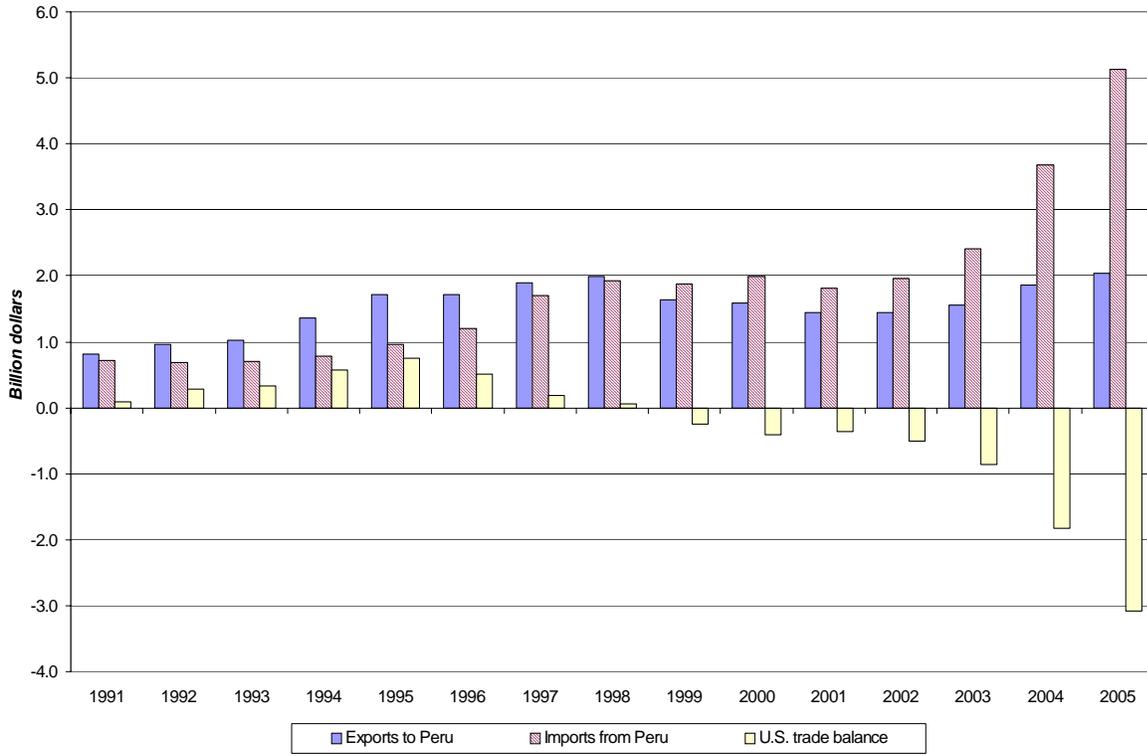
U.S. imports from Peru are highly concentrated in a few product categories, primarily minerals and metals, apparel, energy-related products, coffee, and vegetables (table 1-3). Gold, copper, silver, tin, and zinc combine to make up approximately one-half of U.S. imports from Peru. Petroleum products and apparel each account for more than 10 percent of total U.S. imports from Peru. Coffee, fruits and nuts, prepared vegetables, asparagus, fish, and wood each represent more than 1 percent of U.S. imports from Peru. Of the \$5.1 billion worth of imports from Peru, 97 percent entered free of duty, 50 percent under most-favored-nation (MFN)<sup>19</sup> provisions, and 46 percent under ATPA (figure 1-2). Of the \$2.3 billion in imports that entered under ATPA, 9 percent were also eligible for preferential treatment under the GSP. The remaining 91 percent were “ATPA-only,” meaning they were eligible for duty-free treatment only under ATPA.

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<sup>18</sup> Under the GSP, a beneficiary developing country loses benefits for an eligible product when U.S. imports of the product exceed either a specific, annually adjusted value or 50 percent of the value of total U.S. imports of the product in the preceding calendar year—known as the competitive-need limit. See sec. 503(c)(2) of the Trade Act of 1974, as amended. As mentioned above, ATPA has no competitive-need limits.

<sup>19</sup> Nondiscriminatory tariff treatment is commonly and historically called “most-favored-nation” (MFN) status and is currently called normal trade relations (NTR) status in the United States.

**Figure 1-1 U.S. trade with Peru, 1991-2005**



Source: Compiled from official statistics of the U.S. Department of Commerce.

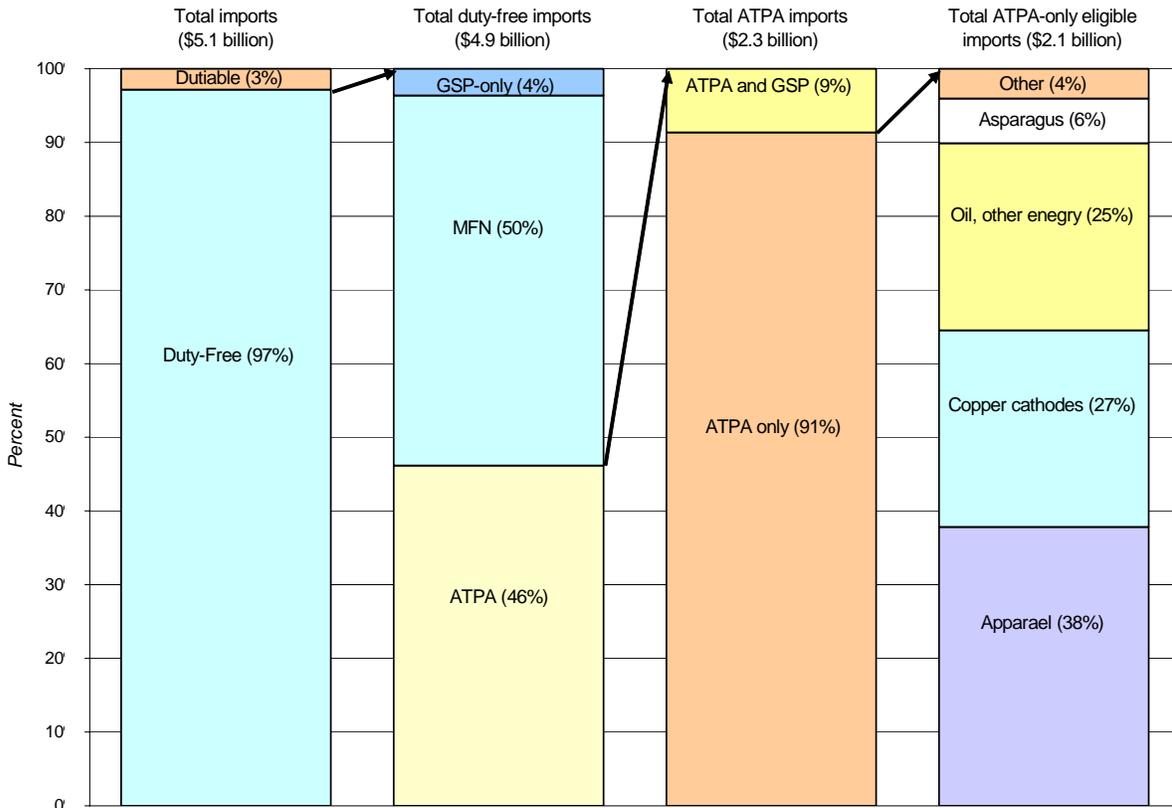
**Table 1-3** Leading U.S. imports from Peru, total U.S. imports from the world, and Peruvian share of total, 2005

HTS subheadings	Description	Imports from Peru	Imports from world	Peruvian share
		-----1,000 dollars-----		-Percent-
7108.12.10	Gold, nonmonetary, bullion and dore	1,555,783	3,573,530	43.54
7403.11.00	Refined copper cathodes and sections of cathodes	556,350	3,238,489	17.18
2710.11.25	Naphthas (exc. motor fuel/mtr fuel blend. stock) fr petroleum oils & bitumin minerals (o/than crude) or preps 70%+ by wt. fr petroleum oils	324,062	6,615,774	4.90
6110.20.20	Sweaters, pullovers and similar articles, knitted or crocheted, of cotton, n.e.s.o.i.	276,178	7,585,160	3.64
2710.19.05	Distillate and residual fuel oil (including blends) derived from petroleum or oils from bituminous minerals, testing under 25 degrees A.P.I.	228,655	23,819,186	0.96
6105.10.00	Men's or boys' shirts, knitted or crocheted, of cotton	173,459	1,548,195	11.20
7106.91.10	Silver bullion and dore	151,098	991,963	15.23
6109.10.00	T-shirts, singlets, tank tops and similar garments, knitted or crocheted, of cotton	146,971	3,424,241	4.29
8001.10.00	Tin (o/than alloy), unwrought	138,341	284,902	48.56
0709.20.90	Asparagus, n.e.s.o.i., fresh or chilled	86,400	188,872	45.75
2608.00.00	Zinc ores and concentrates	84,967	116,985	72.63
0901.11.00	Coffee, not roasted, not decaffeinated	74,283	2,222,981	3.34
2709.00.10	Petroleum oils and oils from bituminous minerals, crude, testing under 25 degrees A.P.I.	73,565	48,435,154	0.15
6106.10.00	Women's or girls' blouses and shirts, knitted or crocheted, of cotton	55,538	863,223	6.43
2901.21.00	Ethylene	48,606	2,560,773	1.90
7113.19.29	Gold necklaces and neck chains (o/than of rope or mixed links)	40,264	947,605	4.25
4407.24.00	Virola, Mahogany, Imbuia and Balsa wood sawn or chipped lengthwise, sliced or peeled, over 6 mm thick	38,246	114,821	33.31
7106.92.10	Silver (incl. silver plate w gold/platinum), semimanufacture, rectangular/near rectangular shape,99.5% or > pure, marked only by wgt/identity	32,450	39,738	81.66
0904.20.20	Paprika, dried or crushed or ground	28,113	44,306	63.45
0306.13.00	Shrimps and prawns, cooked in shell or uncooked, dried, salted or in brine, frozen	25,714	2,803,362	0.92
	Subtotal	4,139,043	109,419,259	3.78
	Other	983,547	1,552,960,409	0.06
	Total	5,122,590	1,662,379,669	0.31

Source: Compiled from official statistics of the U.S. Department of Commerce.

Note: The abbreviation "n.e.s.o.i." stands for "not elsewhere specified or otherwise included."

**Figure 1-2** U.S. imports from Peru, by preference program, 2005



Source: Compiled from official statistics of the U.S. Department of Commerce.

Table 1-4 lists the leading U.S. ATPA-only imports from each of the ATPA beneficiaries, and the AVE for each of these products that would apply in the absence of ATPA preferences. The lower the AVE and the less of the product produced by Bolivia, Colombia, and Ecuador, the less likely there would be trade diversion to Peru under the U.S.-Peru TPA in the event ATPA preferences expire (the “ATPA preferences expire” scenario). Apparel represented 38 percent of ATPA-only imports. These apparel products benefit substantially from ATPA as imports would have faced duty rates ranging from 16.5 percent to 19.7 percent ad valorem.<sup>20</sup> In addition to potentially facing relatively large MFN tariff rates, in the absence of ATPA, apparel also represents leading ATPA-only imports from Bolivia and Colombia, increasing the likelihood for trade diversion from these countries to Peru in the “ATPA preferences expire” scenario.<sup>21</sup>

<sup>20</sup> Other apparel products not listed in the top five could have been subject to duties of up to 28.6 percent.

<sup>21</sup> The economy-wide and sector-specific analyses discuss the various factors that limit possible trade diversion in apparel.

**Table 1-4 U.S. ATPA-only imports by value, by Andean country, 2005**

Country and HTS subheading	Description	Customs value -1,000 dollars-	Ad valorem equivalent -----Percent-----	Percent of total
<b>Peru</b>				
7403.11.00	Refined copper cathodes and sections of cathodes <sup>1</sup>	556,350	1.0	26.68
6110.20.20	Sweaters, pullovers and similar articles, knitted or crocheted, of cotton, n.e.s.o.i.	274,270	16.5	13.15
2710.11.25	Naphthas (exc. motor fuel/mtr fuel blend. stock) fr petroleum oils & bitumin minerals (o/than crude) or preps 70%+ by wt. fr petroleum oils	242,469	0.2	11.63
2710.19.05	Distillate and residual fuel oil (including blends) derived from petroleum or oils from bituminous minerals, testing under 25 degrees A.P.I.	213,694	0.2	10.25
6105.10.00	Men's or boys' shirts, knitted or crocheted, of cotton	172,107	19.7	8.25
	Subtotal	1,458,890		69.95
	Other	626,655		30.05
	Total	2,085,545		100.00
<b>Colombia</b>				
2709.00.20	Petroleum oils and oils from bituminous minerals, crude, testing 25 degrees A.P.I. or more	1,725,838	0.3	41.90
2709.00.10	Petroleum oils and oils from bituminous minerals, crude, testing under 25 degrees A.P.I.	1,171,245	0.2	28.44
2710.19.05	Distillate and residual fuel oil (including blends) derived from petroleum or oils from bituminous minerals, testing under 25 degrees A.P.I.	312,474	0.2	7.59
0603.10.60	Roses, fresh cut	188,965	6.8	4.59
6203.42.40	Men's or boys' trousers and shorts, not bibs, not knitted or crocheted, of cotton, not containing 15% or more by weight of down, etc	143,042	16.6	3.47
	Subtotal	3,541,564		85.99
	Other	577,044		14.01
	Total	4,118,607		100.00
<b>Ecuador</b>				
2709.00.10	Petroleum oils and oils from bituminous minerals, crude, testing under 25 degrees A.P.I.	3,937,316	0.2	93.26
0603.10.60	Roses, fresh cut	74,108	6.8	1.76
2710.11.25	Naphthas (exc. motor fuel/mtr fuel blend. stock) fr petroleum oils & bitumin minerals (o/than crude) or preps 70%+ by wt. fr petroleum oils	73,288	0.2	1.74
1604.14.30	Tunas and skipjack, not in oil, in airtight containers, not of U.S. possessions, over quota	47,814	12.5	1.13
1604.14.40	Tunas and skipjack, not in airtight containers, not in oil, in bulk or in immediate containers weighing with contents over 6.8 kg each	16,721	0.3	0.40
	Subtotal	4,149,247		98.28
	Other	72,562		1.72
	Total	4,221,809		100.00
<b>Bolivia</b>				
2709.00.20	Petroleum oils and oils from bituminous minerals, crude, testing 25 degrees A.P.I. or more	44,501	0.3	46.89
7113.19.21	Gold rope necklaces and neck chains	13,816	5.0	14.56
6105.10.00	Men's or boys' shirts, knitted or crocheted, of cotton	12,130	19.7	12.78
6106.10.00	Women's or girls' blouses and shirts, knitted or crocheted, of cotton	7,270	19.7	7.66
6109.10.00	T-shirts, singlets, tank tops and similar garments, knitted or crocheted, of cotton	7,167	16.5	7.55
	Subtotal	84,887		89.44
	Other	10,017		10.56
	Total	94,901		100.00

Source: Compiled from official statistics of the U.S. Department of Commerce.

Note: The abbreviation "n.e.s.o.i." stands for "not elsewhere specified or included."

<sup>1</sup> Although this product is also GSP eligible, it is excluded from GSP for Peru because imports exceed the competitive-need limit; consequently, it can only enter duty free under ATPA, which does not apply competitive-need limits.

Copper cathodes represented 27 percent of ATPA-only imports; the applicable MFN duty rate is 1.0 percent ad valorem. Petroleum and other energy-related products represented 25 percent of ATPA-only imports; the applicable MFN duty rate is 0.3 percent ad valorem. Given these low MFN duty rates, effects directly attributable to the U.S.-Peru TPA are expected to be small. Asparagus, which accounts for 6 percent of ATPA-only imports, also benefits substantially from ATPA, as the applicable rates of duty would have been 5.0 percent or 21.3 percent for these imports, depending mainly on the season of entry. However, asparagus is not a leading ATPA-only import from the other three Andean countries, and therefore, is not likely to experience trade diversion under the “ATPA preferences expire” scenario. Although these ATPA-only imports are not expected to receive preferential market access under a U.S.-Peru TPA above what was received under ATPA, substantial historical trade flows are expected to continue after implementation of the U.S.-Peru TPA, and the permanence of market access under the TPA may stimulate increased investment.

Peru accounted for 0.25 percent or \$2.0 billion of the \$804.0 billion in total U.S. exports in 2005. U.S. exports to Peru have increased at a compound annual growth rate of 6.8 percent since 1991, and a compound annual growth rate of 12.2 percent since 2002. U.S. exports to Peru are relatively diversified. More than 35 percent are electrical and mechanical appliances and machinery. Refined petroleum products and organic chemicals account for 10 percent and 5 percent, respectively (table 1-5). Many agricultural and related products have significant flows, including wheat, paper, cotton, fertilizers, rubber, corn, and animal and vegetable fats and oils.

Based on Peru’s tariff schedule summarized in the tabulation below, more than 95 percent of tariff rate lines have a base rate between 12 percent and 40 percent. Forty-three percent of Peru’s tariff rate lines have a base rate of 12 percent and 36 percent have a base rate of 40 percent.

Tariff base rate (percent)	Number of tariff lines	Percent of total tariff lines
0 to 9	197	2.86
12	3,005	43.08
17	41	0.59
20	762	10.92
25	311	4.46
30	4	0.06
35	11	0.16
40	2,515	36.05
52 to 70	130	1.86
<b>Total</b>	<b>6,976</b>	<b>100.00</b>

Source: U.S.-Peru TPA, “Peru Tariff Schedule (Industrial and Textiles)” and “Peru Tariff Schedule (Agriculture),” available at <http://www.ustr.gov>.

Note: Does not include tariff lines with base rate values of zeroes or blanks.

**Table 1-5** Leading U.S. exports to Peru, total U.S. exports to the world, and Peruvian share of total, 2005

HTS subheadings	Description	Exports to Peru	Exports to world	Peruvian share
		-----1,000 dollars-----		-Percent-
2710.19	Petroleum oils & oils (not light) from bituminous minerals or preps n.e.s.o.i. 70%+ by wt. from petroleum oils or bitum. min	210,746	9,653,155	2.18
8431.49	Parts and attachments, n.e.s.o.i., for derricks, cranes, self-propelled bulldozers, graders etc. and other grading, scraping, etc. machinery	87,346	3,022,815	2.89
1001.90	Wheat (other than durum wheat), and meslin	78,046	4,206,085	1.86
8473.30	Parts and accessories for automatic data processing machines and units thereof, magnetic or optical readers, transcribing machines, etc., n.e.s.o.i.	57,572	12,171,725	0.47
3907.60	Polyethylene terephthalate, in primary forms	56,576	586,063	9.65
9880.00	Estimate of non-Canadian low value export shipments; compiled low value shipments to Canada; and shipments not identified by kind to Canada	55,677	20,443,326	0.27
8525.20	Transmission apparatus incorporating reception apparatus for radiotelephony, radiotelegraphy, radiobroadcasting or television	52,039	3,266,140	1.59
8431.43	Parts for boring or sinking machinery, n.e.s.o.i.	49,362	5,680,194	0.87
5201.00	Cotton, not carded or combed	38,437	3,920,176	0.98
3100.00	Fertilizers (exports only; includes crude fertilizers from other areas)	37,157	2,906,094	1.28
2926.10	Acrylonitrile	31,660	954,602	3.32
9504.30	Coin- or token-operated games, other than bowling alley equipment; parts and accessories thereof	25,046	601,494	4.16
8402.90	Parts for super-heated water boilers and steam or other vapor generation boilers (other than central heating hot water boilers)	24,008	123,351	19.46
1005.90	Corn (maize), other than seed corn	20,289	4,860,457	0.42
7308.90	Structures and parts of structures n.e.s.o.i., or iron or steel	16,029	489,588	3.27
8432.90	Parts for agricultural, horticultural or forestry machinery (for soil preparation or cultivation) and parts for lawn or ground rollers	14,103	164,534	8.57
8704.10	Dumpers (dump trucks) designed for off-highway use	13,888	1,605,676	0.86
3906.90	Acrylic polymers n.e.s.o.i., in primary forms	13,570	1,159,231	1.17
8479.90	Parts of machines and mechanical appliances having individual functions, n.e.s.o.i.	13,451	2,150,630	0.63
3901.10	Polyethylene having a specific gravity of less than 0.94, in primary forms	13,332	1,571,457	0.85
	Subtotal	908,333	79,536,793	1.14
	Other	1,129,706	724,455,097	0.16
	Total	2,038,039	803,991,890	0.25

Source: Compiled from official statistics of the U.S. Department of Commerce.

Note: The abbreviation "n.e.s.o.i." stands for "not elsewhere specified or included."

# PERU

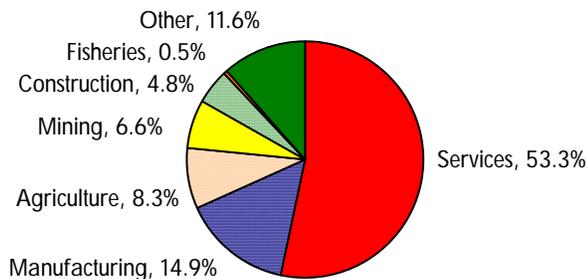


## ECONOMIC PROFILE

### Economic indicators

	2000	2004
Population (mn)	26.3	27.9
GDP (US\$ bn)	53.7	77.6
GDP per capita (US\$)	2,041.8	2,781.4
Real GDP growth (%)	0.2	5.9
Goods exports (US\$ mn)	7,025.7	16,691.7
Goods imports (US\$ mn)	7,221.2	12,079.0
Trade balance (US\$ mn)	-195.5	4,612.7

GDP by economic activities, 2004  
(nominal GDP = \$68.6 billion)



### Peru's main trade commodities, US\$ million, 2004

Exports		Imports	
Copper	2,446.0	Intermediate goods	5,358.4
Gold	2,383.1	Capital goods	2,366.6
Fishmeal	1,103.7	Consumer goods	1,974.4
Zinc	576.8	Other goods	126.2

### Peru's main trading partners, percent of total, 2004

Exports		Imports	
United States	29.0	United States	28.7
China	9.3	Spain	7.4
United Kingdom	7.5	Chile	6.6
Chile	5.0	Brazil	6.0

Source for economic indicators, GDP figure, and trade data: "Peru: Economic Structure"; 2005 data are EIU estimates

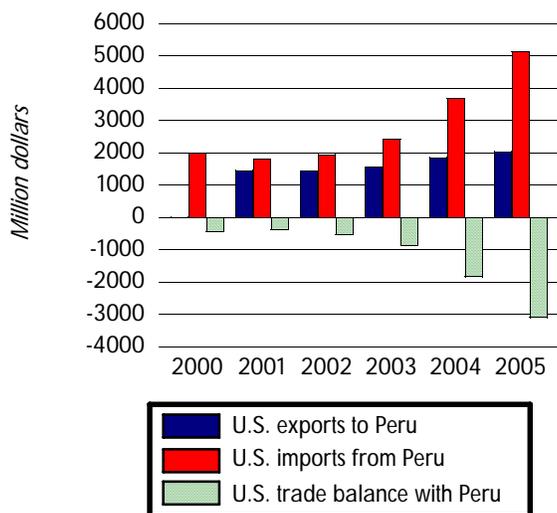
### Economic overview

- ▶ Peru is a lower-middle-income country located in the Andean region (figure 1-3). Its population is less than one-tenth of that of the United States, and its GDP in 2004 was less than 1 percent of the U.S. GDP.
- ▶ The Peruvian economy is characterized by relatively modern sectors on the coastal plains and subsistence sectors in the mountains of the interior. Peru has a wide diversity of climates, encouraging the cultivation of many varieties of crops.
- ▶ Peru's GDP increased by 45 percent between 2000 and 2005, largely resulting from the political and economic reforms enacted in the 1990s and continued in recent years.<sup>1</sup> Increased exports of nontraditional goods and high mineral prices in 2004 and 2005 also helped export earnings and GDP growth.
- ▶ Services represent approximately one-half of Peru's GDP. The manufacturing sector is small, accounting for 15 percent of GDP, but fairly diverse; the largest sectors are food processing, fishmeal, metals and minerals, steel, and textiles and apparel. However, low demand in both Peru and the regional market has resulted in limited growth in the manufacturing sector.
- ▶ Export-earning industries are primarily mining, specifically copper, gold, silver, zinc, and lead, as well as fishing and fishmeal processing. Peru has been ranked as high as the second-largest fishing nation in the world, but overfishing and the effects of El Niño have led to reduced catches in recent years.
- ▶ The United States is Peru's largest single-country trading partner, accounting for approximately 29 percent of Peru's exports and imports.
- ▶ Sectors targeted for expansion by the Peruvian government include tourism, petroleum and natural gas (large deposits have been located but need development), textiles (locally grown Pima cotton is highly regarded, and animals native to Peru such as alpacas and llamas have high-quality wool), and agriculture (the climate lends itself to growth of a wide range of products).
- ▶ Foreign direct investment from Spain, the United States, and the United Kingdom has been concentrated in the communications, energy, and mining sectors.

<sup>1</sup> Although not as pervasive as in the past, Peru's informal economy is still large. In general terms, an estimated 38 percent of GDP and 60 percent of man-hours worked took place in the informal sector in Peru in the late 1980s. DeSoto, Chersi, and Ghibellini, "El Otro Sendero."

# PERU-CONTINUED

U.S. merchandise trade with Peru, 2000-2005



## Regional trade agreements

- ▶ Peru is a member of the WTO, the Asia-Pacific Economic Cooperation (APEC) forum,<sup>2</sup> and the Latin American Integration Association (ALADI).<sup>3</sup>
- ▶ Peru is a member of the Andean Community<sup>4</sup> and an associate member of Mercosur.<sup>5</sup>
- ▶ Peru has full or partial bilateral trade agreements with more than 12 countries (some through ALADI), including Argentina, Bolivia, Brazil, Chile, Cuba, Mexico, Paraguay, Thailand, and Uruguay.
- ▶ Peru is negotiating preferential trade agreements with other countries/regions, including the European Union and some of the members of APEC, bilaterally and through the Andean Community.
- ▶ Peru has signed bilateral investment treaties with 28 countries<sup>6</sup> and is a member of the Multilateral Investment Guarantee Agency, the Overseas Private Investment Corporation, and the International Center for Settlement of Investment Disputes.

## U.S.-Peru trade in goods

- ▶ U.S. trade with Peru is small, accounting for approximately 0.3 percent of total U.S. goods trade in 2005.
- ▶ The U.S. trade deficit with Peru increased during 2000 through 2005, primarily as a result of increased imports from Peru, driven by increasing values (driven primarily by price increases) of energy-related products and minerals/metals.
- ▶ U.S. exports to Peru in 2005 totaled more than \$2.0 billion and consisted mainly of various types of machinery, plastics, mineral fuels and oils, and cereals.
- ▶ U.S. imports from Peru in 2005 totaled more than \$5.1 billion and consisted mainly of minerals and metals, mineral fuels and oils, organic chemicals, apparel, and vegetables.
- ▶ Approximately 6,300 tariff rate lines or products from Peru are eligible to enter the United States duty free under the ATPA program.

### Leading U.S. exports to Peru, US\$ million, 2005

Machinery and parts	709.2
Plastics and chemicals	357.5
Mineral fuels and oils	216.4
Cereals	107.2
Vehicles	73.3
Other	574.4
<b>Total</b>	<b>2,038.0</b>

### Leading U.S. imports from Peru, US\$ million, 2005

Precious stones and metals	1,827.4
Mineral fuels & organic chemicals	777.4
Apparel	746.6
Copper & related articles	592.7
Vegetables	160.6
Other	1,017.9
<b>Total</b>	<b>5,122.6</b>

Source: Compiled from official statistics of the U.S. Department of Commerce.

<sup>2</sup> APEC members are Australia, Brunei, Canada, Chile, China, Hong Kong, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, the Russian Federation, Singapore, Taiwan, Thailand, the United States, and Vietnam.

<sup>3</sup> ALADI members are Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Paraguay, Peru, Uruguay, and Venezuela.

<sup>4</sup> The Andean Community is a customs union that includes Bolivia, Colombia, Ecuador, Peru, and Venezuela.

<sup>5</sup> Mercosur includes Argentina, Brazil, Paraguay, and Uruguay. On Dec. 8, 2004, the Andean Community signed a cooperation agreement with Mercosur, and the two blocs published a joint letter of intention for future negotiations toward integrating all of South America in the context of the South American Community of Nations. In Dec. 2005, Mercosur began considering Venezuela for membership.

<sup>6</sup> The countries are Argentina, Australia, Bolivia, Chile, China, Colombia, Cuba, the Czech Republic, Denmark, Ecuador, El Salvador, Finland, France, Germany, Italy, Malaysia, the Netherlands, Norway, Paraguay, Portugal, Romania, Singapore, Spain, Sweden, Switzerland, Thailand, the United Kingdom, and Venezuela.

# PERU-CONTINUED

Figure 1-3 Map of Peru



## Literature Review

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The Commission found four studies in its review of the literature that directly assess the economic effect of a proposed U.S.-Peru/Andean FTA. Two studies analyze a proposed U.S.-Peru FTA; one analyzes a proposed U.S.-Andean FTA; and a fourth study assesses the effect of the U.S.-Peru TPA specifically on the agricultural sector.<sup>22</sup> Although the focus of most of these studies is primarily on the effect of the agreements on Peru or the Andean Community, the general effects, when reported, on U.S. trade and GDP were very small and mitigated by Peru's existing preferential access to the U.S. market under ATPA. In addition, estimated values by those studies reporting economy-wide effects on the United States of an agreement similar to the U.S.-Peru TPA and using similar modeling techniques did not differ substantially from those determined by Commission analysis in this report.

In the first study, Eduardo Moron<sup>23</sup> used a calibrated dynamic stochastic general equilibrium model of the Peruvian economy to simulate results of the proposed FTA with the United States. On the basis of a three-sector economy model (exportable, importable, and nontradeable goods), Moron examines seven scenarios.<sup>24</sup> The author finds that, from the perspective of Peru's economy, a combination of all reforms results in a higher GDP (by 3.29 percent) for Peru, a substantial increase in exports, imports, and investment, and a real exchange rate depreciation. Moron does not report results for the United States. In terms of trade creation and trade diversion, Moron's analysis suggests there should be minimal trade diversion because of the substantial difference in the level of industrial development and production bases between the United States and Peru.

In addition to his analysis, Moron references two papers that use CGE models to examine the effects of an FTA on the Peruvian economy. In the first paper, Cuadra et al.<sup>25</sup> use the GTAP CGE model (version 5) to simulate the FTA with the United States as well as FTAs with various other regional groups and global free trade. Depending on the scenario and assumptions, Peru's GDP increases between 0.11 and 7.02 percent. Moron does not cite results for the United States. In the second paper referenced by Moron, Rodriguez et al.<sup>26</sup> also use a CGE model. The authors' analysis indicates that, under an FTA, Peru's imports from the United States will be higher by 30.3 percent and Peru's exports to the United States will be higher by 3.0 percent.<sup>27</sup>

In the second study that the Commission identified, Vernon O. Roningen<sup>28</sup> uses a partial equilibrium model to analyze Peru's bilateral trade with a number of countries, including the

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<sup>22</sup> References to FTAs in this section imply proposed, possible, or hypothetical FTAs.

<sup>23</sup> Moron, "The Effect of the Free Trade Agreement with the U.S. in the Peruvian Economy."

<sup>24</sup> The seven scenarios are: 1) reduction in tariff rates, 2) increased access to the U.S. market for Peru's exports, 3) increased value-added tax (VAT) to compensate for lower tariff revenue and to compensate contracting industries, 4) increased VAT for importable goods to cover increased property rights protection, 5) increased government expenditure, 6) increased total factor productivity, and 7) combined effects.

<sup>25</sup> Cuadra, Fairlie, and Florian, "Escenarios de integracion del Peru," referenced in Moron, "The Effect of the Free Trade Agreement with the U.S. in the Peruvian Economy." This paper is unpublished, written in Spanish, and not available on the Internet.

<sup>26</sup> Rodriguez, et al. "Efectos macroeconomicos del acuerdo de libre comercio," referenced in Moron, "The Effect of the Free Trade Agreement with the U.S. in the Peruvian Economy." This paper is unpublished, written in Spanish, and not available on the Internet.

<sup>27</sup> Moron reports that the two papers show very different results, partly because the models are so different. He cites both papers as a comparative static exercise rather than using them for analysis of the transitional dynamics.

<sup>28</sup> Roningen, "The Economic Impact of a Peru Free Trade Agreement with the United States."

United States, in the sugar, cotton, and other selected sectors.<sup>29</sup> Scenarios included (1) global free trade in all products, (2) an FTA between Peru and the United States, (3) an FTA with the removal of the U.S. sugar import quota system, (4) an FTA with a balanced tripling of the Peru sugar quota into the United States, (5) an FTA with the removal of the U.S. cotton export subsidy, and (6) an FTA with the removal of both the United States and the EU textile import quota systems.

For the various scenarios of an FTA between the United States and Peru, the model distinguished between the benefits already obtained through ATPA (i.e., what can be lost for Peru if the FTA is not enacted before ATPA expires) and the benefits from the proposed FTA. Model results for the sugar sector show that most of the gains stem from the FTA rather than ATPA, but for cotton/textiles, most of the gains have already been obtained under the ATPA program. Therefore, the cotton/textiles sector will be the most negatively affected sector if ATPA preferences are not renewed and the FTA is not signed. In examining and comparing scenarios that include the FTA and additional changes, reform of the U.S. sugar import quota scheme (e.g., a tripling of the current quota) would produce more gains for Peru than an FTA with the United States, and removal of the U.S. cotton export subsidies would provide a small increase in benefits for Peru. In sum, according to Roningen, with respect to the sugar and cotton sectors, provisions of the FTA are less liberalizing of the sugar and cotton/textile sectors than would be reforms of the import quota and export subsidy regimes evaluated in his analysis.

The third study the Commission identified examines FTAs involving Latin American countries, and Peru is included and analyzed as a member of the Andean Community. The authors, Josefina Monteagudo and Masakazu Watanuki,<sup>30</sup> use a trade-focused CGE model with variables that represented three kinds of trade barriers: ad valorem tariff equivalents, export subsidies, and domestic supports. The effects of the following FTAs were analyzed: a South American Free Trade Agreement, an Andean FTA with the United States, and the Free Trade Area of the Americas (FTAA). The results show a high correlation between the size of the trade agreement and the potential economic gains. For example, the FTAA produces the largest benefits for the Andean Community<sup>31</sup> in terms of both GDP and total export growth<sup>32</sup> (3.0 percent and 8.3 percent, respectively). The Andean FTA with the United States produces small gains for the United States (0.2 percent GDP growth and 0.3 percent total export growth) because of existing ATPA preferences and Peru's export structure, which includes mining, energy products, and chemicals that already face low or no barriers into the U.S. market. The authors note a large trade diversion effect in the Andean-U.S. FTA because of the Andean countries' shift from third parties to U.S. sources for imports, increasing U.S. exports by 4.0 percent and U.S. imports by 0.2 percent.

The fourth study, conducted by the American Farm Bureau Federation (AFBF), assesses the effect of the TPA on the U.S. agricultural sector.<sup>33</sup> The AFBF's general conclusion is that, despite the increase in U.S. sugar imports, the TPA will have a positive effect on the U.S.

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<sup>29</sup> Roningen's report was designed to examine specific sectors in detail for Peru, subsequent to a GTAP/CGE-based study commissioned by Peru's Ministry of Commerce and Tourism.

<sup>30</sup> Monteagudo and Watanuki, "What Kind of Trade Integration Helps Latin America the Most?"

<sup>31</sup> The results separate Colombia and Venezuela from the "rest of the Andean Community," and so the results listed here are for Bolivia, Ecuador, and Peru combined.

<sup>32</sup> The effect on exports and imports is measured by changes in trade in goods and excludes trade in services.

<sup>33</sup> American Farm Bureau Federation, *Implications of a Peru Trade Promotion Agreement on U.S. Agriculture*.

agricultural sector. The AFBF's methodology compares two scenarios: "the first assumes no agreement is implemented and the second assumes that the current agreement is put in place."<sup>34</sup> This methodology was conducted for four commodities: major grain, oilseed, livestock, and fiber products. For scenario one (without the TPA), the AFBF estimates Peruvian demand for imports in 2025 by projecting current demand and supply based on historical production trends and estimates for population and economic growth. To estimate U.S. exports of these products, the authors assume the U.S. market share in Peru remains at its current value of 8 percent. For scenario two (with the TPA), the authors adjust projected Peruvian demand and supply in 2025 using supply, demand, price, and income elasticities developed by the Food and Agricultural Organization of the United Nations.<sup>35</sup> To estimate the gain in U.S. exports of these products, the authors assume an across-the-board increase of 25 percent in U.S. market share in the Peruvian market.<sup>36</sup> The difference between estimates from these two scenarios is the estimated increase in U.S. exports to Peru, or \$477 million for the four commodities combined. Although the four sectors represent those facing the most restrictions in the Peruvian economy, the authors estimate the overall increase in other agricultural products by applying the same growth rate to all U.S. agricultural exports to Peru for an additional increase of \$229 million, and an overall increase for all U.S. agricultural exports to Peru of \$706 million. In a separate analysis, the AFBF estimates an increase of more than \$6 million in U.S. sugar imports from Peru based on the quota increases provided for in the TPA. Consequently, the AFBF's analysis "suggests a total surplus of [TPA-related] gains in exports over imports of \$699 million."<sup>37</sup>

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<sup>34</sup> Ibid., 12.

<sup>35</sup> The elasticities used in the AFBF assessment are not Peru specific, but based on regional estimates from the mid-1990s.

<sup>36</sup> For example, the U.S. aggregate agricultural market share increases from 8 to 10 percent, and the U.S. wheat market share increases from 32 to 40 percent. The AFBF did not provide the basis for employing this increase in market share.

<sup>37</sup> American Farm Bureau Federation, *Implications of a Peru Trade Promotion Agreement on U.S. Agriculture*, 15.

# CHAPTER 2

## Effect of Market Access Provisions for Goods: Goods Market Access and Economy-Wide Analysis<sup>1</sup>

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This chapter has two major sections: a goods market access assessment and an economy-wide analysis. The goods market access assessment provides a summary and assessment of the tariff commitments made by the United States and Peru in the TPA. The goods market access assessment is followed by an economy-wide analysis of the potential effects of the market access provisions of the TPA. Using a general equilibrium model, the Commission estimates the potential effects of the tariff cuts in the TPA on the U.S. economy as a whole, including the effects on GDP, exports and imports, production, employment, the competitive position of industries, and consumers.

### Summary of Assessment

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#### *Goods Market Access*

The U.S.-Peru TPA provides for the elimination of duties on bilateral trade in all qualifying goods with the exception of sugar. The staging of tariff elimination varies from immediate for the majority of tariff lines to a 17-year phase-in, with some provisions providing for preferential TRQs, primarily for sensitive agricultural goods, which are, with the exception of sugar, eventually phased out.

- ▶ **Industrial and textile tariffs:** More than 99 percent of U.S. and 80 percent of Peruvian “industrial and textile” tariff lines are already duty free or will become duty free immediately upon TPA implementation.
- ▶ **Agricultural tariffs:** More than 89 percent of U.S. and 56 percent of Peruvian agricultural tariff lines are already duty free or will become duty free immediately upon TPA implementation.
- ▶ **Treatment and rules of origin:** The commitments on national treatment and market access are similar in form to the corresponding provisions of GATT 1994. The parties agree to eliminate their customs duties on “originating goods,” unless otherwise provided, and to refrain from increasing any duty rate, imposing a new rate, or imposing or expanding performance requirements to obtain a TPA benefit.
- ▶ **Textiles and apparel provisions:** The TPA will immediately eliminate all tariffs on U.S. trade with Peru in textiles and apparel that meet the TPA rules of origin, thereby making permanent the duty-free benefits currently available under ATPA for almost all

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<sup>1</sup> Although most chapters of the TPA deal with improving market access by addressing trade facilitation, investment, and regulatory environment aspects, “market access provisions” described in this chapter specifically refer to TPA chaps. 2, 3, and 4 of the TPA (and related annexes and side letters).

U.S. imports of Peruvian apparel. The TPA will grant duty-free treatment for the first time to U.S. imports of textiles from Peru and to U.S. exports of textiles and apparel to Peru.

### ***Economy-wide Analysis***

The Commission's simulation of the economy-wide effect of tariff elimination, assuming that ATPA preferences continue, found that U.S. welfare will increase by \$346 million (0.002 percent of GDP) and GDP will increase by more than \$2.1 billion (0.02 percent). These effects are driven by Peru's removal of its tariffs and the subsequent improvement in the U.S. terms of trade. Results of the second policy simulation, whereby ATPA preferences expire, differ minimally from the first simulation.

- ▶ **Tariff asymmetry:** As a result of Peru's access to ATPA, Peruvian exporters generally face substantially lower tariffs in the U.S. market than do U.S. exporters in the Peruvian market. With few exceptions, Peru's average AVE tariff rates in the economy-wide model range from 12 to 25 percent, whereas almost all U.S. sector average tariff rates in the model are zero or near zero, with only one exceeding 3 percent (sugar). Given this tariff asymmetry, the TPA is likely to result in a much larger increase in U.S. exports to Peru than in U.S. imports from Peru.
- ▶ **U.S. exports to Peru:** Based on the results of the economy-wide model simulation, U.S. exports to Peru are estimated to be higher by \$1.1 billion. The largest estimated increases in U.S. exports, by value, are in machinery and equipment; chemicals, rubber, and plastic products; electrical machinery; and wheat. The largest estimated increases in U.S. exports, by percent, are in paddy rice and meat (e.g., swine and poultry) products.
- ▶ **U.S. imports from Peru:** Based on the results of the economy-wide model simulation, U.S. imports from Peru are estimated to be higher by \$439 million. The largest estimated increase in imports, by value, is in metals n.e.c. (mainly gold, copper, and aluminum); the largest estimated increases in U.S. imports, by percent, are in leather products and bovine meat products.
- ▶ **U.S. industries:** The wheat sector is estimated to experience the largest increases in output and employment. Only the U.S. paddy rice, crops n.e.c. (e.g., cut flowers, live plants, and seeds), and metals n.e.c. (mainly gold, copper, and aluminum) sectors decline by more than 0.10 percent in output or employment.
- ▶ **ATPA expires scenario:** The largest effects of the second scenario include increased domestic output of flowers (as Colombia, a large exporter to the United States, would face tariffs) and minimal trade diversion from other Andean countries to Peru in some sectors.

# Goods Market Access

## TPA Tariff Commitments

The U.S.-Peru TPA will eliminate duties on a wide range of the partner countries' originating goods immediately, while phasing out duties on other originating goods over differing transition periods and providing for preferential TRQs on certain sensitive (primarily agricultural) goods.<sup>2</sup> Many originating goods from Peru under the TPA's rules of origin will be guaranteed existing duty-free access or receive immediate duty-free entry into the United States, corresponding to the duty-free status currently available for most tariff rate lines under the GSP or ATPA. The U.S. and Peruvian "industrial and textile," and agricultural tariff schedules (with annexes and notes) cover all goods. Tables 2-1 and 2-2 and figures 2-1 and 2-2 summarize the U.S. and Peruvian tariff commitments. Of the more than 8,800 U.S. and 6,000 Peruvian industrial and textile tariff lines, more than 99 percent of U.S. tariff lines and 80 percent of Peruvian tariff lines are already duty free or are duty free immediately upon entry into force of the TPA. More than 89 percent of U.S. agricultural tariff lines and 56 percent of Peruvian agricultural tariff lines are already duty free or are duty free immediately upon entry into the TPA. A comparison of U.S. and Peruvian tariff schedules indicates that, while the United States has a relatively large percent of tariff lines categorized as already duty free, very few (less than 1 percent) of Peru's industrial and textile tariff lines are categorized as already duty free.

**Table 2-1** U.S.-Peru TPA: Summary of industrial and textile tariff commitments

Staging	U.S. commitments (8,817 tariff lines)	Peru commitments (6,072 tariff lines)
Already free of duty (MFN)	3,403 tariff lines included in 63 HS chapters	47 tariff lines included in agriculture related inputs and machinery (such as tractors, harvesting machines, and mineral and chemical fertilizers) in chapters 28, 29, 31, 38, 84, 85, & 87
Immediate duty-free entry	5,376 tariff lines included in 71 HS chapters	4,863 tariff lines included in 75 HS chapters; 52 percent of which and 32 percent of which had original 4 percent and 12 percent tariff bases, respectively
Free without bond	17 tariff lines in HS chapter 98 primarily included in items for exhibition, repair, or temporary use	None
5-year staging	None	592 tariff lines included in 46 HS chapters; 96 percent of tariff lines had an original 12 percent tariff base
7-year staging	None	39 tariff lines in HS chapters 32-34, 39, 48, 73, 84-85, & 87, primarily plastic products and misc. machinery; 97 percent of tariff lines had an original 12 percent tariff base
10-year staging	20 tariff lines in HS chapters 16 and 64 (tuna and skipjack, and footwear)	529 tariff lines included in 34 HS chapters; 94 percent of tariff lines had an original 12 percent tariff base
Subject to import restrictions	None	2 tariff lines included in used clothing and used tires
Subject to possible duty based on production-sharing section	One tariff line included in further-processed metal articles in subheading 9802	None

Source: U.S.-Peru TPA, "US Tariff Schedule (Industrial and Textiles)" and "Peru Tariff Schedule (Industrial and Textiles)," available at <http://www.ustr.gov>.

Note: Tariff rates stated in percent mean "percent ad valorem."

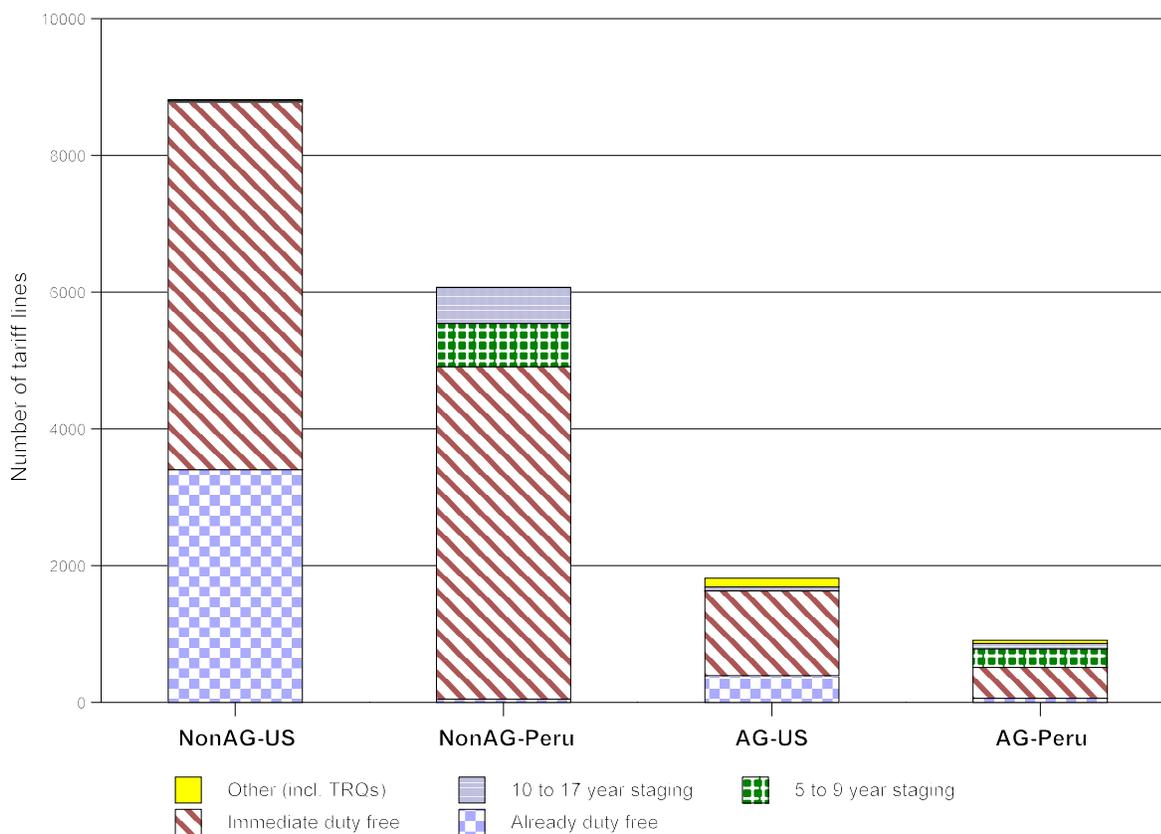
<sup>2</sup> With the exception of sugar, duties on all qualifying goods will be phased out over a period of up to 17 years.

**Table 2-2 U.S.-Peru TPA: Summary of agricultural tariff commitments**

Staging	U.S. commitments (1,817 tariff lines)	Peru commitments (909 tariff lines)
Already free of duty (MFN)	388 tariff lines included in 31 HS chapters	59 tariff lines in HS chapters 01, 05–07, 10, & 12 (including live animals, grains, seeds, & beans)
Immediate duty-free entry	1,241 tariff lines included in 33 HS chapters	451 tariff lines included in 30 HS chapters
2 to 5-year linear and nonlinear staging	3 tariff lines (all 5-year linear) included in wool	257 tariff lines included in 19 chapters; 240 of which are 5-year linear staging
7 to 9-year linear staging	None	17 tariff lines in HS chapters 02, 04, 11, & 15–16 (primarily processed meat products)
10 to 17-year linear staging	56 tariff lines in HS chapters 02, 04, 12, & 18–24 (primarily bovine, dairy products, peanuts, cocoa/chocolate, & tobacco); 51 of which are 15-year staging	78 tariff lines in HS chapters 02, 04, 10–12, 15–17, 19–23, 35, 38, 41, 43, & 50–51 (including meat, eggs, dairy products, grains, animal & vegetable oil, orange juice, and alcoholic products); 69 of which are 10-year staging
Tariff-rate quotas	129 tariff lines in HS chapters 04, 15, 17–19, & 21–22 covering cheese, milk, processed dairy products, & sugar; in-quota items are free of duty; TRQs are liberalized over 15 to 17 years and ended thereafter, except for sugar	47 tariff lines in HS chapters 02, 04–05, 10, 15–16, 19, & 21 covering dairy products, beef, chicken, corn, rice, and soybean oil; in-quota items are free of duty; TRQs are liberalized over 10 to 17 years and ended thereafter

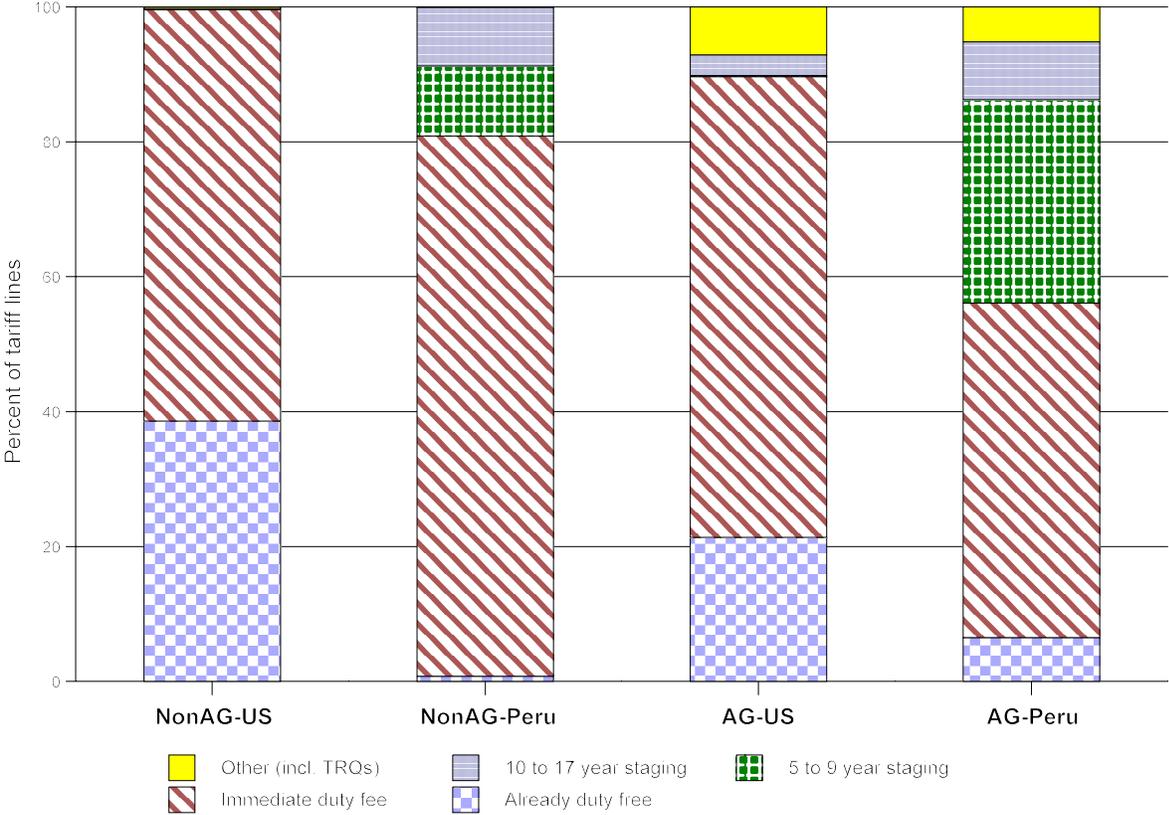
Source: *U.S.-Peru TPA*, “US Tariff Schedule (Agriculture)” and “Peru Tariff Schedule (Agriculture),” available at <http://www.ustr.gov>.

**Figure 2-1 U.S.-Peru TPA: Summary of tariff commitments, by number of tariff lines**



Source: *U.S.-Peru TPA*, “US Tariff Schedule (Industrial and Textiles);” “Peru Tariff Schedule (Industrial and Textiles);” “US Tariff Schedule (Agriculture);” “Peru Tariff Schedule (Agriculture);” available at <http://www.ustr.gov>.

**Figure 2-2** U.S.-Peru TPA: Summary of tariff commitments, by percent of tariff lines



Source: U.S.-Peru TPA, "US Tariff Schedule (Industrial and Textiles)"; "Peru Tariff Schedule (Industrial and Textiles)"; "US Tariff Schedule (Agriculture)"; "Peru Tariff Schedule (Agriculture)"; available at <http://www.ustr.gov>.

## ***TPA Market Access Provisions***

### **TPA Chapter 2—National Treatment and Market Access for Goods**

The commitments on national treatment and market access are similar in form to the corresponding provisions of the GATT 1994. Under this chapter, the parties agree to eliminate their customs duties on originating goods under the attached schedules, and to refrain from increasing any duty rate, imposing a new rate, or imposing or expanding performance requirements to obtain a TPA benefit. Further, they can agree to accelerate the elimination of any duty. Duty-level ceilings are provided in the event that a concession must be withdrawn; a party can impose a duty authorized by the WTO Dispute Settlement Body or return to a higher TPA scheduled rate after a unilateral duty reduction.

Other provisions in this chapter are similar to those of other FTAs and deal with temporary importations, re-entry of repaired or altered goods, and other customs procedures. Article XI of GATT 1994 controls whether a specific measure is allowed under the TPA. Legitimate prohibitions or restrictions on trade with nonparties are to be allowed and are recognized under this article. Import licensing must comply with the WTO agreement on that subject, and the partners are barred from restricting or banning imports from another party on the grounds of alleged violations of local law. Still other provisions ban consular transactions and the U.S. merchandise processing fee (the so-called "customs user fee") and would require other fees and charges that are not duties or their equivalent to be directly related to administrative services being rendered. All fees and charges on trade in goods are required to be published on the Internet. The parties are required to recognize Bourbon Whiskey and Tennessee Whiskey as distinctive U.S. products; they can request that the TPA Committee on Trade in Goods offer amendments to the agreement to recognize a good as a distinctive product. The agreement establishes a Committee on Trade in Goods to consider matters arising under Chapter 4—Rules of Origin Procedures and Chapter 5—Customs Administration and Trade Facilitation.

The Agricultural Market Access Text (section G) deals with the implementation and administration of TRQs, agricultural export subsidies and export state trading enterprises, agricultural safeguard measures, a sugar compensation mechanism, and consultations on trade in chickens, and establishes a Committee on Agricultural Trade. There is an annex on agricultural safeguard measures for beef, bone-in chicken legs, rice, milk powder, butter and dairy spreads, and cheese. This section also includes the agricultural tariff schedules and appendixes for both parties, as well as both parties' industrial and textile tariff schedules. There is also a side letter in which Peru acknowledges its commitment to become a full participant in the WTO Information Technology Agreement (ITA) no later than December 31, 2007.

### **TPA Chapter 3—Textiles and Apparel**

The TPA will immediately eliminate all tariffs on U.S. trade with Peru in textiles and apparel that meet the TPA rules of origin ("originating goods"), thereby making permanent the duty-free benefits currently available under ATPA for almost all U.S. imports of Peruvian

apparel.<sup>3</sup> The TPA will grant duty-free treatment for the first time to U.S. imports of textiles from Peru and to U.S. exports of textiles and apparel to Peru. The rules of origin under the TPA for textiles and apparel will generally be based on the “yarn-forward rule” found in most other U.S. FTAs, which requires that imports of such goods from the TPA party be made in the United States or Peru from the yarn stage forward to qualify for duty-free benefits.<sup>4</sup> Although ATPA also generally requires apparel to be made in beneficiary countries from the yarn stage forward to qualify for duty-free preferences, the TPA contains provisions relating to allowable foreign content and application of the rules of origin that will likely provide the parties more flexibility than ATPA in using third-country inputs. However, the TPA does not contain certain provisions found in other recent U.S. FTAs that expand opportunities for parties to use third-country inputs, such as tariff preference levels (TPLs) and cumulation provisions (discussed below).

The TPA rules of origin for textiles and apparel (annex 3.2 to TPA chapter 3) are based on changes in tariff classification from third-country inputs to goods processed or made in one or both parties. The rules will generally apply only to the component that determines the tariff classification of the garment, rather than to all fabric components of the garment, as is the case under ATPA. For example, a garment subject to the yarn-forward rule will be eligible for TPA preferences if the component that determines the tariff classification of the good is made of originating yarns and fabrics, without regard to the source of any collar, cuffs, or most other components incorporated into the garment.<sup>5</sup> Apparel components that must be originating include certain visible linings,<sup>6</sup> narrow elastic fabrics,<sup>7</sup> sewing thread, and pocketing fabrics.

In addition, the de minimis foreign content rule under the TPA will, like in CAFTA-DR, permit up to 10 percent of the total weight of the component that determines the tariff classification of the good to consist of third-country fibers or yarns, except for elastomeric yarns, which must be made in a TPA party. By contrast, the ATPA de minimis foreign content rule permits third-country yarns to account for not more than 7 percent of the total weight of the garment. Unlike ATPA, the TPA will grant duty-free benefits to garments made in Peru from U.S. fabrics that are dyed, printed, and finished in Peru and to unlimited quantities of garments made in Peru from Peruvian fabrics of U.S. or Peruvian yarns.<sup>8</sup>

Notwithstanding these enhancements of ATPA, the TPA does not contain certain provisions found in other recent U.S. FTAs that permit the parties to use third-country inputs in

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<sup>3</sup> U.S. imports of textiles and apparel from Peru totaled \$821 million in 2005 and consisted almost entirely of apparel (data are from the U.S. Department of Commerce, Office of Textiles and Apparel). Apparel and a few textile articles (textile luggage and handloomed, handmade, and folklore articles) are eligible for special tariff benefits under ATPA, as amended by ATPDEA, as provided for in subchapter XXI of chap. 98 of the HTS (subheadings 9821.11.01 through 9821.11.25).

<sup>4</sup> A “fiber-forward rule” applies to a limited number of articles (mainly yarns and knit fabrics).

<sup>5</sup> ATPA allows originating garments to contain findings, trimmings, and interlinings of foreign origin if the value of these items (e.g., zippers, buttons, and lace trim) does not exceed 25 percent of the cost of the components of the assembled article.

<sup>6</sup> Applies only to the visible lining fabric in the main body of certain suits, sport coats, skirts, and coats (excluding sleeves), which covers the largest surface area; it does not apply to removable linings. The fabrics include woven fabrics of wool, cotton, and manmade fibers (except certain artificial-filament-yarn fabric), and certain pile, warp, and other knitted fabrics.

<sup>7</sup> Applies to narrow fabrics of HTS subheading 5806.20 (woven) or heading 6002 (knitted), of a width not exceeding 30 centimeters, containing by weight 5 percent or more of elastomeric yarn or rubber thread.

<sup>8</sup> ATPA grants duty-free treatment to U.S. imports of apparel made in Andean countries from fabrics formed in the Andean region of U.S. or Andean yarns, subject to an annual cap (the cap for the 12-month period ending Sept. 30, 2005, had a fill rate of just 3.5 percent).

originating goods.<sup>9</sup> For example, the TPA does not include any TPLs that would provide duty preferences to specified quantities of U.S. imports of specific apparel articles made in Peru from third-country inputs. It also does not contain a single-transformation rule that permits certain garments to be made of third-country fabrics as long as the fabrics are cut and sewn in an agreement party.<sup>10</sup> With respect to cumulation provisions, which permit the use of inputs from other FTA partner countries in originating goods, the TPA contains a single, limited specific rule (introduced in ATPA) that allows the use of nylon filament yarn only from pre-1995 FTA partner countries (Canada, Mexico, and Israel) in originating apparel (article 3.3(11)).

TPA chapter 3 also sets out the general legal principles on origin (article 3.3), including a consultation provision for the parties to consider whether to revise the rules of origin after the agreement has been implemented to address issues of availability of fibers, yarns, or fabrics. Article 3.3 also provides an expedited process to add to the “short supply list” a fiber, yarn, or fabric in an unrestricted or restricted quantity, if the United States determines that such input is not available in commercial quantities in a timely manner in any party, or if no interested entity objects to the request.<sup>11</sup> TPA chapter 3 also includes authority to apply bilateral textile safeguard measures (article 3.1), under which either party may reinstate MFN tariffs if imports from the other party cause serious damage or threat of serious damage to the domestic industry. It has detailed customs enforcement and cooperation provisions to ensure the accuracy of claims of origin, to prevent circumvention of the agreement, and to enforce measures affecting textiles and apparel (article 3.2).

#### **TPA Chapter 4—Rules of Origin Procedures**

The TPA's tariff benefits would apply to "originating goods" unless otherwise provided. Such goods fall into two categories—namely, those comprising inputs only from the parties, and those complying with rules of origin based largely on stated changes in tariff classification from foreign inputs to finished goods or containing allowable de minimis foreign content. Eligibility for some goods containing third-party inputs are covered by value content or other specified requirements. Goods containing de minimis foreign content that do not undergo the requisite tariff shifts (limited in the aggregate for all such materials to 10 percent of the adjusted value of the good, with the component-based formula applicable to textile and apparel products) can also qualify as originating, though their value will still be counted as "nonoriginating" when a regional value content test applies. A limited number of products—all in the agricultural sector and primarily sensitive commodities covered by U.S. TRQs—cannot use the de minimis rule to become originating goods. In general, the principles used parallel the rules in NAFTA and in FTAs with Singapore and Chile.

The provisions of this chapter are similar to that in recent FTAs. An originating material of one party that is used in another party to make a good will be considered to originate in the latter party; a good involving production in multiple parties or by multiple firms within the region will be considered to originate if it meets the specific tests of this chapter. Rules and formulas for computing regional value content are provided, with two types of

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<sup>9</sup> The tighter regime under the TPA, compared with other recent U.S. FTAs, likely reflects the fact that Peru has an integrated textile and apparel sector with the capacity to produce fibers, yarns, and fabrics.

<sup>10</sup> CAFTA-DR contains a single-transformation rule for certain boxer shorts, pajamas, and girls' dresses of woven fabrics; umbrellas; and textile luggage.

<sup>11</sup> The United States may, within 6 months after adding a restricted quantity of a fiber, yarn, or fabric to the list, modify or eliminate the restriction. A total of 20 yarns and fabrics are included in the short supply list in annex 3.3 to TPA chap. 3.

computations—the build-down method and the build-up method—designed to take into account all nonoriginating content. As is true under existing U.S. FTAs and preference programs, direct shipment is required, and a good that undergoes subsequent production or other operations outside the parties (not counting minor preservation or loading operations) will not be considered originating. Rules for goods classified as sets pursuant to Harmonized System (HS) general interpretive rule 3 are provided and are quite technical in nature.

Other provisions of the chapter deal with consultations among the parties and the verification and documentation of origin needed under the TPA. Benefits are to be given unless the parties learn that particular goods do not qualify and make a "factual or legal determination that the claim is invalid." Importers who make errors are not to be punished if they act in good faith or correct the entry documents and pay necessary duties within 1 year or a longer period set by a party. Written or electronic certifications of origin can be required and are valid for 4 years from the date of issuance; records must be kept for 5 years after entry to establish the origin of goods. The parties are to publish agreed "common guidelines for the interpretation, application, and administration" of the rules, preferably before the date of entry into force of the agreement.

## **Economy-wide Simulation: Effects on U.S. Imports, Exports, Employment, and Welfare**

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This section provides the results of a quantitative economy-wide simulation of the possible effect on the U.S. economy of the elimination of industrial and agricultural tariffs and selected TRQs as a result of TPA chapters 2–4. The economy-wide experiment herein assumes that all phased-in tariff reductions are accelerated such that they take effect on January 1, 2007. This is a comparative static model. The economy-wide analysis does not, however, incorporate the myriad of world events or economic trends that could counter or mitigate the estimated effects of this analysis. For instance, it does not take into account numerous factors such as the effect of increasing Chinese demand on commodity markets, changes in interest rates, or other factors that may affect the expansion or contraction of sectors. It simply compares one scenario with another. In this case, it compares a world in equilibrium without a U.S.-Peru TPA to a world in equilibrium with the TPA. The second scenario is a world in which the FTA is fully implemented and all markets have fully adjusted to it, all other things held equal. Hence, it maintains a balance in the factors of production—labor, capital, and natural resources. Therefore, if some sectors expand and need more labor, other sectors must contract and release that much labor. In contrast, in the real world there is a dynamic process of adjustment to the policy changes inherent in an FTA; the expansion of certain sectors does not require the contraction of other sectors, and the overall supply of labor may increase or resources may remain unemployed.

Results identified in the simulation, therefore, are illustrative and valuable for showing direction of sectoral and factor movement in a world in which all other things are held equal. It is not a forecast of what will occur. The results are best used in the context of actual domestic and international economic trends. For example, the substantial reduction of Peruvian tariffs on U.S. goods means Peru will import more from the United States. To pay for this, Peru must acquire more foreign capital. It must either borrow more (or receive more foreign investment) or it must export more to earn foreign currency. The simulation model, focused on trade, assumes most of the foreign currency comes from increased exports. In Peru, that means an increase in Peru's export of metals. An increase in supply from a significant player in the world market, like Peru, will tend to put downward pressure on the

world price of metals. The model captures this price effect and, untouched by actual global trends, calculates the effect of a drop in world metal prices on terms of trade and U.S. imports. In this exercise, the United States consumes more at lower prices and its trade deficit increases, albeit minutely. In reality, this increase in supply would barely dampen the rapidly increasing world price for metals. In another example, the model estimates diversion of U.S. apparel imports to Peru from other sources. But this calculation does not take into account the pending expiration of quotas on Chinese apparel imports. Consequently, the effect of the economy-wide simulations should be inferred as limiting Peru's loss of market share of U.S. apparel imports rather than bolstering it.

Many institutional- and industry-specific factors qualify the economy-wide model estimates. For example, the effects of historical price-band levies and SPS measures in Peru, which affect the grain and meat sectors, are highly variable and difficult to quantify. As a result, Peru's current tariffs and TRQs on U.S. grain and meat exports to Peru, and the effect of elimination of these barriers, are possibly underestimated. On the other hand, lack of data on the share of U.S. exports of textiles and apparel that benefits from duty reductions or duty drawbacks in Peru under joint production arrangements precludes estimating the effect of such adjustments.<sup>12</sup> As a result, Peru's current tariffs on textiles and apparel imported from the United States, and the effect of elimination of these duties, are possibly overstated. These are discussed in detail in chapter 3.

The effect of removing import barriers relating to services was not estimated in this simulation. The reported changes in trade and output in services arise from secondary (general equilibrium) effects, including trade balance effects, changes in demand for services by other sectors, and changes in supply of services resulting from the reallocation of labor and capital resources to other sectors that are growing more strongly as a result of the policy changes. Thus, while the reported results for services sectors reflect effects of some parts of the TPA, they are indirect effects, and do not result from TPA-negotiated policy changes in services trade. A detailed discussion of the changes in trade in services that might be expected from provisions of the TPA is presented in chapter 4.

Table 2-3 shows the relationship between the Commission-identified sectors analyzed in chapter 3 of this report and the corresponding aggregated GTAP model sectors analyzed in this section. For example, the grain sector discussed below represents the GTAP rice, wheat, and other grains sectors analyzed in this section. All of the GTAP paddy rice sector (100 percent) is contained in the Commission-identified "grain" sector, as is all of the GTAP wheat sector, whereas only 3.4 percent of U.S. exports in the GTAP food products sector is in the Commission-identified sugar sector.

It is also important to note that Peru's tariffs on imports from the United States are in general much higher, and cover many more products, than U.S. tariffs on imports from Peru (figure 2-3 reports average ad valorem tariff equivalents for aggregate industry sectors).<sup>13</sup> While most of Peru's average tariff rates range from 12 to 25 percent, most of the U.S. average tariff rates are zero, with only one (sugar, 46.3 percent) exceeding 3 percent.<sup>14</sup> As discussed below, it is the elimination of Peru's high tariffs that drive most of the estimated effects of the TPA.

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<sup>12</sup> These data are industry specific and are available, if at all, only from the Peruvian government.

<sup>13</sup> The AVE tariffs for some products such as sugar include the estimated effect of TRQs.

<sup>14</sup> For additional examples of the imbalance in U.S. and Peruvian imports, see also USITC, hearing transcript, 16–21; and Gales, written submission.

**Table 2-3** Percent of GTAP sector included in Commission-identified U.S.-Peru bilateral sector trade, 2005

Commission-identified sector	GTAP sector (GTAP code)	U.S. imports	U.S. exports
Grains	Paddy (unprocessed) rice (1)	-	100.0
	Wheat (2)	100.0	100.0
	Cereal grains n.e.c. (3)	100.0	100.0
	Processed rice (23)	-	100.0
Cotton	Plant-based fibers (7)	77.9	100.0
Sugar	Sugar beet and sugar cane (6)	100.0	100.0
	Sugar (24)	100.0	100.0
	Food products n.e.c. (25)	10.0	3.4
Asparagus	Vegetables, fruits, nuts (4)	2.3	1.0
	Food products n.e.c. (25)	0.0	0.0
Meat (beef)	Bovine meat (19)	86.4	78.0
	Meat n.e.c. (20)	18.9	1.5
Meat (pork)	Bovine meat (19)	0.2	16.5
	Meat n.e.c. (20)	66.8	42.5
Textiles and apparel	Textiles (27)	100.0	100.0
	Apparel (28)	100.0	100.0
Leather goods and footwear	Leather goods (29)	100.0	100.0
Pharmaceuticals	Chemical, rubber, plastic products (33)	0.0	3.0

Source: Compiled from official statistics of the U.S. Department of Commerce and GTAP version 6.1 database.

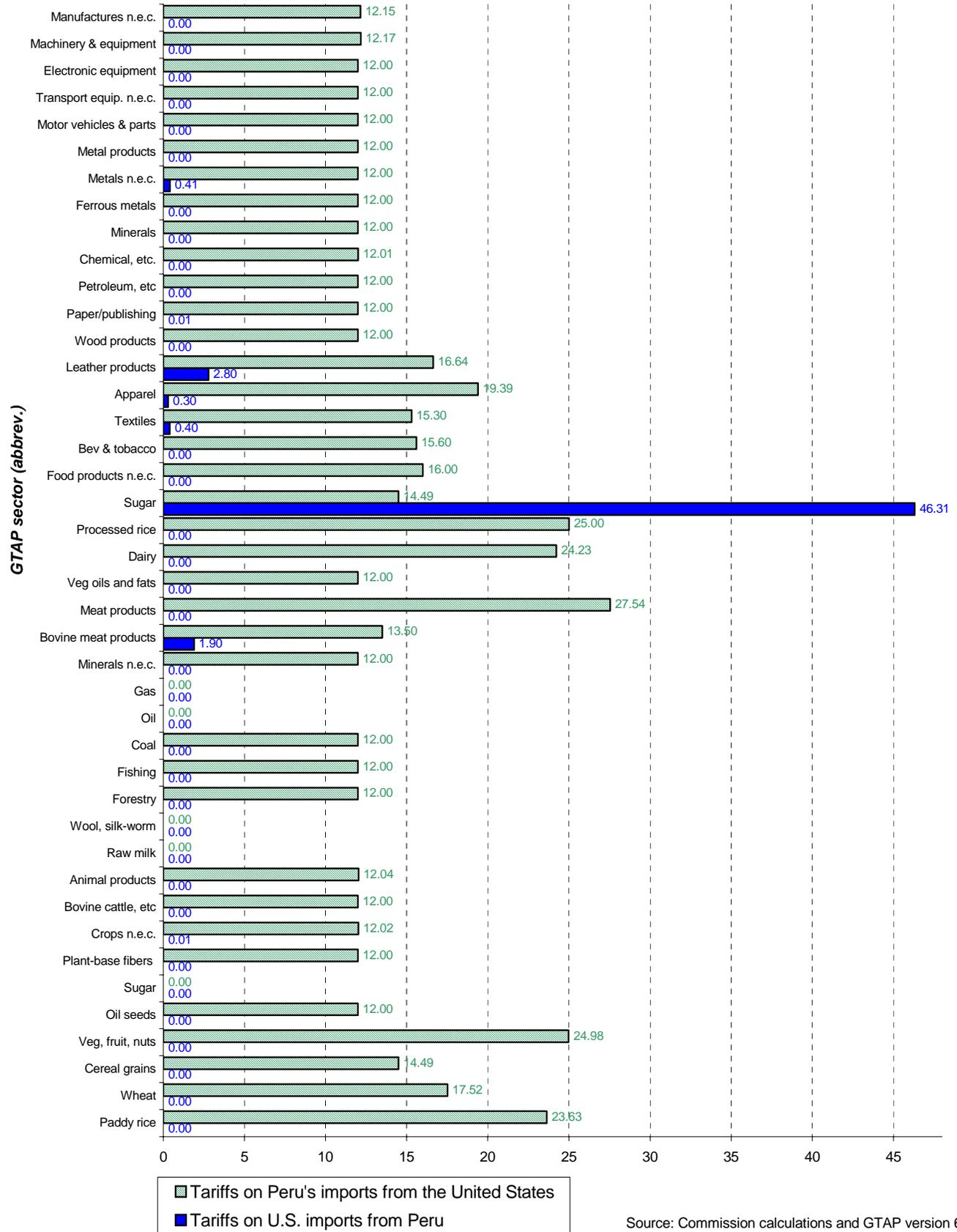
Notes: The abbreviation "n.e.c." stands for "not elsewhere classified." Zero values represent rounded numbers.

## *Analytical Framework*

The Commission's simulation of the possible effects of the removal of tariff and quota restraints under the TPA includes a number of measures of U.S. economic activity, including the possible effects on U.S. imports, exports, production, and employment. The model analysis presented in this section does not consider effects of all provisions of the TPA discussed elsewhere in this report; among other things, it does not consider changes in the investment or regulatory environments in Peru because of the lack of data on the scope of these changes that can be incorporated into the model. The method chosen for quantitative analysis is a CGE simulation. The specific CGE model used for this analysis is the GTAP model. The model includes domestic economic activity and trade patterns for multiple regions of the world economy and for multiple products produced in those regional economies. The use of a model simulation permits the Commission to illustrate quantitatively the possible marginal<sup>15</sup> effect of negotiated TPA tariff and TRQ liberalizations on aggregate sectors, labor markets, and exports and imports.

<sup>15</sup> The use of "marginal" is not intended to imply insignificant, minor, or small, but rather to mean, in the economic sense, the additional effect attributable to a specific policy change.

**Figure 2-3 U.S.-Peru TPA: Bilateral GTAP sector benchmark ad valorem equivalent tariffs (percent)**



Source: Commission calculations and GTAP version 6.1.

Understanding the model's role in providing estimated marginal effects is essential in accurately interpreting its results. For example, a negative effect, such as a decrease in a commodity price or decrease in a sector's output, does not imply that the overall value will be negative as a result of the TPA. Rather it implies that the marginal effect of the TPA could be to buttress or suppress existing economic trends.<sup>16</sup>

The model framework is discussed in more detail in appendix D. It is important to note, however, that model results reflect long-term adjustments to supply, demand, and resource allocations to the TPA. The model does not consider interim effects that might be felt as different provisions of the agreement enter into force, nor does it consider various adjustment costs (such as temporary unemployment or changes in asset prices) that may occur over time. The model results are not intended as a forecast of what will happen to trade and output in 2007, or after full implementation of the agreement. Rather they reflect estimates of the marginal effect on the economy, relative to the base year, of the removal of tariffs specified in the TPA. Many other events or economic trends such as natural disasters, changes in other government policies, and rapid changes in commodity prices will undoubtedly occur during the relevant time period which could have greater effects on global and national trade than does this agreement. The sectoral analyses presented in the following chapter consider short- to medium-term and transitional effects of the agreement as it is phased in.

The model considers the effects of the agreement on an economy that might be similar to a U.S. economy in 2007; the standard GTAP model begins with data reflecting conditions in 2001. As elaborated on in appendix D, trade data through 2005 and projections of U.S. and global GDP growth through 2007 are used to update the database.<sup>17</sup> The model describes production and trade in 56 aggregate industry sectors, including 42 merchandise sectors and 14 service sectors. While liberalization of trade in services is not treated in the model because of the lack of quantitative data on barriers to such trade, services are analyzed qualitatively in chapter 4 of this report. In addition, the Commission did not explicitly model the effect of rules of origin, but the simulation performed is consistent with the existence of such rules. In the simulation, it is assumed that traded commodities are differentiated by country of origin, which implies a limit to the ability of TPA partners to source imports from a third country.

Two policy scenarios are presented. The principal policy simulation in this report assumes that ATPA preferences for Bolivia, Colombia, and Ecuador will continue in force after implementation of the TPA between Peru and the United States. At this time, the ATPA preferences are scheduled to expire at the end of 2006. Given the possibility that the preferences may not be renewed, a second policy simulation was constructed on the assumption that ATPA preferences expire at the same time the TPA with Peru is implemented. Although the second simulation is described below, tables containing the model results for this simulation are presented in appendix F.

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<sup>16</sup> In addition, the model results presented in the discussion below depend on a wide array of assumptions about the economic structure and relationship of variables (parameters) in the model. Altering these variables, and the underlying assumptions they reflect, would change the resulting estimated effects. For example, making a substantial change to only one variable, such as the rate at which investment returns respond to increased investment flows, could shift the U.S. global trade balance change from a small import surplus to a small export surplus.

<sup>17</sup> App. D provides more information on the update procedures. Benchmark 2007 trade flows shown in tables 2-5 and 2-6 are not meant to be forecasts of trade. Estimates of the effects of trade policy, e.g., of the U.S.-Peru TPA, are calculated as percent changes of base rates, and are largely independent of the actual levels of the benchmarks.

## ATPA Preferences Continue

The change in economic welfare provides a measure of the comprehensive marginal tariff and TRQ-related effect of the simulated TPA in a manner that is consistent with economic theory, summarizing the benefits to consumers, as well as the effects on households in their roles as providers of labor, owners of capital, and taxpayers. Table 2-4 presents the simulated welfare and GDP effects of tariff liberalization under the TPA.<sup>18</sup> The Commission simulation of these components of the TPA suggests that the welfare value to the United States of the tariff liberalization under the TPA is \$346 million, approximately 0.002 percent of projected U.S. GDP in 2007. This effect can be interpreted as stating that, when fully implemented, the removal of tariffs specified in the TPA will provide annual benefits to U.S. consumers worth \$346 million in the economy of 2007.<sup>19</sup> As a result of this tariff removal, U.S. GDP will be higher by approximately \$2.1 billion, or 0.02 percent.

**Table 2-4** U.S.-Peru TPA: Simulated effects of trade liberalization on U.S. welfare, GDP, and payments to factors relative to projected 2007 baseline

Indicator	Million dollars	Percent change
Welfare	345.73	0.00
Efficiency	-6.71	-0.00
Terms of trade	352.44	0.00
GDP	2,054.00	0.02
Payments to factors		
Land	91.48	0.39
Unskilled labor	724.00	0.02
Skilled labor	513.00	0.02
Capital	742.50	0.02
Natural resources	-4.33	-0.04

Source: Commission calculations and GTAP version 6.1.

Note: Zero values represent rounded numbers.

The analysis decomposes the change in welfare into changes resulting from allocative efficiency and changes resulting from the terms of trade.<sup>20</sup> Allocative efficiency refers to the gain or loss to the economy as a result of the distortions imposed by taxes or subsidies on particular activities, which cause those activities to be engaged in or avoided in ways that are economically inefficient. The model finds a small allocative efficiency loss, a result of increased output in agricultural sectors that benefitted from subsidies. The agricultural subsidy programs in force in 2001 (and introduced into the GTAP model) have since been revised, so that the measured \$7 million efficiency loss may in fact be an overstatement.

The model estimates a \$352 million welfare gain resulting from terms-of-trade effects. An increase in the terms of trade means that the price of a country's exports increases relative to the price of its imports. In this case, this effect is a result of upward pressure on the prices of products exported by the United States as a result of increased export demand from Peru, as well as downward pressure on the prices of products imported by the United States,

<sup>18</sup> Unlike the change in welfare, measures of changes to GDP include both price and quantity changes.

<sup>19</sup> This welfare measure is often referred to as the "equivalent variation."

<sup>20</sup> For additional information on "terms of trade," see app. E.

resulting from a combination of the elimination of some U.S. tariffs, and more significantly, from a downward pressure on the world price of most of Peru's exports.

As a result of the removal of tariffs specified in the TPA, factor payments in the United States to land are higher by \$92 million, an increase of 0.4 percent (mainly reflecting the increase in production of grains). Payments to unskilled labor and skilled labor are higher by \$724 and \$513 million, respectively. Payments to capital are higher by \$743 million. Payments for natural resources are lower by \$4 million, reflecting slight declines in output for various mining and mineral sectors.

### **Simulated Changes in Trade Volumes**

As mentioned above, Peru has substantially higher trade barriers than does the United States, so the TPA is likely to result in a much greater marginal increase in U.S. exports to Peru (because of the effect of lowering Peru's relatively higher trade barriers) than in U.S. imports from Peru (the U.S. economy is already relatively open to Peru's imports). However, because Peru's tariffs are so high, and because so much of its imports are from the United States, its reduction of the tariffs on imports from the United States has a large effect on Peru's terms of trade. Although the domestic prices of Peru's imports from the United States generally decline as a result of Peru's elimination of tariffs on these goods, this does not significantly affect the world prices of the goods. However, because the domestic price of imports declines, demand increases, as does overall expenditure on imports. Under the constraints of the model, to maintain a balance in its international payments, Peru must increase its exports.

As Peru does influence the global price in some of its export markets, particularly metals, the world price of Peru's exports fall (or if there is an increasing trend, it is dampened). The world price of its imports remains relatively unchanged, and the terms of trade decline (or do not increase as rapidly as they might otherwise). As a result, Peru's exports increase, not just to the United States but to the rest of the world. This terms-of-trade effect on Peru's exports dominates the effect of the elimination of U.S. duties on Peru's exports to the United States. However, it is not necessary for Peru to increase its exports to pay for increases in imports on a dollar-for-dollar basis; standard model assumptions allow some of the balance of payments to be met by increases in financial flows, such as foreign investment. This allows shrinkage of a surplus in the balance of merchandise trade, or an increase in a deficit. It is possible for changes in policy with respect to financial services and investment to increase the share of the balance of payments that is met through such instruments, thereby reducing the extent to which Peru would have to increase its exports to balance its international payments.

Table 2-5 reports the simulated changes in bilateral trade for selected sectors between the United States and Peru as a result of the immediate removal of the tariffs specified in the TPA (see table F-1 in appendix F for results for all model sectors). The trade effects are reported on a landed, duty-paid value basis, relative to the projected 2007 base, and thus reflect changes in the value of trade including tariff payments. In general, the sectors facing the greatest trade barriers are the ones experiencing the greatest effects of eliminating the trade barriers. On the U.S. export side, the largest increases in exports are in machinery and equipment and in chemical, rubber, and plastic products (\$338 and \$223 million, respectively), with substantial increases in electronic equipment, textiles, paper products, wheat, and motor vehicles and parts. As has been noted, the high level of tariff protection currently given to many of Peru's products suggests that the removal of tariffs under the TPA may have significant effects on Peru's imports from the United States. Many of these

increases in U.S. exports, such as those in unprocessed rice, represent changes from small initial levels, so that moderate increases in exports represent large percentage changes, as a result of the reduction of high levels of protection.

Table 2-5 shows that U.S. imports of metals n.e.c. (mainly gold, copper, and aluminum) from Peru increase substantially (by \$261 million, or 11.4 percent), accounting for more than one-half of the total net increase in imports from the Peru. This sector is one of the few sectors on which duties were collected on U.S. imports before the TPA (though a very minuscule amount). As a percentage, the increase in U.S. imports of products in this sector is not out of line with many other products, but because of Peru's position as a major global producer and because of the magnitude of this increase, Peru's additional exports of metals to the United States (and to the rest of the world) affect the world price of this commodity group. The other significant increases are in other crops (e.g., cut flowers, live plants, and seeds); vegetables, fruits, and nuts; textiles; wearing apparel; and leather products. Many goods imported into the United States from Peru do not face tariff barriers. Since there are few import barriers to eliminate, such sectors might not be expected to show increases in their imports except as driven by terms-of-trade forces. In fact, several sectors show fairly high increases in U.S. imports from Peru in percentage terms (wheat, bovine meat products), but these increases are on a small base, and amount to relatively small trade values.

The effect of the removal of the tariffs specified in the TPA on total U.S. trade by sector for selected sectors is reported in table 2-6 (see table F-2 in appendix F for results for all model sectors). Total U.S. imports of metals n.e.c. (mainly gold, copper, and aluminum) increase by \$58 million, which means that a large share of the increase in imports from Peru (\$261 million) is diverted from imports from other countries. Trade diversion in imports of textiles and apparel also occurs.

Aggregate U.S. trade with the world may increase by a small amount as a result of the increased market access under the TPA. The last row in table 2-6 reports the simulated changes in total U.S. trade. Total imports will be higher by \$737 million on a landed, duty-paid basis and total exports will be higher by \$640 million on an f.o.b. basis, a 0.04 percent increase in both cases. The estimation of the change in overall U.S. trade flows may be counterintuitive. As mentioned earlier, in this case the increased exports of U.S. goods to Peru push more exports from Peru to the rest of the world. The shift drops the terms of trade for Peru and, given its ability to affect an important market—metals—it is not surprising that it lowers world prices, which in turn could result in more imports from other countries by the United States. The increase in U.S. exports to Peru also displaces third-country exports to Peru. The simulation model results are, in a practical sense, not different than zero.

**Table 2-5** U.S.-Peru TPA: Simulated effect on U.S.-Peru bilateral trade for selected sectors (landed, duty paid) from a projected 2007 baseline

GTAP sector	U.S. imports from Peru			Peruvian imports from United States		
	Base before TPA	Change after TPA		Base before TPA	Change after TPA	
	Million dollars		Percent	Million dollars		Percent
Paddy (unprocessed) rice	0.001	0.000	12.50	0.031	0.154	495.84
Wheat	0.037	0.007	18.93	116.893	111.355	95.26
Cereal grains n.e.c.	1.241	0.026	2.07	27.378	4.467	16.32
Vegetables, fruit, nuts	497.531	11.984	2.41	8.471	5.538	65.38
Crops n.e.c.	116.360	7.901	6.79	12.397	4.209	33.95
Bovine meat products	0.593	0.138	23.29	12.242	3.858	31.52
Meat products n.e.c.	3.846	0.397	10.32	0.967	3.461	357.99
Textiles	266.973	29.359	11.00	33.280	34.994	105.15
Wearing apparel	524.495	49.298	9.40	11.930	12.681	106.30
Leather products	2.241	0.730	32.56	2.037	3.340	163.99
Wood products	78.435	5.022	6.40	10.281	7.266	70.68
Paper products, publishing	22.495	1.391	6.18	85.007	41.549	48.88
Chemical, rubber, plastic products	117.695	10.427	8.86	494.979	223.037	45.06
Metals n.e.c.	2,297.791	260.742	11.35	0.667	0.786	117.88
Motor vehicles and parts	1.303	0.075	5.78	87.170	38.780	44.49
Electronic equipment	4.915	0.624	12.69	267.986	133.779	49.92
Machinery and equipment n.e.c.	100.220	9.467	9.45	655.561	337.871	51.54
Other sectors	1,233.064	51.218	4.15	2,694.225	178.544	6.63
<b>Total</b>	<b>5,269.236</b>	<b>438.806</b>	<b>8.33</b>	<b>4,521.502</b>	<b>1,145.669</b>	<b>25.34</b>

Source: Commission calculations and GTAP version 6.1.

Notes: The abbreviation "n.e.c." stands for "not elsewhere classified." Zero values represent rounded numbers. See table F-1 for list of effects for all sectors.

**Table 2-6** U.S.-Peru TPA: Simulated effect on U.S. global trade in selected sectors from a projected 2007 baseline

GTAP sector	U.S. imports from the world (landed, duty-paid)			U.S. exports to the world (f.o.b.)		
	Base before TPA	Change after TPA		Base before TPA	Change after TPA	
	Million dollars		Percent	Million dollars		Percent
Paddy (unprocessed) rice	45.365	0.152	0.33	524.311	-1.198	-0.23
Wheat	188.975	2.040	1.08	4,876.625	82.813	1.70
Cereal grains n.e.c.	411.027	0.364	0.09	5,854.666	4.989	0.09
Vegetables, fruit, nuts	10,524.808	10.250	0.10	8,189.847	-2.088	-0.03
Crops n.e.c.	9,128.844	20.663	0.23	3,201.863	-3.651	-0.11
Bovine meat products	4,897.194	4.962	0.10	1,960.432	3.017	0.15
Meat products n.e.c.	2,375.468	2.618	0.11	5,492.470	-1.749	-0.03
Textiles	46,384.617	24.969	0.05	13,525.035	27.145	0.20
Wearing apparel	72,649.461	34.391	0.05	4,323.503	10.931	0.25
Leather products	33,202.898	7.031	0.02	2,392.141	1.423	0.06
Wood products	64,269.664	25.164	0.04	9,142.157	2.411	0.03
Paper products, publishing	30,392.398	13.727	0.05	22,374.684	33.842	0.15
Chemical, rubber, plastic products	170,172.844	74.641	0.04	126,709.227	184.836	0.15
Metals n.e.c.	33,324.480	58.273	0.17	13,791.521	-3.135	-0.02
Motor vehicles and parts	196,769.797	48.609	0.02	79,066.625	28.609	0.04
Electronic equipment	231,362.281	74.891	0.03	105,021.000	103.086	0.10
Machinery and equipment n.e.c.	304,697.844	119.406	0.04	200,889.953	286.594	0.14
Other sectors	627,068.160	214.600	0.00	947,991.940	-117.749	-0.00
<b>Total</b>	<b>1,837,866.125</b>	<b>736.750</b>	<b>0.04</b>	<b>1,555,328.000</b>	<b>640.125</b>	<b>0.04</b>

Source: Commission calculations and GTAP version 6.1.

Notes: The abbreviation "n.e.c." stands for "not elsewhere classified." See table F-2 for list of effects for all sectors. Zero values represent rounded numbers.

## U.S. Gross Output and Employment Effects

Full implementation of the TPA may result in expansion of those U.S. industries that experience higher export demand as a result of Peru's removal of tariffs on imports from the United States. In addition, the reallocation of resources and direct competition from goods that are given preferential import treatment into the United States may cause the output of some U.S. industries to be lower. However, as is suggested by the percentage changes for total U.S. sectoral trade in table 2-6, these changes are likely to be very small. According to the model estimates, there may be minimal to no effect on output or employment for most sectors in the U.S. economy, as shown for selected sectors in table 2-7 (see table F-3 in appendix F for results for all model sectors). A few sectors show a decline of more than 0.10 percent in output, revenue, or employment—paddy rice, crops n.e.c. (e.g., cut flowers, live plants, and seeds), and metals n.e.c. (mainly gold, copper, and aluminum). The sector experiencing the greatest decline in output and employment is metals n.e.c. (mainly gold, copper, and aluminum), for which output and employment, by all measures, are lower by 0.16 percent. These estimates are consistent with the increase in imports of these products from Peru. The sector exhibiting the largest increase is wheat, with an output quantity increase of 0.93 percent, a revenue increase of 1.16 percent,<sup>21</sup> and a labor increase of 1.01 percent for both skilled and unskilled labor employed in the sector.<sup>22</sup>

**Table 2-7** U.S.-Peru TPA: Simulated effects on U.S. output and employment in selected sectors from a projected 2007 baseline (percent changes)

GTAP sector	Output		Labor quantity	
	Quantity	Revenue	Skilled	Unskilled
Paddy (unprocessed) rice	-0.14	-0.07	-0.12	-0.12
Wheat	0.93	1.16	1.01	1.01
Cereal grains n.e.c.	0.00	0.07	0.02	0.02
Vegetables, fruit, nuts	-0.09	-0.01	-0.06	-0.06
Crops n.e.c.	-0.11	-0.02	-0.09	-0.09
Bovine meat products	-0.01	0.02	-0.01	-0.01
Meat products n.e.c.	-0.01	0.01	-0.01	-0.01
Textiles	0.00	0.01	0.00	0.00
Wearing apparel	-0.02	-0.01	-0.02	-0.02
Leather products	-0.02	-0.01	-0.02	-0.02
Wood products	-0.01	0.00	-0.01	-0.01
Paper products, publishing	0.01	0.02	0.01	0.01
Chemical, rubber, plastic products	0.02	0.04	0.02	0.02
Metals n.e.c.	-0.16	-0.16	-0.16	-0.16
Motor vehicles and parts	0.00	0.01	0.00	0.00
Electronic equipment	0.02	0.03	0.02	0.02
Machinery and equipment n.e.c.	0.03	0.04	0.03	0.03

Source: Commission calculations and GTAP version 6.1.

Notes: The abbreviation "n.e.c." stands for "not elsewhere classified." Zero values represent rounded numbers. See table F-3 for list of effects for all sectors.

<sup>21</sup> Changes in revenues by industry incorporate both the quantity and producer price changes generated by the simulated TPA.

<sup>22</sup> The simulation model does not consider changes in total labor supply, nor does it consider potential unemployment effects; labor supply in the model is assumed to be fixed, and the labor market clears in equilibrium, as do all other simulated markets either for other factors or for goods or services. The model serves to indicate the ways in which a fixed labor supply would be reallocated among sectors in response to trade policy changes.

## *ATPA Preferences Expire*

The assumptions underlying this second simulation are the same as those in the first simulation, except that, with the expiration of ATPA, imports of certain products from Bolivia, Colombia, and Ecuador would face new and higher tariffs into the United States, whereas products from Peru will continue to receive preferential market access under the TPA that are similar to those under ATPA. Hence, the comparison made in this scenario is between a situation in which all four countries (Bolivia, Colombia, Ecuador, and Peru) receive preferences under ATPA, and a situation in which Peru continues to receive those tariff preferences (slightly augmented by the TPA), while the others do not. Expiration of ATPA and implementation of the U.S.-Peru TPA will have other implications; among them will be certain changes in the rules of origin qualifying some imports from Peru for preferential tariffs.

Appendix table F-4 shows the estimated incremental duties that will be faced by U.S. imports from Bolivia, Colombia, and Ecuador upon expiration of ATPA. These increments were estimated from current imports from these countries under ATPA, as well as under GSP and under NTR (normal trade relations, or imports not receiving preferences). In some cases, products imported to the United States can benefit from preferential treatment under GSP as well as ATPA. In the present exercise, it is assumed that GSP preferences will continue in force, and that imports eligible for GSP as well as ATPA preferences will continue to receive preferential treatment under GSP.

Appendix table F-5 shows the welfare effects on the United States of implementing a TPA with Peru while allowing ATPA preferences for Bolivia, Colombia, and Ecuador to expire. Compared with the scenario described above (in which ATPA preferences continue), the United States benefits from a slightly higher increase in its terms of trade. This result is largely because of effects in the crops n.e.c. sector, which includes cut flowers. Increasing the duties slightly on these products imported from Colombia and Ecuador (appendix table F-4) causes such imports from Peru to increase slightly more than under the first scenario; Peru captures some of the trade lost by Colombia and Ecuador (compare appendix table F-6 with table 2-5). Overall, total U.S. imports of these products (crops n.e.c.) are lower by \$3 million under the “ATPA preferences expire” scenario (appendix table F-7), while they are higher (by \$21 million) under the first scenario. Most of the difference is taken up by U.S. growers. Output, revenue, and employment in the domestic sector are higher when ATPA preferences expire (appendix table F-8), with revenue increasing more than output as prices for the domestic product increase; domestic output is lower in the first scenario. In addition, as the U.S. market accounts for virtually all of Colombia’s exports in this sector, and Colombia exports less to the United States when it loses ATPA preferences, its export price declines. The world price of U.S. imports of crops n.e.c. (e.g., cut flowers, live plants, and seeds) also declines (Colombia supplies about 10 percent of U.S. imports in this sector). The decline in the world price of U.S. imports, and the increase in the world price of U.S. output, contribute to an increase in the terms of trade resulting from the elimination of preferences for Colombian (and to a lesser extent, Ecuadoran) output.

The textile, apparel, and leather products sectors are among the few GTAP aggregates in which significant preferences will be lost upon expiration of ATPA preferences. Among these sectors, expiration will cause slightly greater increases in imports from Peru, most notably in apparel. U.S. imports of goods in these sectors from the world as a whole will increase by less than under the first scenario. In fact, total imports of apparel are lower when the expiration of ATPA preferences imposes significant tariffs on imports of apparel from the ATPA beneficiary countries. For most other sectors, the expiration of ATPA preferences has little effect.

# CHAPTER 3

## Effect of Market Access Provisions for Goods: Sector-specific Assessment

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This chapter provides assessments and views of interested parties on specific merchandise sectors. Many sectors in U.S.-Peru bilateral trade that represent leading products by volume were not selected for in-depth analysis because these sectors are not expected to experience large changes directly as a result of the implementation of the U.S.-Peru TPA. In addition, the products in many of these high-volume sectors enter the United States free of duty or at very low rates of duty; the removal of such small barriers is not expected to substantially affect trade flows or investment. Examples of high-volume sectors include minerals and metals, such as copper, gold, silver, tin, and zinc, and energy-related products, such as petroleum and natural gas.

Sectors were selected for analysis in this chapter on the basis of a number of criteria, including the importance of the sector in terms of bilateral trade; the likelihood of increased export opportunities for U.S. producers relative to other foreign suppliers; the extent and speed of trade liberalization under the TPA and its potential for increasing U.S. trade; the opinions of industry representatives; and the apparent sensitivity of certain U.S. industries to trade liberalization. The Commission's assessments in this chapter are based on industry knowledge and expertise of USITC industry analysts, industry sources, reports by U.S. industry and functional trade advisory committees on the TPA, and written submissions received in response to the Commission's *Federal Register* notice of institution for this investigation.<sup>1</sup> These sectors are grain, cotton, sugar and sugar-containing products, asparagus, meat, textiles and apparel, leather goods and footwear, and pharmaceuticals. Unlike the assessment conducted in the previous chapter, which analyzed the potential effect of the TPA from an economy-wide perspective, this chapter focuses primarily on sector- and industry-specific institutional factors. These include sector-specific assessments of the potential effects of factors such as price-band levies, duty drawback, SPS measures, government land policy, and consumer perceptions and tastes. This partial equilibrium focus of the sector-specific assessments complements the economy-wide analysis, providing both breadth and depth to the Commission's assessment of the potential effect of the U.S.-Peru TPA.

### Summary of Assessment

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Although the TPA may have a perceptible effect on U.S.-Peru bilateral trade in a specific sector, given the small size of U.S. trade with Peru in relation to total U.S. trade and the entire U.S. sector-specific markets, the TPA is not expected to have a large effect on total U.S. imports, exports, or production for any given sector.

- ▶ **Grain:** The TPA is expected to increase U.S. exports to Peru of wheat, rice, and corn as a result of the immediate removal of tariffs for some products and eventual phase-out of TRQs and associated large over-quota tariff rates. The TPA will also enhance U.S.

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<sup>1</sup> A copy of the *Federal Register* notice is in app. B.

suppliers' competitive position vis-à-vis other regional suppliers and remove the distortions created by Peru's price-band levy system.

- ▶ **Sugar and sugar-containing products:** The TPA is not expected to substantially affect U.S. imports or exports of sugar or sugar-containing products primarily because of the TPA requirement that Peru be a net exporter. Peru's less efficient production, limited growth of the U.S. sugar TRQ for Peru, and the relatively small market in Peru compared with the U.S. market are other mitigating factors.
- ▶ **Asparagus:** Although the TPA is not expected to have additional market-access effects on U.S. asparagus farmers, permanent duty-free access to the U.S. market, especially for frozen and preserved asparagus, may spur additional investment in Peru by U.S. grower-suppliers and processors, expanding year-round imports of fresh asparagus, and increasing Peruvian imports of frozen and preserved asparagus at the expense of imports from other sources.
- ▶ **Meat:** Despite the long phase-out periods for tariffs on some meat products, the increased market access (some limited to duty-free access through TRQs) provided by the TPA is expected to increase market penetration of U.S. exporters in the Peruvian market. This increase will likely result from the removal of high tariffs, enhanced competitive advantages vis-à-vis regional suppliers, and increased regulatory and SPS cooperation. Given the size of the U.S. market and efficiency of U.S. producers, the TPA is unlikely to have an effect on U.S. imports of meat products.
- ▶ **Textiles and apparel:** Liberalization of textiles and apparel trade under the TPA is likely to result in a small increase in imports from Peru, largely at the expense of other import sources rather than domestic producers. These effects are driven by Peru's small share in the U.S. market, certain rules of origin constraints, and increasing competition from other suppliers, especially China. As a result of the existing duty drawback program<sup>2</sup> in Peru, the TPA effect on U.S. exports of textiles is expected to be minimal. Given the differing types of apparel products supplied by the Andean countries, the expiration of ATPA will not likely induce much trade diversion in the short term. Possible long-term trade diversion will be mitigated by increasing international competition from other foreign suppliers.
- ▶ **Leather goods and footwear:** Although the TPA may result in a large percentage increase in imports of leather goods and footwear from Peru, the absolute value is likely to be small. The ability of Peruvian producers to take advantage of increased market access is mitigated by a lack of economies of scale and increasing competition from other import sources, such as China.
- ▶ **Pharmaceuticals:** Given Peru's expanding domestic health care market, the intellectual property rights (IPR) protection provisions in the TPA, and immediate duty-free entry into Peru for many pharmaceutical products, the TPA is expected to increase U.S. exports of pharmaceutical products. Anticipated increases are, in large part, driven by government procurement-related provisions allowing U.S. exporters to be more competitive in supplying Peru's state health care institutions.

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<sup>2</sup> The duty drawback program allows Peruvian producers to recoup duties paid on textiles if subsequent apparel products are exported to the United States.

## Grain (Wheat, Rice, and Corn)<sup>3</sup>

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### *Assessment*

The TPA is likely to have a substantial positive effect on U.S. grain exports, especially over the long term. The positive export effect results from increased market access through tariff removal and TRQ phase out, removal of Peruvian government support measures, and removal of competitive disadvantages vis-à-vis other grain suppliers to the Peruvian market. Exports could increase by an estimated 50 to 80 percent above the \$107 million in U.S. grain exported to Peru in 2005. Approximately two-thirds of the expected additional U.S. grain exports will consist of U.S. rice, with the remainder divided equally between exports of U.S. corn and U.S. wheat. U.S. wheat exports should benefit immediately, but corn and rice exports will increase more slowly, over 6 to 17 years, because initial access is limited by TRQs. These results are generally consistent with the economy-wide analysis results that U.S. grain exports to Peru will increase substantially. However, by considering factors outside the scope of the simulation exercise (e.g., historic price-band protection that was very low in the simulation year), this analysis reaches different conclusions regarding the distribution of the increase among wheat, corn, and rice.

The TPA is likely to have no impact on U.S. imports of grain. Peru is a high-cost producer of grain and a net importer, exporting only small amounts, mostly to adjacent Andean countries. U.S. imports of grain from Peru averaged about \$1 million annually from 2001 to 2005. U.S. MFN tariffs on grain are generally quite low, averaging 2.9 percent AVE from 2001 to 2005, and U.S. grain imports from Peru are duty free under ATPA.

The first full year of market access for U.S. grain exports to Peru is outlined in the tabulation below. Some highlights of the tabulation are immediate duty-free treatment for U.S. wheat and popcorn exports to Peru upon implementation of the agreement; up to 500,000 metric tons (MT) of U.S. yellow corn exports to Peru will receive duty-free access under the provisions of a TRQ; and up to 78,000 MT of U.S. rice exports to Peru will receive duty-free treatment in the first full marketing year of the agreement.<sup>4</sup>

U.S. grain exports to Peru in 2005 accounted for 1 percent of total U.S. grain exports to all countries (\$11.4 billion).<sup>5</sup> Approximately 73 percent of U.S. grain exports to Peru in 2005 consisted of wheat; 19 percent, corn; and most of the remainder, rice. U.S. wheat exports to Peru totaled \$78 million, and were primarily bread wheat rather than durum wheat. U.S. corn and rice exports to Peru totaled \$20 million and \$9 million, respectively, in 2005. The United States is a highly competitive grain exporter to many countries of the world, and supplied

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<sup>3</sup> Includes HTS headings 1001 through 1006. The grain sector as described in this section of the report focuses on wheat, corn, and rice. Corn is the primary grain destined for livestock feed in the world. However, in Peru white corn is used solely in food, and yellow corn mainly in animal feed. Corn, barley, and sorghum are called “coarse grains” or “feed grains.” Rice is traded as unmilled (rough) form, dehulled (brown) form, and milled or semimilled form.

<sup>4</sup> The TRQ for rice designates an Oct. 1 to Sept. 30 marketing year; therefore, assuming an implementation date of Jan. 1, 2007, the duty-free in-quota quantity of rice for marketing year one will be prorated to 9/12 of the base amount of 74,000 MT. The first full marketing year with a duty-free in-quota quantity of 78,000 MT will begin on Oct. 1, 2007 and run through Sept. 30, 2008.

<sup>5</sup> Compiled from official statistics of the U.S. Department of Commerce.

about 42 percent of Peruvian imports of grain in 2004 (the latest year for which data are available).<sup>6</sup>

U.S. grain exports to and market access in Peru					
Product	U.S. exports to Peru		Peruvian market access		
	2001-05 average	2005	First year TRQ	Over quota tariff	Basic rate, 2004
	(1,000 metric tons)			(Percent AVE)	
Wheat	685	484	No quota	Free	17
Corn					
Yellow	170	196	500	25	12 <sup>a</sup>
White	0	0	No quota	25	17
Popcorn	0.15	0	No quota	Free	12
Rice <sup>b</sup>	16	27	78	52	25 <sup>c</sup>

Source: *U.S.-Peru TPA*, General Notes, Tariff Schedule of Peru, app. I; official statistics of the U.S. Department of Commerce; and USDA, FAS, "Peru Grain and Feed Annual 2005," 5, 8, and 12.

<sup>a</sup> Applied duty included a price-band levy that averaged 2 percent in the second half of 2004.

<sup>b</sup> Rice weight is given in milled rice equivalents; TRQ quantity is for the first full marketing year, which runs from Oct. 1, 2007 to Sept. 30, 2008.

<sup>c</sup> Applied duty included a price-band levy that averaged 14 percent in the second half of 2004.

## Wheat

U.S. wheat exports will benefit immediately from the elimination of the applied 17 percent tariff on U.S. wheat; there are no quotas under the TPA nor does Peru impose a price-band duty on wheat imports (unlike rice and corn).<sup>7</sup> U.S. wheat exports to Peru are likely to increase by 5 to 15 percent above the 2005 level of U.S. wheat exports of approximately \$78 million.

As the United States is the major supplier of wheat to Peru,<sup>8</sup> most of the expected increase in exports is driven by increased wheat consumption in Peru as a result of wheat duty elimination,<sup>9</sup> although some U.S. export sales may occur at the expense of competitors such as Argentina and Canada. South American grain has generally undersold U.S. grain in Peru in recent years, but the duty-free access that will be afforded by the TPA will narrow the price disadvantage. However, freight costs from the United States have been higher than from Argentina and Uruguay.<sup>10</sup>

<sup>6</sup> U.S. grain exports accounted for 42 percent of the \$467 million of reported Peruvian imports in 2004, according to UN Comtrade data.

<sup>7</sup> The price-band system in Peru applies to imports of dairy goods, corn, sugar, and rice; the price-band system is similar to that maintained in the other Andean countries and Chile. Under this system, variable monthly duties, which may be positive or negative, are imposed on top of ad valorem tariffs to keep domestic prices within a predetermined range set annually. The system sets a floor price for domestic producers, and mitigates the changes in global prices on producers and consumers. USITC, *U.S.-Chile Free Trade Agreement*, 5, 90; and, USDA, FAS, "Peru Export Guide Annual 2005," 3, 5, and 8.

<sup>8</sup> In MY2004/05, Peru imported 90 percent of its domestic consumption of wheat. In 2004, the United States supplied about two-thirds of Peru's imports of wheat, with Canada and Argentina supplying the remainder. USDA, FAS, "Peru Grain and Feed Annual 2005," 3, 6, and 10.

<sup>9</sup> A 10 percent decline in wheat prices in Peru will likely lead to a nearly 4 percent increase in the quantity demanded. USDA estimated the Peruvian price elasticity of demand for wheat at -0.355. Elasticities represent 1989 data. USDA, ERS, *International Food Consumption Patterns*.

<sup>10</sup> USDA, FAS, "Peru Agricultural Situation CCC Programs in Peru 2003," 2.

In marketing year (MY) 2003/04, Argentine wheat (delivered to Peru) was priced about 3 to 5 percent below U.S. wheat.<sup>11</sup> Under Mercosur, Argentina received an 80 percent tariff reduction from the applied MFN rate.<sup>12</sup> In 2004, for example, Argentine wheat was dutiable at 3.4 percent AVE, and U.S. wheat was dutiable at 17 percent. The TPA immediately eliminates the competitive disadvantage for U.S. wheat exports inherent in Argentina's preferential duty in the Peruvian market.

The primary Peruvian government support for wheat has been the relatively high import duty and the 17 percent value-added tax (VAT) that Peruvian growers do not generally pay. Peruvian wheat production is quite small, supplying less than 10 percent of domestic wheat consumption. The effect on Peruvian wheat production is likely to be small.

## Rice

U.S. rice exports are likely to increase in the long term by 10- to 15-fold above the 2005 U.S. rice export level of \$9 million. Peruvian market access for U.S. exports of rice (and corn) will gradually expand through elimination of the Peruvian price band and the establishment and subsequent growth of TRQs for rice and corn (over a period of 6 to 17 years). In the 16<sup>th</sup> year of the TPA, duty-free access via the TRQ for rice amounts to 177,000 MT (currently valued at \$50 million).<sup>13</sup> The expected increase in U.S. rice exports will likely stem from increased consumption caused by lower prices for rice after the duty elimination and, equally as important, a reduction in Peruvian rice production.<sup>14</sup> U.S. rice exports in 2004 to Peru consisted of 78 percent milled or semimilled rice, and 22 percent brown (husked) rice. As a result of an import ban (discussed below), there were no exports to Peru of U.S. rough or paddy rice in 2004; there was \$3 million of U.S. rough rice exports to Peru in 2002. Removal of the SPS ban on rough rice under the TPA may result in future U.S. exports of rough rice to Peru.

The TPA also eliminates the competitive disadvantage of U.S. rice exports to Peru inherent in rice duty preferences for Uruguay. In 2004, Uruguay accounted for three-quarters of Peru's rice imports, with the United States supplying the remainder. As Peru imported relatively little rice (less than 3 percent of domestic consumption in MY2004/05),<sup>15</sup> any increased U.S. exports taken from competitor suppliers, such as Uruguay, will likely not be large.

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<sup>11</sup> In MY2003/04, U.S. soft red wheat (f.o.b. U.S. Gulf) was priced \$2 per ton above Argentine wheat (f.o.b. Trigo Pan); the freight cost to Peru from Argentina was about \$3 to \$5 per ton lower than from the United States. Thus, the delivered price of Argentine wheat was \$5 to \$7 per ton (3 to 5 percent) below U.S. wheat. USDA, FAS, "Peru Grain and Feed Annual 2005," 7; and IGC, *World Grain Statistics 2003*, 9a-9b.

<sup>12</sup> USDA, FAS, "Peru Grain and Feed Annual 2005," 2.

<sup>13</sup> *U.S.-Peru TPA*, General Notes, Tariff Schedule of Peru, app. I, note 7(a). The average price of U.S. Southern long-grain milled rice, U.S. Gulf ports, was \$312 per metric ton in MY2004/05. USDA, ERS, *Rice Outlook*, table 6.

<sup>14</sup> On the basis of USDA studies of Peru, a 10 percent decline in the rice price in Peru will likely lead to a nearly 4 percent increase in the quantity demanded, based on the price elasticity of demand for grain. Meanwhile, a 10 percent decline in the rice price would likely lead to a 5 percent drop in Peruvian rice production. Elasticity of supply represents database South American regional grouping, and trade liberalization elasticities represent 1989 data. USDA, ERS, *International Food Consumption Patterns*; and USDA, ERS, *Elasticities in the Trade Liberalization Database*.

<sup>15</sup> USDA, FAS, "Peru Grain and Feed Annual 2005," 3, 6, and 10.

The TPA provides that the Peruvian price-band system will not apply to U.S. agricultural products, including those granted market access under the TRQs.<sup>16</sup> The over-quota tariff is a ceiling binding on the price band applied to rice (and corn) imports. However, if the price-band levy is lower than the over-quota tariff, then U.S. goods are dutiable at the lower price-band rate.<sup>17</sup> In the second half of 2004, the average price-band rate on rice amounted to 14 percent.<sup>18</sup> However, since 2001, price-band duties on rice have been as high as 116 percent.<sup>19</sup>

The Peruvian government has historically had an import substitution policy with regard to rice, which substantially increased domestic rice production, sometimes leading to lower producer prices, and excessive carryover stocks.<sup>20</sup> Rice imports were dutiable at 25 percent AVE, subject to the levy under the price-band system, and subject to the 17 percent VAT that domestic producers frequently do not pay.

The Peruvian SPS authority, SENSA, imposed an SPS ban on imports of rough rice from countries where the Kharpra Beetle is persistent, including the United States.<sup>21</sup> Under the TPA, the Peruvian government indicated that it would withdraw the specific decree banning rough rice imports from the United States, and would in the future, “apply standards on rice imported from the United States no less favorable than those applied to domestic products.”<sup>22</sup> However, the Peruvian government reserves the authority to reimpose the ban, although as more scientific information on controlling the pest is exchanged between the United States and Peru, this may not occur.<sup>23</sup>

## Corn

Over the long term, U.S. corn exports are likely to more than double from the \$20 million level of U.S. exports to Peru in 2005. In the short term, however, growth is limited by quotas on U.S. yellow corn, with prohibitive over-quota tariffs. Nonetheless, there will be a substantial increase in U.S. duty-free access as the initial quotas are set well above the level of U.S. exports to Peru during the past 5 years. For white corn (and popcorn), there will be immediate duty-free, quota-fee access to the Peruvian market.

Anticipated increases in exports of U.S. corn will likely result from increased corn consumption in Peru stimulated by a lower domestic price (as the tariff is removed), as well as a reduction in Peruvian corn production.<sup>24</sup> In MY2004/05, Peru imported 38 percent of its corn consumption;<sup>25</sup> in recent years, Argentina accounted for two-thirds of Peru’s corn imports, with the United States the only other significant supplier. In MY2003/04, Argentine

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<sup>16</sup> *U.S.-Peru TPA*, General Notes, Tariff Schedule of Peru, app. I, note 2(a).

<sup>17</sup> ATAC for Grains, Feed and Oilseeds, *Draft GF&O Report on U.S.-Peru TPA*, 2.

<sup>18</sup> USDA, FAS, “Peru Grain and Feed Annual 2005,” 8 and 12.

<sup>19</sup> In Feb. 2002, the levy was \$221/metric ton, and the U.S. export price was \$190/metric ton. USDA, FAS, “Peru Grain and Feed,” 10.

<sup>20</sup> USDA, FAS, “Peru Grain and Feed Annual 2005,” 12.

<sup>21</sup> *Ibid.* U.S. rough rice was imported in 2002, but the ban was reimposed in 2003.

<sup>22</sup> Peru’s Council of Ministers, *Letter Exchange on SPS/TBT Issues for the U.S.-Peru TPA*, #4.

<sup>23</sup> ATAC for Grain, Feed and Oilseeds, *Draft GF&O Report on U.S.-Peru TPA*, 4.

<sup>24</sup> The USDA studies of Peru indicate that a 10 percent decline in corn prices in Peru will likely lead to a near-4 percent increase in the quantity demanded, based on the price elasticity of demand. The same 10 percent decline in price will likely lead to a 4 percent drop in Peruvian corn production. Elasticity of supply represents database South American regional grouping, and trade liberalization elasticities represent 1989 data. USDA, ERS, *International Food Consumption Patterns*; and USDA, ERS, *Elasticities in the Trade Liberalization Database*.

<sup>25</sup> USDA, FAS, “Peru Grain and Feed Annual 2005,” 3, 6, and 10.

corn (delivered to Peru) was priced approximately 9 to 10 percent below U.S. corn.<sup>26</sup> In 2004, as a result of a previous trade agreement, Argentine corn was dutiable at 3.4 percent while U.S. corn was dutiable at 17 percent.<sup>27</sup> The TPA eliminates the competitive disadvantage of U.S. corn exports to Peru inherent in duty preferences for Argentine corn. Consequently, as a result of the TPA, some market share may be taken from other suppliers, such as Argentina.

In the second half of 2004, the average price-band levy on yellow corn amounted to 2 percent, but price-band rates have been as high as 21 percent since 2001.<sup>28</sup> In addition to the price band, the government of Peru has provided support and assistance for corn growers in the form of rotating credit funds and a policy encouraging local poultry growers to purchase locally produced corn.<sup>29</sup> Some poultry operations purchase only Peruvian corn through agreements with Peruvian growers sponsored by the government (so-called “absorption requirements”). Under the TPA, the absorption requirements will be eliminated, further increasing the competitive advantage of U.S. grain exporters.

### *Views of Interested Parties*

The U.S. grain industry endorses the TPA, and indicates that the agreement reduces Peruvian tariffs on grain and negates the adverse effects of Peruvian policies, such as price bands and the absorption requirements. The agreement will provide, in the industry’s view, both immediate and long-term benefits to U.S. producers and processors of grain, feed, and oilseeds.<sup>30</sup>

## **Cotton<sup>31</sup>**

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### *Assessment*

The cotton provisions of the U.S.-Peru TPA are uniquely significant because the U.S.-Peru TPA is the first U.S. bilateral FTA that provides for immediate duty-free, quota-free trade in cotton fiber between the United States and another trading partner.<sup>32</sup> The provisions of the U.S.-Peru TPA are likely to have a significant, positive effect on U.S. cotton exports to Peru. However, the increase is unlikely to have a significant effect on total U.S. cotton exports. From 2003 to 2005, total U.S. cotton exports averaged more than 2.9 million MT. Peru accounted for about 1 percent of this total. If the United States were to supply 100 percent of Peru’s current cotton imports, U.S. exports would be expected to increase by about 3,500 MT, less than 0.2 percent of total U.S. cotton exports. The TPA is not likely to have

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<sup>26</sup> In MY2003/04, the price of U.S. corn (f.o.b. U.S. Gulf) was \$7 per metric ton above Argentine corn (f.o.b. Up River), making the delivered price of Argentine corn \$10 to \$12 per ton (9 to 10 percent) below the price of U.S. corn. USDA, FAS, “Peru Grain and Feed Annual 2005,” 7; and IGC, *World Grain Statistics 2003*, 9a–9b.

<sup>27</sup> USDA, FAS, “Peru Grain and Feed Annual 2005,” 2.

<sup>28</sup> *Ibid.*, 8; and “Peru Grain and Feed Annual 2002,” 7.

<sup>29</sup> Peru imports a substantial amount of yellow corn for poultry feed. By year 11 of the TPA, the import quota for U.S. corn expands to 895,000 metric tons, currently valued at \$90 million. The average price of U.S. corn, No. 3 yellow, f.o.b., U.S. Gulf ports, was \$99 per metric ton in crop year 2004/05. *U.S.-Peru TPA*, General Notes, Tariff Schedule of Peru, app. I, note 7(a); and *Oil World*.

<sup>30</sup> ATAC for Grains, Feed and Oilseeds, *Draft GF&O Report on U.S.-Peru TPA*.

<sup>31</sup> This sector includes cotton fiber classified under HTS headings 5201, 5202, and 5203, but the analysis focuses on trade in cotton classified under HTS 5201, cotton, not carded or combed.

<sup>32</sup> ATAC for Tobacco, Cotton, Peanuts and Planting Seeds, *Advisory Committee Report*.

an effect on U.S. cotton imports from Peru. These results are consistent with the economy-wide simulation that shows a small increase in Peruvian imports of U.S. plant-based fiber products.

The TPA makes permanent the duty-free treatment currently provided under ATPA for U.S. imports of Peruvian apparel and grants additional duty-free access to U.S. imports of Peruvian textiles. Since ATPDEA expanded ATPA in 2002, Peru's textile and apparel sector has grown by more than 25 percent, stimulating Peru's demand for cotton. Peru's textile and apparel industry currently has capacity to process about 100,000 MT of cotton annually.<sup>33</sup> From 2000 to 2004, Peru's cotton production averaged 53,556 MT.<sup>34</sup> To use its textile and apparel production capacity efficiently, Peru imported an average of 39,625 MT of cotton annually from 2000 to 2005, of which 27,155 MT, or more than two-thirds, were imported from the United States. Although the permanence of the TPA may induce additional investment in textile and apparel capacity, which likely will increase further Peru's demand for cotton, low productivity and high cost mitigate Peruvian producers' ability to supply additional cotton. Therefore, increased cotton demand is unlikely to be entirely supplied by domestic cotton production, and Peru can be expected to continue as a net importer of cotton.

Technical production issues will continue to limit Peru's ability to efficiently grow and supply cotton for the domestic textile and apparel industries. In the 1980s, Peru planted nearly 140,000 hectares of cotton; by 2000–2004, planted area had dropped to fewer than 76,000 hectares. The primary variety of cotton grown in Peru is a long-staple variety that accounts for approximately 78 percent of total cotton production. This variety requires a long growing season that makes it more susceptible to pest infestations, such as boll weevils, which can require the use of pesticides that can double production costs.<sup>35</sup> Other factors contributing to production and market inefficiencies include the small size of farm production units, low yields resulting from poor production practices and low seed quality, the lack of technical assistance to improve production practices, and the lack of agricultural credit.<sup>36</sup>

In addition, in response to cotton growers' protests against the TPA, Peru instituted a \$4.30 per hundredweight cotton subsidy,<sup>37</sup> which is equivalent to about \$95 per metric ton,<sup>38</sup> but only offsets about 57 percent of the likely price effect of immediate duty-free treatment for U.S. cotton exports to Peru. While the subsidy may stabilize or even stimulate increased Peruvian cotton production in the short run, without improvements in those conditions that result in low productivity and high costs among Peruvian cotton growers, Peru's cotton production sector is likely to decrease in size, resulting in lower production and increased demand for cotton imports in the long run.

However, the TPA may indirectly result in some increased production of Pima cotton as growers respond to the phase-out of duties on rice. Production of Pima cotton, the second most popular variety accounting for about 18 percent of production, has been unstable and insufficient to supply local demand for extra-long-staple fiber because Pima cotton producers

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<sup>33</sup> USDA, FAS, "Peru Cotton and Products, Update 2005."

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> The average unit value of Peru's cotton imports from 2000 to 2005 was \$1,382 per MT. The applied duty of 12 percent translates into protection of about \$166 per MT.

choose to grow cotton only if there is insufficient water to grow rice.<sup>39</sup> Because the Peruvian rice market has been more highly protected than the cotton market,<sup>40</sup> the TPA may alter the relative domestic prices of rice and Pima cotton so Pima cotton production becomes more consistently attractive in the future.

U. S. cotton exporters' ability to take advantage of increased market access may be mitigated by increasing international competition. As indicated, the United States has been the dominant supplier of cotton to Peru, holding a 68.5 percent import market share from 2000 to 2005. However, Peru's import market share composition has changed in the last 5 years as new competitors have entered the market. Brazil entered the Peruvian market in 2002 and has become a primary competitor for U.S. cotton exports. Peruvian imports of cotton from Brazil began with 367 MT in 2004 rising to an average of 8,112 MT in 2005. Peruvian cotton imports from Bolivia have been fairly stable throughout this period, accounting for nearly 7 percent of the import market share, while cotton imports from Argentina dropped from 12,800 MT and a 32.3 percent share in 2001 to zero in 2005.<sup>41</sup>

The TPA does not provide U.S. cotton a competitive advantage relative to Bolivian cotton in the Peruvian market because, as a member of the Andean community, Bolivian cotton receives duty-free treatment. The agreement does, however, provide U.S. cotton a price advantage over Brazilian and Argentinian cotton in the Peruvian market for 12 years. All cotton imports from Brazil, and cotton imports with a staple length greater than 27.8 mm from Argentina, currently receive a 30 percent margin of preference in the Peruvian market.<sup>42</sup> However, under the Peru-Mercosur trade agreement, cotton imports from Argentina and Brazil do not receive duty-free treatment until January 1, 2019.<sup>43</sup> If U.S., Argentinian, and Brazilian cotton are highly substitutable, the near-term increase in U.S. cotton exports to Peru could be significant. Recently, Argentinian cotton has become less competitive because increased domestic demand has resulted in low volumes available for export, and because of contamination problems.<sup>44</sup> On the other hand, the Brazilian cotton industry is rapidly becoming a highly competitive export supplier, with Brazilian industry leaders believing that Brazilian cotton exports may significantly replace U.S. cotton exports as U.S. cotton support programs are adjusted to comply with the WTO "Subsidies on Upland Cotton" ruling.<sup>45</sup>

### *Views of Interested Parties*

The U.S. cotton industry supports the U.S.-Peru TPA because it believes that the cotton provisions of the agreement will be strongly beneficial to both the United States and Peru, given the characteristics of cotton, textile, and apparel trade between the two countries. The cotton industry also notes that the agreement contains acceptable rules of origin for cotton-based textiles with fewer exceptions than other U.S. free trade agreements.<sup>46</sup>

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<sup>39</sup> USDA, FAS, "Peru Cotton and Products, Update 2005."

<sup>40</sup> Rice has been subject to the Andean price band with AVE duties ranging from 40 percent to 120 percent from 2001 to 2004.

<sup>41</sup> *Global Trade Atlas*.

<sup>42</sup> The margin of preference represents the percentage discount off the MFN duty rate, e.g., a 30 percent margin of preference on the 12 percent cotton duty represents a discount of 3.6 percentage points, resulting in an applied duty of 8.4 percent. ALADI, *Acuerdo de Complementación Económica*.

<sup>43</sup> *Ibid.*, AAP.CEN.58, apéndice 1-A.

<sup>44</sup> USDA, FAS, "Argentina Cotton and Products, Update 2005."

<sup>45</sup> USDA, FAS, "Brazil Cotton and Products, Update 2005"; and WTO, *United States – Subsidies on Upland Cotton*.

<sup>46</sup> ATAC for Tobacco, Cotton, Peanuts and Planting Seeds, *Advisory Committee Report*.

# Sugar and Sugar-containing Products<sup>47</sup>

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## *Assessment*

The U.S.-Peru TPA provisions concerning sugar and sugar-containing products (SCP) are unlikely to have a significant effect on the U.S. sugar market for either producers or users.<sup>48</sup> Historic production, consumption, and trade patterns suggest that Peru may not be able to consistently meet the TPA's net-exporter provision.<sup>49</sup> Moreover, even when Peru is able to meet the net-exporter provision, Peru's duty-free access to the U.S. market under the TPA is limited to the initial size (9,000 MT) and growth rate (180 MT annually) of the TRQ in-quota quantity, which is small relative to the size and growth of the U.S. sugar market. Furthermore, U.S. over-quota tariff rates are not affected by this agreement. Although U.S. market access commitments above the WTO minimum have been increasing as a result of NAFTA and CAFTA-DR, the increase proposed under the U.S.-Peru TPA is relatively minor and likely would not result in import levels that would trigger the suspension of domestic marketing allotments. In addition, the U.S.-Peru TPA contains a compensation mechanism whereby the United States could limit sugar imports under the agreement in exchange for compensation (amount not specified in the TPA). Although the provisions of the TPA are unlikely to have an effect on U.S. exports of raw cane and beet sugar, the TPA may affect the exports of other sweeteners and syrups and sugar-containing confectionery to Peru. These results are consistent with the economy-wide simulation results that show a small increase in the value of sugar trade between the United States and Peru.

Peru is unlikely to meet the net exporter provision of the TPA, which limits Peru's sugar exports to the United States (beyond those allocated by the U.S. WTO TRQs) to the lesser of the specified TRQ quantity or the amount by which Peru's total imports exceed its total exports, excluding sugar trade with the United States. Peru would not have met the net-exporter provision of the agreement in 5 of the past 6 years (2000–2005).<sup>50</sup> Peru has generally been a net importer of sugar as domestic production has fallen short of domestic consumption by an average of 153,000 MT annually since 1983.<sup>51</sup> Furthermore, sugar

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<sup>47</sup> The discussion of U.S. imports in this sector includes raw sugar, refined sugar, sugar syrups, and sugar-containing products classified in chaps. 17, 18, 19, and 21 of the HTS that are subject to TRQs, and all items that are covered by the sugar provision of the TPA. The discussion of U.S. exports in this section is limited to raw sugar, refined sugar, sugar syrups, and sugar-containing products classified in chap. 17.

<sup>48</sup> The U.S. sugar-producing sector addressed in this section of the report primarily consists of sugarcane growers, sugarcane millers, raw cane sugar refiners, sugar beet growers, and sugar beet refiners. This section of the report does not generally address producers of corn-based sweeteners, e.g., high-fructose corn syrup. The U.S. sugar-using sector generally consists of a wide range of food and beverage manufacturers, though the three largest sugar-consuming sectors in the United States are nonchocolate confectionery, chocolate and chocolate confectionery, and breakfast cereal.

<sup>49</sup> The net-exporter provision of the TPA reads as follows: "In any year, duty free tariff treatment under subparagraph (a) for Peru shall be accorded to the lesser of (i) the aggregate quantity set out in subparagraph (a) for Peru, or (ii) a quantity equal to the amount by which Peru's exports to all destinations exceeds its imports from all sources ("trade surplus") for goods classified under the following subheadings: HS 1701.11, HS 1701.12, HS 1701.91, HS 1701.99, HS 1702.40, and HS 1702.60, except that Peru's exports to the United States of goods classified under subheadings HS 1701.11, HS 1701.12, HS 1701.91, and HS 1701.99 and its imports of originating goods of the United States classified under HS 1702.40 and HS 1702.60 shall not be included in the calculation of its trade surplus. Peru's trade surplus shall be calculated using the most recent annual data available." (*U.S.-Peru TPA*, annex 2.3, I4–I5.)

<sup>50</sup> Based on USITC staff estimates using *Global Trade Atlas*.

<sup>51</sup> USDA, FAS, "Dataset for centrifugal sugar."

exported to the United States to obtain quota rents<sup>52</sup> under the U.S. WTO sugar TRQs has been replaced by imports over this period.<sup>53</sup> Therefore, to fully supply the average domestic shortfall since 1983 and the minimum U.S. WTO TRQ access allotment of 43,174 MT, Peru's average production would have needed to be 196,000 MT greater, or 26 percent greater than the average production of 752,000 MT over this period.<sup>54</sup>

Recent changes in the structure of Peru's sugar industry, however, may affect Peru's ability to achieve net-exporter status in the future. Much of the historic shortfall in domestic sugar production has been attributed to a 1968 land reform in which expropriated assets of private sugar companies were distributed to workers' cooperatives, resulting in production inefficiencies and lack of investment to upgrade cane fields and sugar mills.<sup>55</sup> Sugar production fell from a 1974 peak of more than 1 million MT to 415,000 MT by 1993.<sup>56</sup> Peruvian laws were changed in 1996 to encourage private investment in the sugar cooperatives. These changes increased private investment in the sugar industry, resulting in increased production. By 2004, Peru had its first sugar surplus since 1985.<sup>57</sup> The 2005 shortfall has been attributed to drought conditions, and production is expected to recover in 2006.<sup>58</sup> Furthermore, in January 2006, the Peruvian government sold the 31 percent share it had acquired to support Peru's largest sugar cooperative, Casa Grande, to a private conglomerate, Grupo Gloria.<sup>59</sup> Grupo Gloria is expected to increase investment in cane fields and milling technology. The Casa Grande mill is currently operating at one-third of its 300,000 MT capacity.<sup>60</sup> USDA estimates that increased investment in the Casa Grande mill and sugar fields that supply it can increase Peru's total sugar production to 1.2 million MT,<sup>61</sup> sufficient to make Peru a net sugar exporter based on current domestic demand. In addition, Peru's cost of production is significantly lower than the typical U.S. market price and the loan forfeiture price administered in the U.S. sugar program.<sup>62</sup>

Other factors, however, can offset the potential for increased sugar exports. First, general economic growth could increase the domestic demand for sugar in Peru. Second, high oil prices and recent Peruvian legislation to increase the use of biofuels have induced sugar mills to consider ethanol as an alternative to sugar production.<sup>63</sup> Third, dependence on irrigation makes Peruvian sugar production susceptible to drought, which can make production variable from year to year.

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<sup>52</sup> U.S. border protection measures (TRQs) help maintain an internal price that is typically greater than the price available on the world market. Therefore, allocation of licenses to quota holders for sugar imports creates quota rents.

<sup>53</sup> Peru's basic WTO TRQ allocation of 43,174 MT of raw cane sugar is among the largest allocations, ranking sixth, and accounting for nearly 3.9 percent among the U.S. WTO minimum market access commitment of 1,117,195 MT. Furthermore, during FY2005, Peru received an additional allocation of 8,476 MT for a total of 51,651 MT; and for FY2006, Peru has been allocated up to 73,664 MT of duty-free access for raw cane sugar.

<sup>54</sup> USDA, FAS, "Dataset for centrifugal sugar."

<sup>55</sup> USDA, FAS, "Peru Sugar Annual, 2005."

<sup>56</sup> USDA, FAS, "Dataset for centrifugal sugar."

<sup>57</sup> Ibid.

<sup>58</sup> USDA, FAS, "Peru Sugar Annual, 2005."

<sup>59</sup> Reuters, "Gloria Takes Over Peru Sugar Mill."

<sup>60</sup> Ibid.

<sup>61</sup> USDA, FAS, "Peru Sugar Annual, 2005."

<sup>62</sup> The current U.S. raw sugar price is about 24 cents per pound. USDA, ERS, "Table 4—U.S. raw sugar price." The current loan forfeiture price under the U.S. sugar program is 18 cents per pound for raw cane sugar and 22.9 cents per pound for refined sugar. USDA, ERS, "Sugar and Sweeteners: Policy." Data on Peru's cost of production are proprietary and are from LMC, *LMC Worldwide Survey*.

<sup>63</sup> USDA, FAS, "Peru Sugar Annual, 2005."

If in the future, Peru is able to meet the net exporter provisions of the agreement, the TPA is still unlikely to have a significant effect on the U.S. domestic sugar market. Additional duty-free access for Peruvian sugar and SCPs in the U.S. market is initially limited to 9,000 MT, which grows by 180 MT annually, plus 2,000 MT of specialty sugar.<sup>64</sup> These provisions will limit Peruvian sugar exports to the U.S. market because current MFN over-quota duty rates associated with WTO TRQs for sugar and SCP are generally prohibitive and not affected by the TPA. The initial additional in-quota quantity of 9,000 MT represents less than one-tenth of 1 percent of the 9.7 million MT of sugar expected to be consumed in the United States during FY2006.<sup>65</sup> Furthermore, comparing U.S. sugar consumption at the average annual growth rate of 1.3 percent (1994–2005) with the TPA duty-free in-quota quantities over the same period of time indicates that the TPA in-quota quantity is unlikely to ever exceed more than one-tenth of 1 percent of U.S. domestic sugar consumption, nor is it likely to exceed a nearly-insignificant amount in terms of the total U.S. domestic market for sweeteners.

Furthermore, any potential effect of increased duty-free access for sugar and SCP imports from Peru depends on the potential effect of imports from other trading partners subject to bilateral or regional trade agreements with the United States that have yet to be fully implemented or phased in. Under NAFTA provisions, Mexico has been allocated more than 250,000 MT (about 2.6 percent of U.S. domestic consumption) of sugar exports to the U.S. market during FY2006, and, as of January 2008, Mexico will have unlimited duty-free access to the U.S. sugar market subject to a net-exporter provision. Under the provisions of the as yet not fully implemented CAFTA-DR, the Dominican Republic and other Central American countries will have additional duty-free access of 109,000 MT (about 1.19 percent of U.S. domestic consumption) initially, growing at 2 percent of the initial amount annually. Imports of sugar and SCP resulting from these agreements are far more likely to affect the U.S. market than the relatively small amount of additional duty-free access in the U.S.-Peru TPA, particularly with respect to the potential to trigger the suspension of U.S. marketing allotments.

The TPA is unlikely to have a significant effect on U.S. exports of raw cane and beet sugar because the United States is primarily an importer of these products. Furthermore, though the TPA may result in increased exports of other sweeteners and SCP classified in HS chapter 17, it is unlikely to have an effect on the total exports of sugar, other sweeteners, and SCP classified in that chapter because Peru is a small market relative to total U.S. exports of these products. From 2001 to 2005, U.S. exports to Peru were less than 0.5 percent of total U.S. chapter 17 exports, averaging \$3 million to Peru compared with a world total U.S. exports of \$697 million.<sup>66</sup> The United States is a competitive producer of alternative sweeteners, including lactose and high-fructose corn syrup (HFCS). Without the benefits of the TPA, U.S. lactose exports to Peru have grown from less than \$4,000 in 2000 to more than \$1 million in 2005.<sup>67</sup> Duty-free treatment of U.S. lactose exports upon implementation of the TPA should continue to facilitate the growth of U.S. lactose exports to Peru. High fructose syrups (those with 50 percent or more fructose by weight on a dry matter basis) were subject to a high and unpredictable price band. Consequently, U.S. exports of these

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<sup>64</sup> Peru has been given an allocation of 2,000 MT of specialty sugar, which represents a country-specific allocation within the current chap. 7, note 5, TRQ which was allocated on a first-come, first-served basis. *U.S.-Peru TPA*, annex 2.3, I4–I5.

<sup>65</sup> USDA, ERS, *Sugar and Sweeteners Outlook*, Table 4, 10; converted to MT at rate of 1 metric ton = 1.10231123 short tons.

<sup>66</sup> USITC, *Dataweb*.

<sup>67</sup> *Ibid*.

products were highly variable, recently ranging from \$100,780 in 2003 to \$704,102 in 2005.<sup>68</sup> Elimination of the price band and a 5-year phase-out of the remaining duties on high fructose syrups should make U.S. exports of HFCS more competitive in the Peruvian sweetener market, especially as an input into soft drink production.

### *Views of Interested Parties*

Both U.S. sugar producers and U.S. sugar consumers agree that the U.S.-Peru TPA is unlikely to negatively affect the U.S. sugar-producing industry.<sup>69</sup> However, U.S. sugar producers believe that including sugar in bilateral FTAs does not promote the objectives of the U.S. sugar-producing sector.<sup>70</sup> The American Sugar Alliance (ASA), representing U.S. sugar beet and sugar cane growers, prefers that U.S. sugar market access is negotiated in the multilateral WTO context in which foreign subsidies to sugar production can be addressed.<sup>71</sup> Sugar producers on the ATAC characterized that the additional market access extended to Peru as considerably more reasonable than the additional access extended in CAFTA-DR.<sup>72</sup> Sugar producers on the sweeteners ATAC also noted that, as a large net importer, the United States has no prospects for exporting sugar to Peru.

U.S. sugar consumers also believe that the TPA is unlikely to have negative effects on U.S. sugar producers; moreover, sugar users believe that the agreement will promote fair competition and help ensure an ample supply of sugar in the U.S. market.<sup>73</sup> U.S. sugar consumers support comprehensive product coverage, including sugar, in U.S. regional and bilateral FTAs. In addition, sugar consumers expressed their view that the increased access extended to Peru was extremely modest and that maintaining over-quota rates indefinitely was a substantial compromise from the goal of fully liberalized trade.<sup>74</sup> The Grocery Manufacturers Association, representing many sugar-consuming food manufacturers, stated that the agreement will stimulate increased manufactured food exports to Peru, helping balance the exchange of goods between the two countries, and will stimulate U.S. job growth in food manufacturing.<sup>75</sup>

## **Asparagus<sup>76</sup>**

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### *Assessment*

The U.S.-Peru TPA is likely to maintain and potentially expand the positive effects of ATPA on U.S. consumers, importers, and distributors of asparagus. The TPA is unlikely to have additional negative effects on U.S. growers of fresh asparagus, though continued consolidation, rationalization, and relocation in the processing industry is likely to effect

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<sup>68</sup> Ibid.

<sup>69</sup> ATAC for Sweeteners and Sweetener Products, *Advisory Committee Report*.

<sup>70</sup> Ibid., majority view, 5–7. In addition to representatives of cane and beet producers, the American Beekeeping Federation participated in the majority view.

<sup>71</sup> American Sugar Alliance, *Statement from U.S. Sugar Producers*.

<sup>72</sup> ATAC for Sweeteners and Sweetener Products, *Advisory Committee Report*.

<sup>73</sup> Ibid., minority view, 7–8.

<sup>74</sup> ATAC for Sweeteners and Sweetener Products, *Advisory Committee Report*.

<sup>75</sup> Grocery Manufacturers Association, “News Release: GMA Commends the Conclusion of Successful Trade Negotiations.”

<sup>76</sup> This section considers imports of fresh, frozen, and processed asparagus classified under HTS tariff lines 0709.20.1000, 0709.20.9000, 0710.80.7060, 0710.80.9710, and 2005.60.0000.

growers in Michigan and Washington that historically had grown asparagus primarily for processing. Increases in current import growth rates of fresh asparagus may be stimulated by increased demand through expansion of seasonal availability and increased U.S. grower-shipper investment in the Peruvian industry. Furthermore, increased investment by U.S. processors in the Peruvian industry, which has been linked to divestment in U.S. asparagus processing capacity, may push additional domestic production in Washington and Michigan into the fresh market and increase U.S. imports of canned and frozen asparagus. ATPA preferences have provided Peru with duty-free treatment for fresh, frozen, and processed asparagus since 1991. These preferences are scheduled to expire at the end of 2006. Without renewal, duties would increase to between 5.0 and 21.3 percent, because Peruvian asparagus is not eligible for GSP treatment.<sup>77</sup> Under the terms of the TPA, Peru's duty-free access to the U.S. asparagus market is made permanent. The results discussed in this section are not comparable to the economy-wide simulation results because asparagus trade makes up a small portion of the GTAP food products n.e.c. and vegetables, fruits, and nuts sectors, and thus its individual effect is not measurable.

Since implementation of ATPA preferences in 1991, U.S. asparagus imports from Peru have increased at an average annual rate of 157.4 percent, compared with an average annual rate of 10.8 percent for U.S. asparagus imports from Mexico, and an average annual rate of 27.4 percent for total U.S. asparagus imports. By comparison, U.S. asparagus production has declined at an average annual rate of 1.9 percent over the same period. By 2001, asparagus imports from Peru exceeded asparagus imports from Mexico, making Peru the largest foreign supplier of asparagus to the U.S. market. In 1991, Mexico held a 75 percent share of U.S. asparagus imports versus 12 percent for Peru; by 2005 Peru held 59 percent versus 39 percent for Mexico.<sup>78</sup> Historically, more than 90 percent of U.S. asparagus imports from Peru were fresh. More recently, however, canned asparagus imports from Peru have increased from 401 MT in 2001 to more than 7,219 MT in 2005. As a result, fresh asparagus imports from Peru decreased to 86 percent of the total asparagus imports from Peru in 2005.<sup>79</sup>

Initially, fresh asparagus imports from Peru were seasonal and declined beginning in January, lessening the effect on U.S. producers. Over time, as Peru became a year-round producer and shipper, the effect on U.S. producers increased. Peru now supplies fresh asparagus to the U.S. market year round, including February and March,<sup>80</sup> which coincides with the beginning of the California production season. California is the primary U.S. supplier of fresh asparagus, providing about 74 percent of U.S. fresh asparagus production in 2005; California is the only U.S. supplier from January to March. Some growers report that prices are lower when imported supplies overlap with their normal shipping season. For example, even though prices for fresh asparagus from California are lower in late January, some U.S. retailers in the Southeast continue to purchase Peruvian asparagus as long as supplies are available.<sup>81</sup> Other grower-shippers suggest that rising imports have forced them to become more efficient in their overall operations. Some larger-volume U.S. grower-shippers are investing in operations in California, Mexico, and Peru in an effort to supply

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<sup>77</sup> Imports of asparagus from Peru under HTS 0709.20.10, which are limited to the period between Sept. 15 and Nov. 15, are GSP eligible; however, imports from Peru exceed the competitive-need limit.

<sup>78</sup> USITC, *Dataweb*.

<sup>79</sup> *Ibid.*

<sup>80</sup> Vance Publishing, "Peru Leads Growth in Asparagus," C2.

<sup>81</sup> *Ibid.*

asparagus to their customers year round.<sup>82</sup> Two major U.S. asparagus shippers merged into a new company in late 2003 to improve their ability to ship fresh asparagus year round by combining product from California, Mexico, and Peru.<sup>83</sup>

California asparagus acreage has declined, falling from a recent high of 40,900 acres in 2000 to 30,000 acres in 2005, a 27 percent decrease; acreage totaled 35,500 acres in 1991.<sup>84</sup> Despite this acreage reduction, California produced more asparagus in 2005 than it did in 1991; yields have increased from 2,800 pounds per acre to 3,600 pounds per acre, and production has increased from 93.8 million pounds to 104.4 million pounds.<sup>85</sup> In 1991, the California asparagus crop was valued at more than \$73 million, and in 2005, it was valued at more than \$119 million.<sup>86</sup> The competition for fresh California asparagus is not limited to fresh asparagus imports from Peru. From 2001 to 2005, 70 percent of fresh asparagus imports from Mexico entered from January through June in direct competition with most U.S. domestic producers.<sup>87</sup> By contrast, 81 percent of fresh asparagus imports from Peru entered the United States from July to December, when fresh domestic asparagus is generally not available.<sup>88</sup>

Peru's ability to ship fresh asparagus year round has provided positive benefits to U.S. consumers of fresh asparagus. U.S. consumption of fresh asparagus has increased as imports from Peru and Mexico have extended the season of availability to year round. The Peruvian Asparagus Importers Association (PAIA) directly attributes the near doubling of U.S. consumption, from 0.6 pounds per capita in 1995 to 1.1 pounds per capita in 2003, to the year-round availability associated with imports of fresh asparagus from Peru.<sup>89</sup>

Peru's ability to grow asparagus year round has also affected the U.S. market for processing asparagus. Asparagus produced in Michigan and Washington has been used primarily for processing. In 2003, Del Monte Foods moved its asparagus processing operations from its plant in Toppenish, Washington, to Peru.<sup>90</sup> Also around this time, Green Giant announced that it would also end asparagus processing at its Walla Walla, Washington, facility. Those asparagus processing operations were closed at the end of the 2005 growing season before the TPA negotiations were complete, leaving Washington growers to find other processing options or compete in the fresh market.<sup>91</sup> Even without the TPA, it is unlikely that processing capacity will return to Washington; Green Giant has stated that domestically canned asparagus is not a financially viable alternative to supplies of canned asparagus from Peru, China, or Mexico.<sup>92</sup>

As a result of losing processing capacity, the Washington asparagus industry has declined sharply in recent years. Washington State asparagus acreage has dropped from a peak of

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<sup>82</sup> Vance Publishing, "Imports Help Lift Yearly Sales," C7.

<sup>83</sup> Vance Publishing, "Alpine Deals To Increase Asparagus From Peru," A2.

<sup>84</sup> USDA, NASS, *QuickStats Database*.

<sup>85</sup> *Ibid.*

<sup>86</sup> Not adjusted for inflation; adjustment using the CPI for food and beverages suggests that 1991 production would have been equivalently valued at about \$103 million in 2005.

<sup>87</sup> *Ibid.*

<sup>88</sup> USITC staff estimates from *Dataweb* data.

<sup>89</sup> USITC, hearing transcript, Mar. 15, 2006, 29–36.

<sup>90</sup> Egan, "War On Peruvian Drugs Takes a Victim: U.S. Asparagus."

<sup>91</sup> Milkovich, "Asparagus Growers Prepare for Processing Plant Loss."

<sup>92</sup> Shapiro, written submission.

approximately 32,000 acres in the late 1980s<sup>93</sup> to the current 12,000 acres. Washington growers expect to lose an additional 3,000 acres as processing asparagus acreage is eliminated from production; nonetheless, some Washington growers believe that prospects to supply the fresh market are good.<sup>94</sup> During 2003 to 2005, prices for fresh-market asparagus averaged \$2,163 per ton versus \$426 per ton for asparagus used for processing.<sup>95</sup> As a result, growers expect more supplies to enter the fresh market inducing lower prices and lost revenue. Furthermore, without access to processing capacity, growers also lose revenue from the sale of asparagus that does not meet fresh-market grading standards.

Peruvian asparagus production was estimated to be 196,000 MT in 2005 and is expected to increase to 200,00 MT in 2006.<sup>96</sup> Recent increases in production have been facilitated by replacement of older, less productive plants with new ones to improve yields.<sup>97</sup> Land tenure changes also facilitated continued growth in the Peruvian asparagus industry, which has averaged 5.4 percent annually since 1994. In the mid 1990s, small producers with low levels of production technology found themselves squeezed by an inability to access credit, high taxes on inputs, and increasing labor costs.<sup>98</sup> Land tenure reforms facilitated the consolidation of small holdings and attracted local as well as foreign investment into the Peruvian asparagus industry.<sup>99</sup> Despite lower prices and the belief by Peruvian exporters that the world asparagus market has matured, continued new investment and increased production<sup>100</sup> suggest that, under the TPA, Peruvian asparagus will continue to be highly competitive in the U.S. market relative to domestic production and imports from other sources, including fresh asparagus from Mexico and canned asparagus from China.

### *Views of Interested Parties*

The Agricultural Technical Advisory Committee (ATAC) on Trade in Fruits and Vegetables does not believe that the duty-free treatment afforded to asparagus under ATPA should have been made immediately permanent in the TPA.<sup>101</sup> Rather, ATAC believes that the duties on Peruvian asparagus should be phased out slowly over time from MFN duty rates. A representative of the Michigan Asparagus Advisory Board states that the industry was disappointed but not surprised that asparagus imports from Peru will receive immediate duty-free treatment under the terms of the agreement.<sup>102</sup> This representative acknowledged that ATPA was not intended to negatively affect the U.S. asparagus industry; however it provided the Peruvian industry the opportunity to expand and become a year-round shipper of fresh asparagus, and then move into the processed sector in competition with domestic producers.<sup>103</sup> Despite the negative reaction from most producers, one industry source reported that the TPA would not cause any additional negative effect than was already done by ATPA.<sup>104</sup>

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<sup>93</sup> USDA, NASS, "Vegetables, Final Estimates 1987–1992."

<sup>94</sup> Milkovich, "Asparagus Growers Prepare for Processing Plant Loss."

<sup>95</sup> USDA, NASS, *Crop Values 2005 Summary*.

<sup>96</sup> USDA, FAS, "Peru Asparagus Annual 2005," 4.

<sup>97</sup> USDA, FAS, "Peru Asparagus Annual 2003," 3.

<sup>98</sup> USDA, FAS, "Peru Asparagus Annual 1995," 4.

<sup>99</sup> USDA, FAS, "Peru Asparagus Annual," various issues.

<sup>100</sup> USDA, FAS, "Peru Asparagus Annual 2005," 5.

<sup>101</sup> ATAC on Trade in Fruits and Vegetables, *Advisory Committee Report*.

<sup>102</sup> Lehnert, "No Relief Yet for U.S. Asparagus Producers."

<sup>103</sup> *Ibid.*

<sup>104</sup> Jackson, "Globalization Hits Michigan's Asparagus Industry."

The National Asparagus Council (NAC) believes that U.S. asparagus growers have been economically injured by the growth of the Peruvian asparagus industry as a result of ATPA duty-free access for fresh, chilled, and preserved asparagus.<sup>105</sup> U.S. asparagus planted acreage has fallen from 93,000 acres before ATPA to fewer than 53,000 acres today. Processors that used to can 55 million pounds of asparagus have left Washington State and moved to Peru. The NAC believes that this reduced U.S. asparagus acreage and the loss of U.S. asparagus processing capacity to Peru has resulted in lost income for U.S. asparagus growers and lost jobs in rural communities in California, Washington, and Michigan.

PAIA strongly supports the TPA, believing it will provide tangible and significant economic benefits for both the United States and Peru.<sup>106</sup> PAIA believes that the TPA will continue to provide economic benefits to U.S. consumers, U.S. importing companies, U.S. distributors, and other companies involved in the distribution of fresh asparagus in the United States. Furthermore, PAIA states that, without the TPA, the loss of duty-free treatment associated with the possible expiration of ATPA would have resulted in discernable economic harm to these parties. Furthermore, a PAIA representative estimates that imports of Peruvian fresh asparagus directly and indirectly generate 5,000 jobs in the United States. Moreover, of the \$300 million of revenue generated by fresh asparagus imports from Peru in 2003, PAIA estimates that 70 percent, or \$210 million, accrued to U.S. companies. PAIA also believes that imports of fresh Peruvian asparagus are largely countercyclical to U.S. production, and benefit U.S. consumers by providing year-round availability.

The Peruvian Asparagus and Vegetables Institute (IPEH) supports the TPA and believes that it will continue to provide substantial economic benefits to both Peru and the United States.<sup>107</sup> The IPEH represents growers and exporters that accounted for \$183 million of U.S. imports of asparagus, artichokes, chile peppers, paprika, and pimientos in 2005. The IPEH states that the Peruvian asparagus industry, which accounted for 71 percent of these U.S. imports in 2005, has grown into a mature industry that achieved the objectives of ATPA, and spurred economic development as an alternative to the production of illegal narcotics. The IPEH members believe the production and export of artichokes and paprika, which are expected to account for total world exports of more than \$165 million in 2006, to further contribute to economic development and provide alternatives to the production of illegal narcotics. The IPEH believes that the TPA will expand and increase these benefits.

General Mills, the owner of Green Giant vegetables, states that the TPA will provide long-term economic benefits to consumers, manufacturers, and producers in both the United States and Peru, particularly with respect to trade in prepared and preserved asparagus.<sup>108</sup> Green Giant stated that, to provide the best-valued product to consumers, the company began sourcing canned asparagus from Peru in June 2005. Green Giant states that it is unable to supply canned asparagus from U.S. sources in a financially viable manner. Furthermore, even if Peruvian canned asparagus were not afforded continued duty-free treatment under the TPA, Green Giant states that it would not source canned asparagus from domestic sources, but would consider Mexico or China as viable alternatives.

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<sup>105</sup> Bakker, written submission.

<sup>106</sup> USITC, hearing transcript, Mar. 15, 2006, 29–36.

<sup>107</sup> Paz-Soldan on behalf of the Peruvian Asparagus and Vegetables Institute, written submission.

<sup>108</sup> General Mills, written submission.

## *Assessment*

The provisions of the U.S.-Peru TPA will likely have a significant, positive effect on total U.S. exports of beef and pork to Peru. However, increased exports may not have a significant effect on the total U.S. industry because of the relatively small size of the Peruvian market. Peru is currently a large importer of beef variety meats, and the TPA will give U.S. exporters of directly competing products a competitive advantage over other suppliers in the Peruvian market, primarily Mercosur countries.<sup>110</sup> USDA prime and choice beef, which tends not to compete directly with local production and imports from the region,<sup>111</sup> will receive immediate duty-free treatment, while beef other than USDA prime and choice will receive duty-free treatment within an 800 MT TRQ, with all duties to be phased out within 12 years. U.S. pork and pork variety meat exports are likely to increase because the TPA will enhance the competitiveness of pork vis-à-vis other domestic protein sources (primarily fish and poultry), as well as pork imports from Chile that currently receive duty-free treatment. Furthermore, U.S. beef and pork exports will benefit from an exchange of letters that address outstanding SPS issues have limited U.S. meat exports in the past. This analysis is generally consistent with the economy-wide simulation results that show significant increases in Peruvian imports of U.S. bovine and other meat products, and small changes in the volume of U.S. imports of Peruvian meat products.

The provisions of the U.S.-Peru TPA are unlikely to cause an increase in U.S. beef and pork imports from Peru, because the Peruvian beef and pork industries primarily consist of small and indigenous producers that produce for household and local consumption.<sup>112</sup> Furthermore, Peru does not currently have any slaughter or processing facilities that are eligible to export meat to the United States.<sup>113</sup> Therefore, it is unlikely that the TPA will have a significant, negative effect on U.S. cattle and beef producers or U.S. swine and pork producers.

Provisions of the TPA include a TRQ for beef variety meats<sup>114</sup> that provide U.S. suppliers with up to 10,000 MT of immediate duty-free access, thereafter growing at the rate of 6 percent annually until all imports of the identified products are duty free by year 10 of the agreement.<sup>115</sup> Peruvian imports of beef variety meats averaged 19,268 MT, valued at more than \$15 million from 2001 to 2005.<sup>116</sup> The United States supplied less than 5 percent of this total. Furthermore, U.S. suppliers shipped nothing in 2004 and 2005 because of an import

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<sup>109</sup> This section primarily covers beef, beef variety meats, pork, and pork variety meats classified in chaps. 2, 5, and 16 of the HTS.

<sup>110</sup> This group includes Argentina, Brazil, Paraguay, and Uruguay.

<sup>111</sup> U.S. prime and choice beef is typically produced from young animals fed a high energy ration, i.e., grain-fed beef; local and regional production tends to be produced from animals of varying ages fed primarily forages, i.e., grass-fed beef.

<sup>112</sup> Sallyards, informal written industry description – Beef, Pork, Bovine Offal.

<sup>113</sup> USDA, FSIS, “Import Information.”

<sup>114</sup> This TRQ covers items classified under Peru HTS items 0206.21.00, 0206.22.00, 0206.29.00, and 0504.00.10, and includes items such as livers, hearts, tongues, and tripe.

<sup>115</sup> *U.S.-Peru TPA*.

<sup>116</sup> *Global Trade Atlas*. This total includes Peru HTS items imported under subheadings 0202.21, 0206.22, 0206.29, and heading 0504. Under heading 0504, item 0504.00.10 accounted for more than 99 percent of imports; this item may include items from all species though, according to industry sources, imports are primarily bovine items. The beef variety meat TRQ includes items classified under HTS subheadings 0202.21, 0206.22, 0206.29, and 0504.00.10.

ban related to bovine spongiform encephalopathy (BSE).<sup>117</sup> The primary suppliers of these products to the Peruvian market are the Mercosur countries. These countries have preferential trade agreements with Peru; however, duties on most of these items for Mercosur countries will not be completely phased out until 2014 or 2016.<sup>118</sup> Until that time, U.S. suppliers will enjoy preferential access to the highly price sensitive Peruvian beef variety meat market. The United States should be able to be price competitive in the variety meat market because, if not exported, these items have very low U.S. domestic demand for consumption, and have much lower values in alternative domestic uses such as pet food.

The provisions of the TPA provide U.S. suppliers with immediate duty-free access for beef that is graded USDA prime or choice. The TPA also provides U.S. suppliers with a TRQ that provides immediate duty-free access for up to 800 MT of beef that does not grade prime or choice, growing at 6 percent annually, until all imports of these products are duty free by year 12 of the agreement.<sup>119</sup> Peruvian imports of beef averaged 3,750 MT valued at \$8 million from 2001 to 2005; the U.S. share of this market was only approximately 1 percent, and no imports came from the United States in 2004 and 2005 because of the BSE ban.<sup>120</sup> Peru's primary suppliers are the Mercosur countries. Peru's trade agreements with these countries do not completely phase out tariffs on beef until 2019,<sup>121</sup> meaning that U.S. suppliers will have preferential access relative to Mercosur suppliers to the Peruvian market for beef.

The degree to which U.S. beef, which is primarily grain fed, and Mercosur beef, which is primarily grass fed, will compete in the Peruvian market depends on tastes, preferences, and price. Historically, Peruvian consumers have had limited access to U.S. grain-fed beef, but are familiar with grass-fed beef from local production and imports, which have been dominated by the Mercosur countries. U.S. beef exports graded USDA prime and choice are likely to be initially targeted at the hotel and restaurant segment, as well as the high-end retail segment.<sup>122</sup> Although this initially creates a market that may depend on tourist trade, it is also expected to create a market opening among upper- and middle-income Peruvian consumers, creating local demand for grain-fed beef that is expected to expand as local incomes increase. The TPA affords U.S. beef the ability to be price competitive with comparable cuts of beef from Mercosur countries while a local market for grain-fed beef is developed.

The provisions of the TPA provide U.S. pork with duty-free access for most muscle cuts and variety meat items by year 5 of the agreement, with duty-free treatment for all pork items by year 10, putting U.S. pork in a better competitive position in this growing market. Peruvians have not historically been large pork consumers; per capita consumption of pork is about

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<sup>117</sup> Upon discovery of a BSE-infected cow in the U.S. cattle herd in Dec. 2003, 72 of 133 countries that had imported U.S. beef during 2003 banned imports of U.S. beef and beef variety meats. Most of these countries have since reopened their markets to U.S. beef, though access may be limited, typically to boneless beef from animals fewer than 30 months of age. As of Feb. 17, 2006, 27 countries, including Peru, were still closed to U.S. beef and beef variety meats. The Letter Exchange on SPS/TBT Issues for U.S.-Peru TPA set as Mar. 1, 2006, the date by which Peru would permit imports of U.S. beef and beef products accompanied by an FSIS Export Certificate of Wholesomeness. As of this writing, the Peruvian market had not been opened to U.S. beef shipments.

<sup>118</sup> ALADI, *Acuerdo de Complementación Económica*.

<sup>119</sup> The beef TRQ includes items classified under HTS items 0201.30.00, 0202.20.00, and 0202.30.00 not graded USDA prime or choice.

<sup>120</sup> *Global Trade Atlas*.

<sup>121</sup> ALADI, *Acuerdo de Complementación Económica*.

<sup>122</sup> USMEF, "USMEF Strategic Market Profile."

2.6 kg (5.7 pounds) annually, compared with 20.7 kg (45.5 pounds) of fish and seafood and 13.0 kg (28.6 pounds) of chicken.<sup>123</sup> Low consumption has been attributed to Peruvian perception of pork as a less healthy alternative to fish or chicken and the conditions under which most animals are raised (backyard production).<sup>124</sup> Though imports of pork products have been small, they are increasing. The value of fresh, chilled, and frozen pork imports has increased from less than \$2,000 in 2001 to more than \$1 million in 2005. Imports of processed pork items increased in value from approximately \$80,000 to nearly \$240,000 from 2001 to 2005; and imports of pork variety meats increased in value from approximately \$72,000 in 2001 to nearly \$257,000 in 2005. Most of this increase, however, benefited Chilean pork producers. Chile was the only supplier of fresh, chilled, and frozen pork and pork variety meats in 2004 and 2005. This predominance can be attributed to an FTA reached between Chile and Peru in 1998 that now provides Chile with duty-free access for most pork and pork variety meats.

Peru's commitments with respect to sanitary issues<sup>125</sup> are also likely to enhance the market access of U.S. beef and pork exports. In an exchange of letters in connection with the TPA, the Peruvian government has committed (1) to continue to recognize the U.S. meat and poultry inspection system as equivalent to Peru's inspection system and not require individual plant approval; (2) to continue to accept meat and poultry shipments accompanied by USDA Food Safety and Inspection Service (FSIS) Certificates of Wholesomeness; (3) to recognize FSIS certification statements as meeting import requirements for pork and pork products, and poultry and poultry products; and (4) to recognize that U.S. measures regarding BSE meet World Organization of Animal Health (also known as OIE) guidelines and to complete the verification process that will allow resumption of U.S. beef imports. Furthermore, these provisions should enhance future market access for U.S. beef and pork exports by assuring exporters and importers that sound scientific principles for food safety and wholesomeness will be transparently applied to U.S. beef and pork exports.

### ***Views of Interested Parties***

The ATAC for Trade in Animals and Animal products praises the U.S.-Peru TPA as an excellent example of the type of agreement that is in the best interest of the United States because it expands trading opportunities to the benefit of U.S. agriculture.<sup>126</sup> Nonetheless, the ATAC is disappointed with the 12-year phase-out on over-quota duties on beef not grading USDA prime or choice. Despite immediate duty-free access for all USDA prime and choice beef, 10,000 MT of beef variety meats, and 800 MT of beef not grading USDA prime or choice, and the 5-year phase-out of most duties on pork and pork variety meats, the ATAC believes that failure to secure the same preferential duties that Peru provides to parties subject to agreements concluded before December 7, 2005—this would appear to be directed at Peru's preferential trade agreements with Chile and the Mercosur countries—disadvantages U.S. livestock industries vis-à-vis these parties.

The National Cattlemen's Beef Association (NCBA) views the U.S.-Peru TPA as a great opportunity for the U.S. cattle and beef industry. The NCBA indicates that Peruvian beef consumers are very price sensitive and that immediate elimination of the 25 percent duty will allow U.S. suppliers to provide products at a lower price. This advantage is very important

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<sup>123</sup> FAOSTAT data.

<sup>124</sup> Sallyards, informal written industry description – Beef, Pork, Bovine Offal.

<sup>125</sup> See chap. 5 of this report for a discussion of the TPA's SPS chapter.

<sup>126</sup> ATAC for Trade in Animals and Animal Products, *Advisory Committee Report*.

to both Peruvian consumers and U.S. producers. The NCBA also believes that the TPA sets a critical precedent for future FTA negotiations.<sup>127</sup>

The Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA, hereafter R-CALF), states that it assesses each FTA on a case-by-case basis subject to four criteria: (1) reduction of global market distortions, such as high tariffs; (2) application of a born, raised, and slaughtered beef rule of origin; (3) creation of special safeguards to protect against import surges and excess price volatility; and (4) upward harmonization of health and safety standards. On the basis of these criteria, R-CALF has concerns about the U.S.-Peru TPA. Specifically, R-CALF points out that the TPA does not include a special safeguard, nor does it apply a born, raised, and slaughtered beef rule of origin, which will allow beef from Argentinian and Brazilian cattle that is shipped to Peru to qualify for preferential access to the U.S. market.<sup>128</sup>

The National Pork Producers Council (NPPC) expresses strong support for the U.S.-Peru TPA. Analysis conducted for the NPPC found that the agreement, when fully implemented, will be extremely beneficial to U.S. pork producers; U.S. pork exports to Peru will increase U.S. hog prices by 83 cents per head, and producer profits by 7 percent.<sup>129</sup>

## Textiles and Apparel

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### *Assessment*

Tariff liberalization under the U.S.-Peru TPA will likely result in a small increase in U.S. imports of textiles and apparel from Peru. The textile and apparel sector in Peru is an important sector, but is comparatively small, even though it is integrated from the production of raw materials (mainly cotton) to the manufacture of intermediate goods (yarn and fabric) and finished goods (mainly apparel).<sup>130</sup> Because almost all imports of such goods from Peru already enter free of duty under ATPA (96 percent in 2005) and because the rules of origin under the TPA for apparel are similar to those under ATPA, the principal benefit of the TPA is to make the trade preferences permanent and reciprocal. ATPA benefits have enabled Peru to expand its shipments of textiles and apparel to the United States by 108 percent since 2002, to \$821 million in 2005.<sup>131</sup> The TPA can further boost U.S. apparel imports from Peru to the extent that it spurs foreign investment in Peru's textile and apparel sector<sup>132</sup> to increase its capacity and its competitiveness in the face of greater competition in the U.S. market from

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<sup>127</sup> NCBA, "Peru to Lower Beef Tariffs."

<sup>128</sup> R-CALF, *2006 Position Paper: International Trade in Cattle and Beef*.

<sup>129</sup> NPPC, "NPPC to Champion U.S.-Peru Trade Agreement."

<sup>130</sup> The textile and apparel sector is a leading source of economic activity in Peru, representing approximately 10 percent of the country's exports and reportedly accounting for 14 percent of industrial production and directly employing 150,000 workers. Italo Acha, counselor, Embassy of Peru, e-mail message to Commission staff, Mar. 23, 2006; and Paz-Soldan on behalf of Exporamericas, written submission.

<sup>131</sup> Import data are from the U.S. Department of Commerce, Office of Textiles and Apparel (OTEXA).

<sup>132</sup> The "relatively short life span" of ATPA preferences for apparel has reportedly deterred foreign investment in Peru's textile and apparel sector. U.S. Department of State, "USITC 2004 Annual Andean Investment and Drug Crop Survey."

lower-cost exporting countries<sup>133</sup> following the elimination of U.S. import quotas on textiles and apparel in 2005.<sup>134</sup> The results of the economy-wide analysis indicate that tariff liberalization will result primarily in a small increase in U.S. imports of apparel from Peru, which accounted for 97 percent (or \$800 million) of U.S. textile and apparel imports from Peru in 2005. Although Peru supplied just 1 percent of total U.S. apparel imports in 2005, it was the fifth-largest source of knit cotton shirts and blouses, with shipments of \$644 million and a 5 percent import market share. The expected increase in apparel imports from Peru will likely displace U.S. apparel imports from other countries, rather than domestic production, which generally consists of time-sensitive and niche market goods.

The expected increase in U.S. apparel imports from Peru under the TPA will likely not change appreciably if ATPA preferences for the other three Andean countries (Bolivia, Colombia, and Ecuador) are extended beyond their current expiration date of December 31, 2006.<sup>135</sup> If ATPA preferences expire, the expected increase in U.S. apparel imports from Peru under the TPA also will likely not change appreciably in the short or long term, because U.S. textile and apparel imports from Bolivia (\$37 million in 2005), Colombia (\$618 million), and Ecuador (\$19 million) are small. Although Colombia was the second-leading Andean supplier of textiles and apparel to the United States after Peru, with 41 percent of total Andean shipments in 2005, the import product mix differs between Colombia and Peru. Cotton trousers and wool trousers, suits, and sport coats accounted for 37 percent and 14 percent, respectively, of total U.S. textile and apparel imports from Colombia in 2005, while cotton knit shirts and blouses accounted for 78 percent of U.S. textile and apparel imports from Peru. In the long term, the growth in U.S. apparel trade with Peru will likely be moderated by the expected growth in imports from lower-cost exporting countries previously constrained by U.S. import quotas, particularly China, whose shipments of knit shirts, blouses, and other textile and apparel articles are now subject to U.S. safeguards through 2008.<sup>136</sup>

Although the results of the economy-wide analysis indicate that tariff liberalization under the TPA will likely result in a small value, but large percentage, increase in U.S. exports of textiles and apparel to Peru, this potential effect is unlikely largely because most U.S. exports of textiles to Peru are believed to be already eligible for duty savings in the form of duty drawback, a factor not accounted for in the economy-wide model, and local demand for U.S. apparel is limited by income.<sup>137</sup> U.S. exports of textiles and apparel to Peru are small (\$21 million in 2005) and likely consist mostly of inputs (yarns, fabrics, and garment parts)

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<sup>133</sup> A trade report stated that production costs in Peru are estimated to be as much as 50 percent higher than those in China. "Peru Textile Trade."

<sup>134</sup> The WTO Agreement on Textiles and Clothing (ATC) obligated the United States, the EU, and Canada to phase out their import quotas on textiles and apparel from WTO member countries over 10 years ending on Jan. 1, 2005. The United States did not maintain import quotas under the ATC on such goods from Peru.

<sup>135</sup> U.S. imports of textiles and apparel from Colombia, Bolivia, and Ecuador totaled \$674 million, or less than 1 percent of total U.S. imports of such goods in 2005.

<sup>136</sup> U.S. imports of knit cotton shirts and blouses from China in 2005 increased 194 percent over the 2004 level to \$636 million. Imports of these and certain other textile and apparel articles from China are now subject to safeguards (or quotas), as provided for under the terms of China's Protocol of Accession to the WTO, through 2008. U.S. imports of textiles and apparel from China totaled more than \$22.4 billion, or 25 percent of total U.S. textile and apparel imports in 2005.

<sup>137</sup> Duty drawback is a refund of duties paid on inputs imported into a country and incorporated into goods for export. Peru's imports of U.S. materials are currently eligible for duty drawback upon exportation of the finished goods from Peru to the United States. Although duty drawback and rules of origin requirements are important in estimating the potential effect of the TPA on U.S. bilateral textile and apparel trade with Peru, they are not comprehensively incorporated into the CGE model (GTAP), resulting in a possible overestimation of the marginal tariff effects in this sector by the model.

used in the production of apparel for export to the United States. In addition, the low level of per capita income in Peru will likely dampen Peruvian demand for U.S. exports of finished goods, which tend to be more costly than the locally-produced apparel products.

### *Views of Interested Parties*

U.S. textile firms<sup>138</sup> generally support the rules of origin for textiles and apparel under the TPA because the rules "will ensure [that] the benefits of the agreement flow mainly to the signatory parties" and that the yarn-forward rule will advance regional integration goals. They support the requirement in the TPA that pocketing fabrics be made and finished in the parties, as well as the exclusion from the TPA of certain provisions found in other U.S. FTAs that permit the use of third-country inputs such as cumulation provisions, TPLs, and a single-transformation rule. By contrast, U.S. apparel firms that source and market globally generally oppose the yarn-forward rule of origin; they state that this origin rule will be burdensome to administer and, in turn, prevent expansion of trade and investment in textiles and apparel. The apparel firms oppose the exclusion of TPLs, cumulation provisions, and a single-transformation rule from the TPA, stating that it will limit the built-in flexibility of CAFTA-DR. The apparel firms also oppose the added requirements that sewing thread, elastomeric yarns, certain narrow fabrics, and pocketing fabrics be made in the TPA region. Textile and apparel firms support the expedited "commercial availability" process under the TPA, although some apparel firms support the inclusion of more apparel inputs on the initial short-supply list. The apparel firms also support the continuation of the existing customs duty drawback program under the TPA that provides important cost savings.

U.S. retailers and distributors of textile and apparel goods<sup>139</sup> oppose the TPA rules of origin for textiles and apparel, stating that the yarn-forward rule is not commercially viable because it is overly restrictive and fails to reflect the realities of global production and sourcing. They state that the yarn-forward rule imposes a value-added requirement that is higher for apparel than for other goods and that the absence of certain exceptions to the yarn-forward rule, such as TPLs and cumulation provisions, will limit production flexibility, increase costs for apparel producers in Peru, and prevent the integration of hemispheric-wide production. The retailers and distributors state that, although Peru has an integrated textile and apparel sector producing fibers, yarns, fabrics, and apparel, the Peruvian sector is comparatively small and unable to compete effectively with "full-package" suppliers in China. The retailers and distributors state that the TPA short-supply provisions are unclear and provide insufficient product coverage. They support provisions in the TPA that will grant immediate duty-free treatment to originating textile and apparel articles and permit the use of third-country inputs (the de minimis foreign content rule). The retailers and distributors also support the continued use of duty drawback following implementation of the TPA.

The American Apparel & Footwear Association (AAFA) stated that it is "extremely disappointed that the U.S./Peru TPA contains very restrictive and, in many cases, unworkable rules of origin for apparel and textiles. Because of the agreement's apparel and textile provisions, we believe the U.S./Peru Trade Promotion Agreement represents a missed opportunity to preserve and expand the region's apparel and textile industries."<sup>140</sup> The AAFA adds that it prefers provisions similar to those in CAFTA-DR, and would have preferred to

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<sup>138</sup> ITAC 13, *The U.S./Peru Trade Promotion Agreement*.

<sup>139</sup> The industry views expressed in this paragraph are from ITAC 5, *The U.S./Peru Trade Promotion Agreement*.

<sup>140</sup> Burke, written submission.

see the inclusion of features such as cumulation, a larger short-supply list, single transformation for key products, and a yarn-forward rule on essential character.

Peruvian apparel exporters support the TPA, stating that it builds on the benefits of ATPA. They assert that the TPA will strengthen and expand the strategic alliance between Peru and the United States, thereby enabling both countries to compete more effectively against Chinese and other Asian suppliers.<sup>141</sup> Peruvian apparel exporters note that the TPA will benefit both Peru and United States by boosting U.S. exports of cotton, yarn, and fabrics to Peru and increasing Peru's exports of price-competitive apparel to the United States.

## Leather Goods and Footwear<sup>142</sup>

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### *Assessment*

Tariff liberalization under the U.S.-Peru TPA for leather goods and footwear (including leather and leather articles as well as footwear, travel goods,<sup>143</sup> and other products characteristic of the leather trade but also made from materials such as textiles and plastics) will likely result in an increase in U.S. leather goods trade with Peru that is small in absolute value but large in percentage terms. Under the TPA, tariff liberalization, coupled with flexible rules of origin, can spur foreign producers to assemble certain leather goods in Peru from nonoriginating materials and export the goods to the United States for sale in niche market segments. However, despite the TPA, the leather goods sector in Peru reportedly lacks the economies of scale necessary to compete in the U.S. market with China, which supplied 69 percent, or \$17.5 billion, of total U.S. imports of leather goods in 2005.<sup>144</sup>

The results of the economy-wide analysis indicate that tariff liberalization for leather goods will result in estimated increases of approximately \$1 million (33 percent) in U.S. imports from Peru and \$3 million (164 percent) in U.S. exports to Peru, and that these increases will likely have almost no effect on total U.S. trade or domestic production of leather goods.<sup>145</sup> The modeling results reflect the current small volume of U.S. leather goods trade with Peru (U.S. imports and U.S. exports each totaled less than \$2 million in 2005);<sup>146</sup> the large share of U.S. leather goods imports from Peru already eligible for duty-free entry (75 percent in 2005); the domination of the U.S. footwear market by China and other, mostly Asian

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<sup>141</sup> Paz-Soldan on behalf of Exporamerica, written submission.

<sup>142</sup> This product grouping covers leather and composition leather (HTS headings 4102-4115); saddlery and harness (4201); luggage, handbags, and similar goods (4202); articles of leather or composition leather used in machinery or mechanical appliances or for other technical uses (4204); other articles, except apparel, of leather or composition leather (4205); footwear and footwear parts (HTS chap. 64); watch straps of non-metallic materials (HTS subheading 9113.90); and personal travel sets (9605.00).

<sup>143</sup> Travel goods include luggage, brief cases, computer cases, handbags, purses, duffle bags, wallets, and related goods.

<sup>144</sup> Peru's exports of leather goods totaled \$33 million in 2005 and consisted mostly of leather (\$18 million) and footwear and travel goods (\$14 million), according to data from Global Trade Atlas. Peru's exports of footwear are expected to grow 20–25 percent in 2006. *Latin America News Digest*, "Peru Forecasts up to 25 Pct Y/Y Rise."

<sup>145</sup> The modeling results apply to leather goods, whether or not ATPA preferences for the other Andean nations (Bolivia, Colombia, and Ecuador) are extended beyond their current expiration date of Dec. 31, 2006. U.S. leather goods imports from all four Andean nations totaled \$46 million, or 0.2 percent of total U.S. imports of such goods in 2005.

<sup>146</sup> In 2005, total U.S. imports and total U.S. exports of leather goods were \$25.2 billion and \$2.7 billion, respectively.

suppliers (import market share was 98 percent in 2004);<sup>147</sup> and the low level of per capita income in Peru, which dampens Peruvian demand for U.S. leather goods.

The TPA will grant immediate duty-free market access for tariff lines covering almost all leather goods currently traded between the United States and Peru, with tariffs on all the remaining leather goods phased out within 10 years.<sup>148</sup> The only U.S. tariff lines subject to 10-year staging are the 17 lines covering “sensitive” rubber footwear; the NTR duty rates for such footwear range from 20 percent ad valorem to 55 percent AVE, based on 2005 trade.<sup>149</sup> Peru will phase out its uniform ad valorem tariff of 20 percent on rubber footwear and 12 percent on most tanned leather over 10 years, and its 12 percent tariff on personal travel sets over 5 years.<sup>150</sup> The rule of origin under the TPA for the 17 sensitive footwear articles will be similar to that under NAFTA, requiring a qualifying good to have a regional value content of not less than 55 percent of the appraised value of the article, which effectively restricts the use of nonoriginating uppers because of the high labor content associated with stitching. The TPA will apply a more flexible “substantial transformation” rule of origin to all other footwear, permitting the use of nonoriginating uppers and other materials in qualifying goods, subject to a 20 percent local value-added content requirement. The substantial-transformation rule will also apply to travel goods except those of textiles. Textile travel goods will be subject to a “fabric-forward” rule that requires qualifying goods to be made of originating fabrics.

### *Views of Interested Parties*

U.S. footwear companies that source and market footwear globally generally support the U.S.-Peru TPA because footwear, other than the 17 sensitive rubber footwear articles, will receive immediate duty-free market access and a flexible rule of origin (albeit with a 20 percent local value-added content requirement).<sup>151</sup> U.S. producers of the 17 sensitive rubber footwear articles state that these goods were excluded from duty-free treatment under ATPA and should be excluded from any FTA with the Andean countries because duty-free treatment for such footwear made in the Andean region will pose a serious threat to the domestic industry.<sup>152</sup> The Travel Goods Association (TGA) does not support the U.S.-Peru TPA. TGA states that the TPA has highly restrictive provisions on textile travel goods that prevent U.S. travel goods companies from using the best available inputs.<sup>153</sup> Certain U.S. travel goods industry representatives support the TPA provisions for nontextile travel goods, but oppose the fabric-forward rule of origin for textile travel goods, stating that this rule is “so restrictive that it effectively renders the [TPA] useless” for the industry.<sup>154</sup> These representatives state that all travel goods (both textile and nontextile) should become duty

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<sup>147</sup> USTR, hearing transcript, 54–63; and Lamar, written submission.

<sup>148</sup> The “baseline” trade-weighted average ad valorem tariff used in the Commission modeling for leather goods was 2.8 percent for U.S. imports from Peru and 16.6 percent for Peru’s imports from the United States.

<sup>149</sup> There were no U.S. imports from Peru in 2005 under the 17 tariff lines, which cover rubber or plastic protective footwear and certain athletic and other footwear with rubber or plastic soles and fabric uppers (HTS items 6401.10.00, 6401.91.00, 6401.92.90, 6401.99.30, 6401.99.60, 6401.99.90, 6402.30.50, 6402.30.70, 6402.30.80, 6402.91.50, 6402.91.80, 6402.91.90, 6402.99.20, 6402.99.80, 6402.99.90, 6404.11.90, and 6404.19.20).

<sup>150</sup> Peru maintains a uniform MFN ad valorem tariff of 12 percent for all leather goods except footwear (subject to a uniform rate of 20 percent) and leather articles used in machinery or mechanical appliances or for other technical uses (4 percent).

<sup>151</sup> ITAC 13, *The U.S./Peru Trade Promotion Agreement*.

<sup>152</sup> Cooper, written submission.

<sup>153</sup> Pittenger, written submission.

<sup>154</sup> ITAC 13, *The U.S./Peru Trade Promotion Agreement*.

free immediately under simple and flexible rules of origin. U.S. footwear retailers and distributors state that they support immediate tariff elimination and liberal rules of origin for all footwear under a U.S.-Andean FTA, and that the Andean region lacks the footwear production capacity to affect the U.S. footwear market in any meaningful way.<sup>155</sup> Finally, the American Apparel & Footwear Association (AAFA) generally supports the TPA's provisions for footwear, stating that the provisions "will ensure that the growth in footwear trade between the United States and Peru started under the current Andean Trade Promotion & Drug Eradication Act (ATPDEA) will continue."<sup>156</sup> The AAFA notes, however, that it had hoped "for an even more liberal rule of origin for non-import-sensitive footwear articles along the lines of what was negotiated in [CAFTA-DR]."<sup>157</sup>

## Pharmaceuticals

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### *Assessment*

The U.S.-Peru TPA is expected to have a positive effect on U.S. pharmaceutical exports to Peru. Pharmaceutical exports will benefit from the liberalization of government procurement in Peru, which currently gives preferential treatment to local manufacturers.<sup>158</sup> Stronger intellectual property laws, specifically those related to patent protection and confidential test data, should also assist U.S. suppliers in expanding exports to Peru.<sup>159</sup> Demand for health care in Peru is expected to rise as life expectancy and urbanization increase, further increasing possible long-term market opportunities for U.S. suppliers.<sup>160</sup> This analysis is not comparable to the economy-wide simulation results because pharmaceuticals trade makes up a very small portion of the GTAP chemical, rubber, and plastic products sector.

The TPA offers significant immediate duty reductions for U.S. pharmaceutical exports. Peruvian imports of all pharmaceuticals are taxed at 12 percent ad valorem. Of the 69 headings or subheadings in the Peruvian schedule for pharmaceutical products (chapter 30), 53 become duty free immediately with the enactment of the TPA, 15 become duty free after 5 years, and 1 heading (waste pharmaceuticals) becomes duty free after 10 years. The 16 items that do not immediately become duty free accounted for 18.7 percent of U.S. exports to Peru in 2005.<sup>161</sup>

The United States is one of the top suppliers of pharmaceuticals to Peru, exporting \$14 million in 2005. Imports accounted for approximately 40 percent of the Peruvian market for pharmaceuticals; U.S. exports represent approximately 9 percent of Peruvian imports.<sup>162</sup> The largest U.S. exports of pharmaceuticals to Peru in 2005 were medicaments in measured doses (\$6 million), vaccines for veterinary medicine (\$4 million), and adhesive dressings (\$1 million). The Peruvian market for pharmaceuticals was \$544 million in 2004 and is expected to grow by 4 percent annually for the next few years, expanding long-term opportunities for U.S. suppliers.<sup>163</sup>

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<sup>155</sup> USTR, hearing transcript, 54–63.

<sup>156</sup> Burke, written submission.

<sup>157</sup> *Ibid.*

<sup>158</sup> US&FCS and U.S. Department of State, "Drugs and Pharmaceuticals," 7.

<sup>159</sup> PhRMA, "Special 301 Submission: Peru," 251.

<sup>160</sup> EIU, *Industry Briefing, Peru: Healthcare and Pharmaceuticals Background*.

<sup>161</sup> *Global Trade Atlas*.

<sup>162</sup> US&FCS and U.S. Department of State, "Drugs and Pharmaceuticals," 7.

<sup>163</sup> *Ibid.*, 2.

## *Views of Interested Parties*

In general, the U.S. pharmaceutical industry favors the Peru TPA and supports “immediate tariff elimination in accordance with the multilateral understanding on elimination of pharmaceutical tariffs.”<sup>164</sup> Industry representatives are pleased that all of the tariff lines eventually go to zero, but expressed disappointment with the number of lines in this sector subject to staged reduction of tariff rates.<sup>165</sup> A prominent industry group indicates that the TPA will increase legal certainty for U.S. companies and help create “an environment that helps to encourage the launch of new medicines.”<sup>166</sup> Industry representatives are encouraged by the obligations to improve intellectual property protection. However, the industry notes the absence of explicit obligations for the protection of second-use patents and new clinical information, and restrictions on compulsory licensing, parallel imports, and pre-grant opposition.<sup>167</sup>

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<sup>164</sup> ITAC 3, *The U.S.-Peru Trade Promotion Agreement*, 4.

<sup>165</sup> *Ibid.*, 3.

<sup>166</sup> PhRMA, “PhRMA Welcomes Peru Free Trade Agreement.”

<sup>167</sup> ITAC 15, *Report on the U.S.-Peru Trade Promotion Agreement*, 16.



# CHAPTER 4

## Effects of Market Access Provisions for Services

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This chapter assesses the potential effect of the U.S.-Peru Trade Promotion Agreement (TPA) on the services sector and services trade. The analysis first focuses on cross-border trade in services, generally, and then discusses financial and telecommunications services, specifically. Each TPA chapter discussion includes an assessment, summary of TPA provisions, and views of interested parties.

### Summary of Assessment

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The U.S.-Peru TPA will provide U.S. service firms with levels of market access, national treatment, and regulatory transparency that generally exceed those afforded by Peru's commitments under the General Agreement on Trade in Services (GATS).

- ▶ **Small potential effect:** The TPA is expected to generate only a small increase in U.S. services exports to Peru. As the U.S. service market is already generally open to foreign firms and as the Peruvian industries are small, the U.S.-Peru TPA is not likely to have a measurable effect on U.S. imports of services from Peru.
- ▶ **Benefit of “negative list” approach:** Improved access for U.S. service firms in Peru is largely attributable to the “negative list” approach in the agreement. This approach extends the trade disciplines found in the services chapters of the TPA to many services for which Peru made no commitments under the GATS such as computer and related services, real estate services, construction services, environmental services, and pipeline transport services.
- ▶ **Financial services:** The financial services chapter will contribute to favorable conditions for U.S. providers of asset management and insurance services. Particularly important provisions for U.S. industry include new commitments regarding asset management and cross-border insurance services. However, because of the small size of the Peruvian market and the unsettled nature of Peruvian regulations with regard to the nation's privatized social security program, substantial new investment by U.S. financial companies is unlikely in the short term.
- ▶ **Telecommunications services:** The existing level of openness and small size of Peru's telecommunications services market will limit any measurable effect of the TPA on U.S. cross-border exports or affiliate sales of telecommunications services.

# TPA Chapter 11—Cross-Border Trade in Services

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## *Assessment*

The U.S.-Peru TPA will broadly provide many U.S. service firms with levels of market access, national treatment, and regulatory transparency that exceed those afforded by Peru's commitments under the GATS, though significant restrictions placed on banks and securities firms remain.<sup>1</sup> However, the effect of TPA disciplines on overall bilateral services trade is likely to be minimal, because of Peru's relatively small and domestically-focused service sector (box 4-1 and table 4-1) and the small size of the Peruvian market.<sup>2</sup> Improvement in U.S. firms' access to the Peruvian market under the TPA is attributable in large part to the use of a "negative list" approach in the agreement. Under this approach, all trade disciplines included in TPA chapters 11, 12, and 14 will automatically cover all service industries and industry segments except those specifically exempted in TPA annexes I through III on nonconforming measures (table 4-2).<sup>3</sup> Use of the negative list approach extends the trade disciplines found in the services chapters of the TPA to many services for which Peru made no commitments under the GATS, including those yet to be offered commercially.<sup>4</sup> For instance, Peru elected not to make GATS commitments in services such as computer and related services, real estate services, construction services, environmental services, and pipeline transport services, but did not exempt these services from TPA disciplines. Consequently, U.S. providers of such services will receive unrestricted market access, nondiscriminatory regulatory treatment, and improved transparency under the terms of the TPA.

## *Summary of Provisions*

Chapter 11 covers services other than financial services and air transport services.<sup>5</sup> The TPA will guarantee national and MFN treatment for providers of the covered services. Local presence is not required, and regulation of services and qualification requirements may not be unduly burdensome. There are transparency requirements in addition to those set out in TPA chapter 19 on transparency. The parties are permitted but not required to recognize education, experience, licenses, or certifications obtained in particular nonparty countries.

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<sup>1</sup> WTO, Peru: Schedule of Specific Commitments.

<sup>2</sup> It is not currently feasible to establish an overall quantitative measure of the effect of the U.S.-Peru TPA on trade in services because of the unavailability of sufficient data (see table 4-1 for the available data on Peru's services trade).

<sup>3</sup> The United States specified 5 service industries for which it currently maintains cross-border nonconforming measures, whereas Peru specified 19 service industries subject to cross-border nonconforming measures. However, because of the fact that the U.S. market is already a largely open market and Peru's service industry is relatively small, the commercial effect of these measures on U.S. imports and exports is likely to be small.

<sup>4</sup> The negative list approach tends to yield greater market access and transparency than the "positive list" approach employed in the GATS, wherein market access and national treatment apply only to the provision of specifically listed services. Under a positive list approach, the extension of trade disciplines to newly created services would have to be negotiated individually.

<sup>5</sup> The covered measures include those adopted or maintained by central, regional, or local governments and authorities and by nongovernmental bodies exercising powers delegated by such governments and authorities.

#### **Box 4-1 Profile of service industries in Peru and the United States**

The services sector in Peru accounted for 65 percent of the country's GDP in 2003. Peru posted a services trade deficit in that year, with imports and exports of \$2.6 billion and \$1.7 billion, respectively. Services accounted for 16 percent of Peru's overall exports, with the travel and tourism sector accounting for 55 percent of services exports in 2003. International tourist arrivals have increased steadily in recent years, reaching more than 1 million visitors in 2004 for the first time. However, owing to Peru's inadequate hotel infrastructure, social unrest, and a global slowdown in the tourism industry, growth in Peru's tourism sector has fallen short of expectations. Thus, in an effort to stimulate investment and growth, the government of Peru has introduced tax exemptions on tourist packages sold abroad, and 33 hotels of the state chain, Enturperú, have been transferred to private ownership.

As of December 2005, 17 commercial banks were operating in Peru with substantial foreign investment, along with several smaller municipal and rural savings banks, one government-owned deposit-taking bank, and the government-owned development bank. The Bolsa de Valores de Lima, Peru's stock exchange, is open to foreign investors. At the end of 2004, total market capitalization was \$19.6 billion.

The insurance market in Peru in 2004 recorded total premiums of \$883 million, of which 45 percent were for life insurance and 55 percent for nonlife insurance. Based on total premium volume, Peru's insurance market is ranked 56 out of 88 countries in the Swiss Re database. In November 2005, 12 insurance companies were operating in Peru, with the top 3 companies (Rímac Internacional, El Pacífico Peruano Suiza, and El Pacífico Vida) accounting for 63 percent of total premiums. Peru recorded \$88 million in global exports of insurance services, compared with a negative \$263 million in imports of such services.<sup>1</sup> By contrast, the U.S. insurance market recorded premiums of \$1.1 trillion in 2004, equal to 34 percent of the global insurance market, and U.S. insurers recorded cross-border exports of \$6.1 billion in 2004. Sales by U.S. carriers' foreign affiliates totaled \$108.1 billion in 2003, the most recent year for which such information is available.

The telecommunications market in Peru was valued at \$1.4 billion in 2002, of which 75 percent was fixed-line/Internet services and 25 percent was mobile services. In the first quarter of 2006, three firms were operating in the fixed-line market (Comunicaciones Móviles del Perú, Telefónica de Perú, and Telmex Perú) and three firms in the mobile sector (Movistar, Claro, and Nextel). In 2005, U.S.-owned firms, AT&T and BellSouth, were bought out and subsequently withdrew from Peru. U.S.-owned Nextel is reportedly interested in bidding for an additional mobile license scheduled to be auctioned in 2006.

The U.S. services sector accounted for 83 percent of U.S. private-sector GDP and 85 percent of private-sector employment in 2004. The United States is the world's largest services exporter, with cross-border private services exports totaling \$323.4 billion in 2004, and maintains the largest cross-border services trade surplus, measuring \$65.3 billion in 2004. The principal U.S. services exports in 2004 were travel and tourism (\$74.5 billion), followed by services generating royalty and license fees, such as software licensing and distribution (\$52.6 billion), and other transportation services, primarily maritime and freight transportation (\$36.9 billion). Sales of services by foreign affiliates of U.S. parent firms, the value of which has exceeded that of U.S. cross-border services exports since 1996, totaled \$477.5 billion in 2003 (latest available). Such sales follow U.S. direct investment in foreign markets, and in part reflect the degree to which foreign markets are open to U.S. service firms.

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Sources: USDOC, BEA, *Survey of Current Business*, May 2005, Aug. 2005, and Oct. 2005; IMF, *Balance of Payments Statistics Yearbook*, 729–35; EIU, *Country Profile 2005: Peru*, 36–38; US&FCS and U.S. Department of State, *Doing Business in Peru*; La Superintendencia de Banca, Seguros, y AFP; Swiss Re, *Sigma*, 35–39; TeleGeography, "Peru Country Overview"; and International Telecommunications Union, *World Telecommunications Indicators Database*.

<sup>1</sup> Cross-border trade in insurance services principally reflects estimates of premiums earned minus claims paid or recovered in a given year. A negative value for imports of insurance services indicates that premiums paid by Peruvian residents to foreign insurers were smaller than claims paid by foreign insurers to Peruvian residents.

**Table 4-1** Cross-border trade in services with all trading partners, the United States and Peru, 2003  
(Millions of U.S. dollars)

Service industry	United States		Peru	
	Exports	Imports	Exports	Imports
Total services	304,090	256,300	1,679	2,609
Passenger transport	15,690	20,960	36	258
Freight transport	14,100	31,770	16	615
Other transport	17,730	12,990	245	105
Travel	84,120	59,660	923	620
Other services <sup>1</sup>	172,440	130,910	459	1,012

Source: International Monetary Fund, *Balance of Payments Statistics Yearbook, 2004, Part 1: Country Tables*, vol. 55, 2004, 730 and 985.

Notes: As noted by the International Monetary Fund regarding data summation discrepancies: Columns may not sum to totals due to rounding. Most data in the tables are expressed in units of one million; users should not assume that any IMF table showing smaller units necessarily contains more accurate figures. The unit is chosen to present the figures conveniently. Because of the calculation routines used, there may be rounding differences between an aggregate and the sum of its components.

<sup>1</sup> Included in "other services" are communications; construction; insurance; financial; computer and information; royalties and license fees; other business services; personal, cultural, and recreational; and other government.

The parties must permit unfettered transfers and payments relating to the cross-border supply of services and must allow such transactions to occur in a freely usable currency at the prevailing exchange rate on the date of transfer, subject to explicit exceptions. The benefits of this chapter may be denied under limited circumstances if the service supplier is controlled by persons of a nonparty. Chapter 11 includes specific language on express delivery services, which defines the scope of coverage, confirms the desire to maintain market access no less favorable than that in effect when the TPA was signed, and delineates the relationship between covered services and each party's postal monopoly (annex 11-D).

In annex 11-A, the parties agree that if a party establishes or maintains a fund to promote a particular service within its territory, discriminatory disbursement of such funds will be allowed under the TPA, even when the fund is administered in part or wholly by a privately-owned entity. In annex 11-B, the parties agree to encourage relevant bodies to develop mutually acceptable standards and criteria for licensing and certification of professional service suppliers. This annex permits the parties, by mutual agreement, to encourage the relevant bodies in their respective territories to develop procedures for the temporary licensing of one another's professionals. Moreover, this annex establishes a Working Group on Professional Services, including representatives of each party, to facilitate the activities listed previously, with priority consideration given to engineering, architecture, and accounting services. At its first meeting, the working group shall consider establishing procedures for the temporary licensing of engineers. Annex 11-C will allow Peru to reserve the right to maintain certain limitations regarding labor mobility, except to the extent that these limitations restrict the ability of enterprises to employ professionals and specialty personnel of other parties on a temporary basis. Finally, the TPA includes U.S. side letters concerning the review of selected state permanent residency and citizenship requirements and the maintenance of certain Peruvian measures relating to costs associated with archaeological research projects, the granting of monetary prizes to Peruvian cinematographic works, and tax credits and refunds for publishing activities in Peru.

**Table 4-2** U.S.-Peru TPA: Service sectors subject to nonconforming measures related to cross-border trade

Peru		United States	
Current measures	Potential measures	Current measures	Potential measures
Air transport	Audiovisual industry	Air transportation	Communications
Archaeological services	Cultural industries	Business services	Minority affairs
Architecture services	Handicraft industries	Insurance	Social services
Audiovisual services	Jewelry design	Professional services—patent attorneys, patent agents, and others who practice before the Patent and Trademark Office	Transportation
Banking and other financial services, excluding insurance	Indigenous communities, peasant, native, and minority affairs		
Bullfighting	Music	Transportation services—customs brokers	
Customs warehouses	Public sewage services		
Energy-related services	Public supply of potable water		
Free-to-air radio communications	Publishing		
Insurance and insurance-related services	Social services		
Land transport	Theater arts		
Land transport of passengers	Visual arts		
Maritime tourist transport			
Maritime transport and related services			
Merchant marine services			
Notary services			
Port services			
Security services			
Specialty air services			

Source: *U.S.-Peru TPA*, annex I, annex II, and annex III.

Note: Nonconforming measures, or areas in which countries wish to take reservations, are found in annexes I through III of the TPA. Annex I contains reservations for cross-border services, excluding financial services, to preserve existing measures that are inconsistent with the disciplines concerning nondiscrimination, performance requirements, and senior personnel. Annex II contains reservations for cross-border services, excluding financial services, to ensure that a party maintains flexibility to impose measures in the future that may be inconsistent with the disciplines of the TPA. Annex III contains both existing and potential future nonconforming measures related to financial services, including insurance.

## *Views of Interested Parties*

Overall, U.S. industry representatives are generally satisfied with the TPA provisions on services and transparency.<sup>6</sup> U.S. industry sources state that the TPA will provide a favorable environment for professional services trade. They state that the TPA contains few nonconforming measures on professional services, and that equity and reciprocity will likely result from the provisions in annex 11-B on professional services.<sup>7</sup> In particular, U.S. industry sources are encouraged by the proposed working group's initial objective that focuses on the temporary licensing of professionals. U.S. industry sources indicate that the TPA's chapters on investment, government procurement, cross-border trade in services, and transparency provide a framework that can increase opportunities in Peru for U.S. energy services firms, as Peru has proven reserves in both petroleum and natural gas.<sup>8</sup> However, U.S. industry representatives note that, because of Peru's relatively small market, any additional bilateral services trade between the United States and Peru will likely be commercially insignificant, from their perspective.<sup>9</sup>

## **TPA Chapter 12—Financial Services**

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### *Assessment*

The financial services chapter of the U.S.-Peru TPA is expected to benefit some U.S. providers of financial services, although the TPA does not reflect significant liberalization beyond the GATS for banking services. Additionally, the Peruvian economy is small compared with the U.S. economy, so new exports of financial services, or new investment in the Peruvian financial services market by U.S. firms, are expected to be limited. Particularly important provisions for U.S. industry include new commitments permitting asset management companies to provide services across borders and participate in managing retirement accounts in Peru's mandatory social security retirement account system.

### **Financial Services, Except Insurance**

As noted, the TPA is expected to generate only a small increase in U.S. exports of financial services except insurance (i.e., banking and securities services) to Peru. Such exports are estimated to have accounted for not more than 2 percent (\$534 million) of total U.S. exports of financial services in 2004.<sup>10</sup> The TPA expands Peru's commitments in the asset management service industry by guaranteeing both rights of establishment and national treatment to U.S. service providers. Under the TPA, Peru will also allow U.S. asset managers of mutual funds to provide cross-border portfolio management services. This commitment, which has been a priority of U.S. asset managers in previous trade negotiations, reportedly will permit U.S. mutual fund managers to offer their services in Peru without establishing a commercial presence in that country, enabling them to control costs effectively and

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<sup>6</sup> ITAC 10, *U.S.-Peru Free Trade Agreement*, 2-3.

<sup>7</sup> *Ibid.*, 6-8.

<sup>8</sup> *Ibid.*, 9-10.

<sup>9</sup> Representatives of U.S. asset management and pension, education, engineering, legal, maritime trade, and medical services industries, e-mail messages and telephone interviews with Commission staff, Mar. 8-9, 2006.

<sup>10</sup> This figure represents exports to "other South and Central America" countries, including Peru, for which data are not individually available. USDOC, BEA, *Survey of Current Business*, Oct. 2005, 60.

increase their competitiveness in the Peruvian market.<sup>11</sup> In addition, the agreement permits U.S. providers of pension and asset management services to participate in management of Peru's privatized social security accounts (also known as AFPs). This commitment reportedly serves as an important model for future trade promotion agreements.<sup>12</sup> However, as a result of the small size of the Peruvian market and the unsettled nature of Peruvian regulations with regard to the AFP program, substantial new U.S. investment is unlikely in the short term.<sup>13</sup>

The market for U.S. financial services is already fairly open and the Peruvian industry is relatively small. As a result, the U.S.-Peru TPA is not likely to have a significant effect on U.S. imports of financial services from Peru. In 2004, total U.S. imports of banking and securities services registered \$11.2 billion, and sales of financial services by U.S. affiliates of foreign firms totaled \$24.5 billion.<sup>14</sup> While precise figures on financial service imports from Peru do not exist, available data indicate that cross-border imports did not exceed \$95 million in 2004,<sup>15</sup> or less than 1 percent of total U.S. banking and securities services imports. Moreover, such Peruvian imports, if any, are most likely concentrated in the provision of trade financing to U.S. clients importing goods from Peru, and do not directly compete with U.S.-based banks.<sup>16</sup> Any future growth in this industry segment will likely be a result of demand for these services generated by increased trade in goods between the United States and Peru rather than a direct result of financial sector liberalization.

## **Insurance**

The TPA is expected to generate only a small increase in U.S.-Peru bilateral trade in insurance services, with little or no change in overall U.S. insurance imports and exports. The insurance market in Peru is small compared with that in the United States and, therefore, the potential for cross-border U.S. exports or sales by foreign affiliates of U.S. firms in this sector reportedly is limited.<sup>17</sup> With respect to the potential for increased U.S. imports from Peru, the U.S. insurance market is already open to foreign firms, so market access gains for Peruvian firms are marginal. In 2004, U.S. cross-border imports of insurance services from the world were \$29.9 billion, and insurance sales by U.S. affiliates of foreign firms totaled \$83.3 billion. Precise figures on U.S. cross-border imports of insurance services from Peru are not available, but existing data indicate that such imports did not exceed \$23 million in 2004, or less than 0.1 percent of total U.S. imports of insurance services.<sup>18</sup> Any future growth in this industry segment will likely result from demand for insurance generated by increased trade in goods between the United States and Peru, rather than as a direct result of insurance sector liberalization.

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<sup>11</sup> U.S. industry representative, telephone interview with Commission staff, Feb. 15, 2006; and ITAC 10, *U.S.-Peru Free Trade Agreement*.

<sup>12</sup> U.S. industry representative, telephone interview with Commission staff, Feb. 14, 2006; and ITAC 10, *U.S.-Peru Free Trade Agreement*.

<sup>13</sup> This conclusion is also supported by industry sources. U.S. industry representative, telephone interview with Commission staff, Feb. 14, 2006; and ITAC 10, *U.S.-Peru Free Trade Agreement*.

<sup>14</sup> USDOC, BEA, *Survey of Current Business*, Oct. 2005, 60 and 77.

<sup>15</sup> *Ibid.*

<sup>16</sup> As of Sept. 2005, there were no Peruvian banks with offices in the United States, so the existence of measurable imports is unlikely. U.S. Federal Reserve Board, "Structure and Share Data for U.S. Offices of Foreign Banks."

<sup>17</sup> U.S. industry representatives, telephone interviews by Commission staff, Feb. 14–15, 2006.

<sup>18</sup> Data are not available on sales of insurance services by Peruvian-owned affiliates in the United States. USDOC, BEA, *Survey of Current Business*, Oct. 2005, 63 and 77.

## ***Summary of Provisions***

Chapter 12 will generally require each party to allow cross-border trade in financial services, accord national treatment and MFN treatment to investors of the other party, and provide market access for financial institutions without limitations on the number of financial institutions, value of transactions, number of service operations, or number of persons employed. As in previous bilateral U.S. FTAs, cross-border trade is limited to certain segments of the financial services industry. For insurance, TPA coverage of cross-border trade is limited to marine, aviation, and transit insurance; reinsurance; and insurance intermediation services such as brokerage and agency services. For banking and securities, TPA coverage of cross-border trade is limited to the provision and transfer of financial information and financial data processing, advisory, and other auxiliary financial services as defined in the text of the chapter. Cross-border intermediation services (i.e., deposit-taking and lending) are prohibited. Under the TPA, securities firms may not establish branches, whereas banks may do so, though the operations of bank branches are limited by the amount of capital they hold in Peru. However, the two parties confirm that they will permit financial institutions to offer portfolio management services from one party to another on a cross-border basis.

Each party will be required to permit a financial institution of the other party to provide new financial services similar to those that it permits its own domestic institutions to provide, without additional legislative action. The chapter will not require either party to furnish or allow access to information related to individual customers or confidential information, the disclosure of which would impede law enforcement, be contrary to the public interest, or prejudice legitimate commercial concerns.

Under chapter 12, a party could not require financial institutions of the other party to hire individuals of a particular nationality as senior managers or other essential personnel, and could not require more than a simple majority of the board of directors to be nationals or residents of the party. The parties agree that transparent regulations and policies are important, commit to publishing in advance all regulations of general application, and agree to maintain or establish mechanisms to respond to inquiries from interested persons. Where a party requires membership in a self-regulatory organization, the chapter provides that such organizations are subject to the national treatment and MFN obligations of this chapter. The two parties state that they recognize the importance of maintaining and developing expedited procedures for offering insurance services.

The TPA will establish a financial services committee to implement the provisions of chapter 12. Chapter 12 also provides for consultations and dispute resolution, and includes cross-references to the provisions covering dispute settlement procedures. Under the TPA, parties may retain specific financial services measures that do not conform to the TPA by including the measures in annex III of the agreement.

## ***Views of Interested Parties***

U.S. industry sources consider the financial services commitments in the TPA to be relatively strong.<sup>19</sup> Of particular importance to U.S. firms is the provision allowing them to establish certain operations as either a branch or a subsidiary, and allowing 100 percent foreign ownership of newly established entities. However, U.S. industry sources express

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<sup>19</sup> Information in the paragraph is from the ITAC 10, *U.S.-Peru Free Trade Agreement*, 8.

concern that the TPA will not permit securities firms to establish branches in the Peruvian market, and that foreign firms participating in the AFP market will not be permitted to invest assets outside of Peru.<sup>20</sup> Financial services industry representatives also note that the TPA is consistent with previous U.S. bilateral FTAs in limiting the scope of cross-border commitments to a small subset of financial services, which, in their opinion, is insufficient.<sup>21</sup>

U.S. insurance industry sources express support for the TPA, noting in particular that foreign insurers in Peru will be permitted to participate in the government-mandated pension program.<sup>22</sup> According to industry sources, U.S. insurers supplying services in Peru are expected to benefit greatly from the TPA. New rights for U.S. insurers in Peru include the ability to establish a commercial presence through subsidiaries, branches, or joint ventures; to supply marine, aviation, and transport insurance and reinsurance to Peruvian residents on a cross-border basis; and to supply insurance-related services on a cross-border basis, including brokerage, claims processing, actuarial services, and other auxiliary services.<sup>23</sup>

## TPA Chapter 14—Telecommunications

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### *Assessment*

The U.S.-Peru TPA will likely have no measurable effect on U.S. cross-border exports or affiliate sales related to telecommunications services, largely reflecting the existing level of U.S. openness and small size of Peru's telecommunications services industry. Additionally, in the near term, the small size of Peru's telecommunications services market and high levels of industry concentration, in both fixed-line and mobile services, will likely reduce the incentive for additional U.S. telecommunications services firms to establish affiliates in Peru.<sup>24</sup>

Liberalization efforts began in Peru in 1993, following the formation of a national telecommunications regulator, Organismo Supervisor de la Inversión Privada en Telecomunicaciones (OSIPTEL).<sup>25</sup> In 1994, Peru's incumbent fixed-line telecommunications operators, Entel Perú and Compañía Peruana de Teléfonos, were merged into a single entity, Telefónica de Perú (TdP).<sup>26</sup> In observance of its commitments under the WTO's 1997 Basic Telecommunications Agreement, the government of Peru introduced competition in the local, domestic long-distance, and international markets in 1998.<sup>27</sup> In 1999 and 2000, respectively, U.S.-owned firms BellSouth Peru and AT&T Peru received licenses and launched fixed-line services in Peru. However, AT&T Peru<sup>28</sup> was acquired by Teléfonos de

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<sup>20</sup> U.S. industry representatives, telephone interviews with Commission staff, Feb. 14–16, 2006; and ITAC 10, *U.S.-Peru Free Trade Agreement*.

<sup>21</sup> ITAC 10, *U.S.-Peru Free Trade Agreement*.

<sup>22</sup> U.S. industry representative, telephone interview with Commission staff, Feb. 14, 2006.

<sup>23</sup> ITAC 10, *U.S.-Peru Free Trade Agreement*.

<sup>24</sup> Nextel del Perú, a subsidiary of U.S.-based Nextel International, is currently the only U.S. telecommunication service provider operating in Peru; Nextel provides mobile services to business customers in Lima.

<sup>25</sup> OSIPTEL's mandate includes monitoring and promoting competition in Peru's telecommunications services market, improving universal access, and ensuring regulatory transparency.

<sup>26</sup> After the merger, 35 percent of TdP's shares were sold to Spanish telecommunications incumbent Telefónica S.A.; Telefónica S.A. subsequently purchased additional share tranches, increasing its holdings to 97.1 percent.

<sup>27</sup> Amendment No. 022-98-MTC (1998) Telecommunications Law No. 06-94-TCC (1994). In 2002, amendment No. 029-2002-MTC (2002) further liberalized Peru's fixed-line and mobile services markets.

<sup>28</sup> AT&T Peru was renamed Telmex Peru upon acquisition by TelMex.

México (Telmex), Mexico's former incumbent operator in 2004, and BellSouth Peru<sup>29</sup> was acquired by Spanish-owned Telefónica Móviles in 2005.<sup>30</sup>

Mobile services were introduced by BellSouth Peru in 1990, with competition introduced by Telefónica Móviles in 1992 and Telecom Italia Mobile (TIM) in 2001. Mobile services were liberalized, along with the fixed-line market, via amendments to the national telecommunications law in 1998 and 2002. The mobile sector also experienced significant market consolidation resulting from mergers and acquisitions among the market's main players. In 2005, Telefónica Móviles acquired the mobile operations of BellSouth Peru,<sup>31</sup> and América Móvil<sup>32</sup> announced the takeover of TIM.<sup>33</sup>

The TPA will likely have no significant effect on U.S. imports of telecommunications services, largely as a result of the relatively high existing level of openness in the U.S. market for telecommunications services, as reflected in the WTO Basic Telecommunications Agreement. Currently, Peru's three main telecommunication services providers, Telefónica S.A.,<sup>34</sup> América Móvil,<sup>35</sup> and Telmex,<sup>36</sup> all maintain telecommunication operations in the United States. In general, competitive pressures in the U.S. telecommunication services market limits the incentive for telecommunications firms to establish affiliates in the United States.

### *Summary of Provisions*

Chapter 14 will commit each party to ensure a high degree of openness, transparency, and nondiscrimination in providing both basic and value-added telecommunications services. For example, it will require each party to ensure that enterprises of the other party have access to, and use of, any public telecommunications service offered in its territory on reasonable and nondiscriminatory terms and conditions. The chapter imposes obligations on telecommunications service providers related to interconnection, number portability, dialing

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<sup>29</sup> Bellsouth Peru was renamed Comunicaciones Móviles del Peru (CMdP) upon acquisition by Telefónica Móviles. Since Telefónica controls both TdP and CMdP, many observers expect the two companies to merge, a move that could further reduce competition in Peru's fixed-line market.

<sup>30</sup> Business Monitor International, *Peru Business Forecast Report*, 29; EIU, "Peru: Telecoms and Technology Background"; and TeleGeography, "Peru Country Overview."

<sup>31</sup> The combined operations of Telefónica Móviles and BellSouth were renamed Movistar.

<sup>32</sup> Concerned about the anticompetitive effect of the Telefónica Móviles/BellSouth merger, OSIPTEL issued a new wireless license, which was subsequently awarded to Sercotel, a subsidiary of América Móvil. Shortly thereafter, América Móvil announced plans to acquire TIM. The combined operations of Sercotel and TIM were renamed Claro.

<sup>33</sup> Following América Móvil's announced acquisition of TIM, a move which may reduce competition in Peru's mobile sector, OSIPTEL announced plans to issue another mobile license in 2006. Nextel del Perú and Luxembourg-based Millicom are reportedly interested in bidding for the new license. Business Monitor International, *Peru Business Forecast Report*, 29; EIU, "Peru: Telecoms and Technology Background"; and TeleGeography, "Peru Country Overview."

<sup>34</sup> Telefónica S.A., the Spanish-based parent of Telefónica de Perú and Telefónica Móviles, operate in the United States through three companies: Telefónica Contenidos, Telefónica Empresas, and Terra Networks.

<sup>35</sup> América Móvil operates in the United States through Tracfone Wireless Inc.

<sup>36</sup> Telmex operates in the United States through Telmex USA.

parity, and resale services.<sup>37</sup> In addition, major suppliers<sup>38</sup> of one party are also required to offer telecommunications services to entities of the other party on terms no less favorable than those accorded to their own subsidiaries, affiliates, and nonaffiliated partners,<sup>39</sup> particularly regarding the availability, provisioning, rates, and technical quality of such services. Major suppliers also face additional obligations related to network unbundling, co-location, interconnection, leased circuits, resale services, and access to poles, ducts, conduits, rights-of-way, and submarine cable systems.<sup>40</sup>

Chapter 14 will require the governments of the United States and Peru to make all regulations and measures publicly available, ensure the independence of the national telecommunications regulator, maintain dispute resolution procedures, and bestow competent regulatory entities with the authority to enforce compliance with TPA obligations. The chapter also contains commitments and obligations related to universal service, licensing, and the allocation/use of scarce resources. Chapter 14 will also allow each party to exercise latitude regarding the application of regulations to public telecommunications services, if the telecommunications regulatory body determines that enforcement is not necessary to protect consumers, promote competition, or prevent discriminatory practices. Two annexes to chapter 14 establish exemptions, in both the United States<sup>41</sup> and Peru,<sup>42</sup> to provide telecommunications services in rural areas.

### *Views of Interested Parties*

Overall, U.S. industry representatives approve of the commitments detailed in the chapter, noting the strong “WTO-plus” nature of many of the commitments. However, the industry

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<sup>37</sup> Paragraph 2 (resale), paragraph 3 (number portability), and paragraph 4 (dialing parity) of article 14.3 (Obligations Relating to Suppliers of Public Telecommunications Services) do not apply to suppliers of commercial mobile services.

<sup>38</sup> TPA chap. 13 defines “major supplier” as a supplier of public telecommunication services that has the ability to materially affect the terms of participation in the relevant market due to its market position and control over essential facilities.

<sup>39</sup> Each party is required to maintain measures preventing major suppliers from engaging in anticompetitive practices. Such practices include, inter alia, cross-subsidization, using information obtained from competitors with anticompetitive results, and not making relevant technical and commercial information available to suppliers on a timely basis.

<sup>40</sup> Paragraph 1 (treatment by major suppliers), subparagraph (2)(b)(iii) (availability of technical information), paragraph 3 (resale), paragraph 4 (unbundling), paragraph 5 (interconnection), paragraph 6 (leased circuits), paragraph 7 (co-location), and paragraph 8 (access to poles, ducts, conduits, and rights-of-way) of article 14.4 (Additional Obligations Relating to Major Suppliers of Public Telecommunications Services) do not apply to major suppliers of mobile services.

<sup>41</sup> In the United States, a state regulatory authority may exempt rural local exchange carriers from obligations contained in article 13.4 and paragraph 2 (resale), paragraph 3 (number portability), and paragraph 4 (dialing parity) of article 14.3 (Obligations Relating to Suppliers of Public Telecommunications Services).

<sup>42</sup> In Peru, rural telephone companies may be exempted from obligations contained in paragraph 2 (resale), paragraph 3 (number portability), and paragraph 4 (dialing parity) of article 14.3 (Obligations Relating to Suppliers of Public Telecommunications Services) and the obligations in article 14.4 (Additional Obligations Relating to Major Suppliers of Public Telecommunications Services). In addition, for 10 years, Peru may exempt service suppliers that supply public telecommunications services in rural areas from the obligations contained in paragraph 2 (resale), paragraph 3 (number portability), and paragraph 4 (dialing parity) of article 14.3 (Obligations Relating to Suppliers of Public Telecommunications Services) and from the obligations contained in paragraph 3 (resale), paragraph 4 (unbundling), and paragraph 7 (co-location) of article 14.4 (Additional Obligations Relating to Major Suppliers of Public Telecommunications Services).

representatives are opposed to a “carve out,”<sup>43</sup> which exempts major suppliers from obligations to institute cost-oriented interconnection related to mobile services. According to some companies, trade associations, and U.S. government agencies, mobile termination fees should be based upon a cost-recovery methodology. According to this view, above-cost termination fees inflate the settlement payments that U.S. carriers must pay to foreign carriers, resulting in higher costs for U.S. consumers.<sup>44</sup>

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<sup>43</sup> Footnote 4 to article 14.4 (Additional Obligations Relating to Major Suppliers of Public Telecommunications Services) exempts major suppliers of commercial mobile services from, among other things, obligations contained in paragraph 5 (interconnection). ITAC 8 believes that this “carve out” forfeits an opportunity for the USTR to seek cost-oriented mobile termination rates in Peru. ITAC 8, *U.S.-Peru Free Trade Agreement*, 8. In 2005, responding to pressure from both the USTR and U.S. Embassy representatives, Peru’s telecommunications regulator, OSIPTEL, issued Resolution No. 070-2005-CD/OSIPTEL, which lowers interconnection rates over a 4-year period. The resolution lowered the mobile termination rate to \$0.2053 for all carriers in June 2005 with further reductions thereafter. U.S. Department of State, “Telecoms Regulator Publishes Improved Mobile Termination Rate”; U.S. Department of State, “Peru: 1377 Telecom Trade Agreements Review”; and U.S. industry representative, letter sent in response to a USTR Section 1377 Request for Comments.

<sup>44</sup> U.S. industry representative, letter sent in response to a USTR Section 1377 Request for Comments.

# CHAPTER 5

## Effect of Trade Facilitation Provisions

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This chapter assesses the potential effect of provisions in the U.S.-Peru TPA related to trade facilitation. These provisions are covered in TPA chapters addressing customs administration and trade facilitation, SPS measures, technical barriers to trade (TBT), and electronic commerce. Each TPA chapter discussion includes an assessment, summary of TPA provisions, and views of interested parties.

### Summary of Assessment

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The U.S.-Peru TPA provisions on trade facilitation are designed to expedite the movement of goods and the provision of services between the United States and Peru through specific improvements in customs administration, SPS measures, TBT measures, and electronic commerce. Benefits are tempered, however, by recent and ongoing improvements that Peru has made in these areas. For example, during the 1990s, Peru undertook a major effort to reform its customs administration that resulted in a significantly improved customs organization with high levels of automation and transparency. In addition, there is also a general lack of TBT-related concerns in Peru.

- ▶ **Customs Administration and Trade Facilitation:** The customs administration and trade facilitation commitments to transparent and efficient procedures, greater accountability and predictability, improved customs efficiency, reciprocity and fairness, and expedited goods clearance will likely further reduce paperwork, speed goods delivery, and alleviate U.S. industry concerns about Peruvian customs' transparency and regulatory inconsistency. Moreover, these provisions will likely provide greater control over illegal activities such as fraud and corruption, and enhance Peru's investment climate. Both will be positive outcomes for U.S. industry.
- ▶ **Sanitary and Phytosanitary Measures (SPS):** The SPS chapter of the TPA is expected to enhance market access provisions by facilitating scientific and technical cooperation, such as recognition of regulatory regimes. A new feature, the bilateral standing committee, will assist in more quickly addressing SPS issues. Such measures will support increased trade, especially in agricultural products such as rice, beef, poultry, and pork products.
- ▶ **Technical Barriers to Trade (TBT):** The TBT provisions will benefit U.S. companies by (1) reinforcing transparency obligations in rulemaking, (2) increasing opportunities for direct participation on a nondiscriminatory basis in Peru's standards development activities, (3) establishing informal mechanisms for rapid resolution of disputes, and (4) reinforcing WTO TBT obligations. However, there will be little, if any, effect on U.S. industries or the U.S. economy due to U.S. implementation of the TPA because the United States and Peru already generally meet the principal TBT obligations of the agreement. Product sectors identified as potentially benefitting from the TBT provisions include oil and gas field machinery, mining equipment, food processing equipment, packaging equipment, and pharmaceuticals.

- ▶ **Electronic Commerce:** E-commerce provisions may provide small, but increasing, opportunities for U.S. suppliers. Opportunities are supported by market growth in Peru, potential reduction in transaction costs as a result of the TPA, and improvement in the business environment. Intellectual property rights and piracy concerns are expected to mitigate opportunities in the short term.

## TPA Chapter 5—Customs Administration and Trade Facilitation

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### *Assessment*

U.S. industry will likely benefit from reduced transaction costs<sup>1</sup> with the implementation of the customs administration and trade facilitation provisions of chapter 5. The commitments to transparent and efficient procedures, greater accountability and predictability, improved customs efficiency, reciprocity and fairness, and expedited goods clearance will likely further reduce paperwork, speed goods delivery, and alleviate Peruvian customs concerns for U.S. industry. Although certain provisions, such as those for express shipments and advanced rulings, will receive deferments comparable to those provided in CAFTA-DR (see below for clarification), their full implementation will build on commitments to streamline goods processing and documentation and provide binding advanced rulings. Moreover, chapter 5 provisions will likely provide greater control over illegal activities, such as fraud and corruption,<sup>2</sup> and enhance Peru's investment climate.<sup>3</sup> Both will be positive outcomes for U.S. industry.

However, benefits to U.S. exporters began accruing years ago when Peru undertook a major effort during the 1990s to reform its customs administration that resulted in a significantly improved customs organization with high levels of automation and transparency.<sup>4</sup> The reform effort introduced customs autonomy, a higher level of staff professionalization, computerization of all customs functions and operations, electronic commerce, and uniform customs and clearance procedures.<sup>5</sup> According to a representative from Caterpillar, Peruvian customs has been described as “a reasonably stable, reasonably transparent, reasonably quick process.”<sup>6</sup> Despite these improvements, importers and exporters have reported issues with Peruvian customs, such as problems with customs assigning higher-than-invoice values for goods.<sup>7</sup>

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<sup>1</sup> For an in-depth discussion of the effect of trade facilitation on transaction costs, see OECD, “The Economic Impact of Trade Facilitation,” 26.

<sup>2</sup> OECD, “Trade Facilitation Reforms,” 27; USITC, hearing transcript, March 15, 2006, 13; and U.S.-Peru Trade Coalition, “Why Support the Peru Trade Promotion Agreement? It's a Foreign Policy Imperative.”

<sup>3</sup> OECD, “The Economic Impact of Trade Facilitation,” 26.

<sup>4</sup> OECD, “Trade Facilitation Reforms,” 26.

<sup>5</sup> DeWulf and Sokol, eds., *Customs Modernization Initiatives*, 76–77.

<sup>6</sup> USITC, hearing transcript, Mar. 15, 2006, 76.

<sup>7</sup> US&FCS and U.S. Department of State, *Doing Business in Peru*, chap. 5.

## Summary of Provisions

This chapter is structured similarly to corresponding sections of CAFTA-DR and supports many of the GATT goals in the areas of fees and formalities (article VIII) and publication and administration of trade regulations (article X) (table 5-1). The TPA will facilitate the goods clearance process through greater use of information technology to enhance automation, establish procedures for resolving disputes, and improve risk management and cooperation among parties. The parties will commit to immediate cooperation in the areas of information exchange, technical advice and assistance for trade facilitation, and enforcement of customs rules and regulations. They will also continue to explore other means of cooperation.<sup>8</sup> Additionally, chapter 5 calls for the immediate implementation of articles that provide for customs automation,<sup>9</sup> the use of risk maintenance systems,<sup>10</sup> the advanced publication of Peruvian customs regulations,<sup>11</sup> confidential information guidelines,<sup>12</sup> review and appeal of customs matters,<sup>13</sup> and penalties for customs violations.<sup>14</sup>

**Table 5-1** Selected GATT articles and U.S.-Peru TPA commitments related to customs administration

GATT	U.S.-Peru TPA
<p><b>Article VIII—Fees and Formalities</b></p> <p>1.(c) <i>Minimize</i> the incidence and <i>complexity</i> of import/export formalities.</p> <p><b>Article X—Publication and Administration of Trade Regulations</b></p> <p>1. (in part) <i>Laws, regulations, etc. shall be published promptly</i> and in such a manner as to enable government and traders to become acquainted with them; trade policy agreements in force shall be published.</p> <p>2. <i>No measures</i> may be enforced to change import duties or charges or other customs administrative practices <i>before official publication</i>.</p> <p><b>Article X—Publication and Administration of Trade Regulations</b></p> <p>2. <i>No measures</i> may be enforced to change import duties or charges or other customs administrative practices <i>before official publication</i>.</p> <p><b>Article X—Publication and Administration of Trade Regulations</b></p> <p>1. (in part) <i>Prevents disclosure of confidential information</i>.</p> <p><b>Article X—Publication and Administration of Trade Regulations</b></p> <p>3. (b) Maintain and establish <i>independent tribunals to review</i> and correct customs administrative actions.</p>	<p><b>Article 5.2—Release of Goods</b></p> <p>1. Shall adopt or maintain <i>simplified customs procedures</i> for the efficient release of goods (1-year deferment).</p> <p><b>Article 5.1—Publication</b></p> <p>1. <i>Internet publication of laws, regulations, and administrative procedures</i> (2-year deferment).</p> <p>2. Designate or maintain customs inquiry points and provide procedural information for inquiries via Internet (2-year deferment).</p> <p>3. <i>Advance publication of regulations</i> governing proposed customs matters and comment period (immediate).</p> <p><b>Article 5.5—Cooperation</b></p> <p>1. <i>Advance notice</i> of significant modifications of administrative policy likely to substantially effect Agreement's operation (immediate).</p> <p><b>Article 5.6—Confidentiality</b></p> <p>1. Designated <i>confidential information</i> shall be maintained as such and <i>will not be disclosed without prior permission</i> (immediate).</p> <p>2. Parties may decline to provide such information if confidentiality has not been maintained (immediate).</p> <p>3. Adopt or maintain procedures to protect unauthorized disclosure (immediate).</p> <p><b>Article 5.8—Review and Appeal</b></p> <p>Importers will have access to <i>independent administrative review</i> and judicial review of determinations (immediate).</p>

Sources: U.S.-Peru TPA; and WTO, *Trade Facilitation Documents*.

<sup>8</sup> U.S.-Peru TPA, article 5.5.

<sup>9</sup> U.S.-Peru TPA, article 5.3.

<sup>10</sup> U.S.-Peru TPA, article 5.4.

<sup>11</sup> U.S.-Peru TPA, article 5.1.3.

<sup>12</sup> U.S.-Peru TPA, article 5.6.

<sup>13</sup> U.S.-Peru TPA, article 5.8.

<sup>14</sup> U.S.-Peru TPA, article 5.9.

The express shipments section,<sup>15</sup> which will be subject to a 2-year deferment,<sup>16</sup> includes two notable provisions not incorporated in CAFTA-DR that will further liberalize such activity. Such shipments will not be limited by a maximum weight or customs value, and under normal circumstances, express shipments valued at \$200 or less will not be assessed duties or taxes and will not require any formal entry documents, except when expressly identified by each party's laws and regulations. Like CAFTA-DR, the TPA will require each party to adopt separate customs administration measures for express shipments. These measures will facilitate express shipment processing to allow (1) electronic submission of documents, (2) prearrival processing of information, and (3) submission of a single manifest covering all goods in an express shipment, as well as minimize release documentation, where possible. Chapter 5 requires release of express shipments within 6 hours.

Staggered implementation schedules comparable to those incorporated in CAFTA-DR will also defer the entry into force of other provisions. Simplified release procedures will be deferred for 1 year,<sup>17</sup> and Internet access to Peruvian customs information and assistance will be subject to a 2-year deferment.<sup>18</sup> The requirement that importers be able to obtain binding advanced rulings will not apply to Peru until 3 years after the date of entry into force of the TPA.<sup>19</sup> The United States already has a system in place allowing requests for advance rulings.

### ***Views of Interested Parties***

The Industry Trade Advisory Committee on Customs Matters and Trade Facilitation (ITAC 14) states that the TPA substantially meets the committee's objectives<sup>20</sup> and will provide equity and reciprocity in the area of customs administration.<sup>21</sup> The committee notes that the agreement includes the adoption of many current best practices in customs administration, such as 48-hour release of goods and advanced publication of rules and regulations. Moreover, the commitment to capacity building to better implement such provisions as risk assessment, review and appeal, and confidentiality, and the formation of a committee to administer chapter obligations, are cited as critical to meeting the objectives in this functional area.

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<sup>15</sup> *U.S.-Peru TPA*, article 5.7.

<sup>16</sup> Deferral of certain provisions is provided in the TPA to allow parties to develop the necessary technical capacity.

<sup>17</sup> *U.S.-Peru TPA*, article 5.2.

<sup>18</sup> *U.S.-Peru TPA*, article 5.1.1–5.1.2.

<sup>19</sup> *U.S.-Peru TPA*, article 5.10.

<sup>20</sup> Committee objectives included transparency of rules and regulations and inclusion of a mechanism to maintain "best practices" for the import and export process. ITAC 14, *U.S.-Peru Trade Promotion Agreement*.

<sup>21</sup> *Ibid.*

## TPA Chapter 6—Sanitary and Phytosanitary Measures

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### *Assessment*

As tariffs are lowered, nontariff barriers such as SPS restrictions often require more attention to ensure and maintain market access.<sup>22</sup> Negotiation of the SPS chapter reportedly has provided the United States and Peru an opportunity to resolve SPS barriers to agricultural trade, especially regarding food safety inspection procedures for beef, pork, and poultry products.<sup>23</sup> Inclusion of these provisions could provide expanded market access for U.S. farmers and ranchers exporting to Peru. The TPA chapter addressing SPS provisions is similar to provisions in recent FTAs. A facilitating feature of the TPA is that the partners agree to establish a bilateral standing committee to address relevant SPS issues. Such a committee should allow the United States and Peru to address SPS concerns in a more efficient and timely manner. In addition, although substantive commitments on SPS measures were already made in the WTO SPS agreement;<sup>24</sup> the U.S.-Peru TPA ensures cooperation and continued attention in this area.

### *Summary of Provisions*

This chapter covers the protection of human, animal, or plant life or health in the parties' territories, insofar as they directly or indirectly affect trade between them, and the enhancement of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS agreement). The United States and Peru agree to establish a Standing Committee on Sanitary and Phytosanitary Matters to coordinate administration of the chapter (article 6.3). The Standing Committee shall provide for consultation and cooperation regarding implementation of the SPS agreement and provide a forum for resolving future bilateral animal and plant health matters with a view to facilitate trade and engage in scientific and technical cooperation regarding animal and plant health matters that affect trade.<sup>25</sup> The chapter further outlines the process by which the standing committee will review issues of interest to either the United States or Peru. The chapter specifies that no party has recourse to dispute settlement under the TPA for any matter arising under the chapter. Any SPS issue that requires formal dispute resolution would be resolved through the formal process established under the WTO SPS Agreement.

The TPA includes letters of exchange on SPS/TBT issues from both the United States and Peru. The letters from the governments of Peru and the United States (1) confirm that Peru will continue to recognize the U.S. meat and poultry inspection system as equivalent to its own; (2) confirm that the certification statements from the U.S. inspection system, attached in annexes 1 and 2, meet Peru's import requirements; (3) recognize that measures taken by the United States regarding BSE<sup>26</sup> and avian influenza meet WTO guidelines; and

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<sup>22</sup> For an in-depth discussion of the effect of nontariff barriers on market access, see USDA, "Importance of Trade to the U.S. Economy"; and UNCTAD and WTO, *Improving and Maintaining Market Access*, 4.

<sup>23</sup> USTR, "Free Trade with Peru: Brief Summary of the U.S.-Peru Trade Promotion Agreement," 1.

<sup>24</sup> WTO, "The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)."

<sup>25</sup> U.S. government trade officials, interviews by Commission staff, Washington, DC, Feb. 9, 2006. The U.S.-Australia FTA also provided for the establishment of a bilateral SPS working group; however, that group is directed to resolve specific bilateral animal and plant health matters.

<sup>26</sup> See chap. 3 of this report for additional sector-specific information.

(4) confirm that Peru has taken steps to eliminate restrictions on U.S. rice exports to Peru.<sup>27</sup> These letters of exchange further recognize the TPA's annexes 1 and 2 that provide certification statements for certain livestock and poultry products.<sup>28</sup>

### *Views of Interested Parties*

In general, U.S. industry representatives consider the U.S.-Peru TPA a benefit for U.S. farmers and ranchers by increasing export opportunities through the elimination of tariff and nontariff barriers.<sup>29</sup> Regarding SPS matters, prior complaints by U.S. agriculture industry representatives about Peru included failure to recognize U.S. meat inspection systems and accept product from all USDA-approved facilities; lack of a transparent system for issuing import permits; restrictions on all rice imports because of the alleged presence of certain pests on some types of rice; and, more generally, the need to strengthen Peru's commitment to the use of scientific evidence regarding SPS matters.<sup>30</sup>

The U.S. agriculture industry recognizes that Peru has agreed to address many long-standing SPS concerns with the United States by "fully complying with the WTO regarding importing beef and poultry products, recognizing the U.S. meat inspection system as equivalent to Peru's, modifying import permit requirements for the import of pork and poultry, and agreeing to apply fair standards for the import of rice."<sup>31</sup> The ATAC for Grains, Feed, and Oilseeds reports that the SPS provisions in the TPA may not end the Peruvian ban on U.S. paddy rice because of phytosanitary concerns; however, the TPA provides "an additional vehicle for discussing these concerns."<sup>32</sup> In particular, Peru's recognition of the U.S. meat inspection system as the certifying authority for meat and poultry exports meets a key U.S. industry negotiating objective under the U.S.-Peru TPA.<sup>33</sup> Major trade associations representing the U.S. livestock sectors consider this a significant precedent for other FTA negotiations and hope the SPS commitments made by Peru will set a standard for all future U.S. FTAs.<sup>34</sup> The U.S. agriculture industry also supports the agreement's reaffirmation of each party's rights and obligations under the WTO SPS agreement and the establishment of a bilateral standing committee for providing a forum to address SPS concerns.<sup>35</sup>

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<sup>27</sup> Peru's Council of Ministers, "Letter Exchange on SPS/TBT Issues"; and USTR, "Letter Exchange on SPS/TBT issues."

<sup>28</sup> Annex 1 Certification Statements: (1) matured, partially cooked (scalded) or cooked pork ham; (2) edible offal products from refrigerated or frozen porcine species; and (3) de-boned meat, refrigerated or frozen meat, channels, half channels and cuts of porcine species. Annex 2 Certification Statements: fresh/frozen poultry meat.

<sup>29</sup> APAC, *The U.S.-Peru Free Trade Agreement*, 2.

<sup>30</sup> NPPC, "Public Comments to USTR," 3; NAM, written comments, U.S.-Andean Countries FTA, 2; and USDA, FAS, "Sanitary and Phytosanitary Measures," 2.

<sup>31</sup> APAC, *The U.S.-Peru Free Trade Agreement*, 2.

<sup>32</sup> ATAC for Grains, Feed, and Oilseeds, *U.S.-Peru Trade Agreement*, 3.

<sup>33</sup> ATAC for Trade in Animals and Animal Products, *U.S.-Peru Trade Agreement*, 1; APAC, *The U.S.-Peru Free Trade Agreement*, 2.

<sup>34</sup> NCBA, "Colombia/Panama Free Trade Agreements," 3; and APAC, *The U.S.-Peru Free Trade Agreement*, 2.

<sup>35</sup> ATAC for Trade in Processed Foods, *U.S.-Peru Trade Agreement*, 3.

## TPA Chapter 7—Technical Barriers to Trade

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### *Assessment*

Implementation of the TBT provisions of the U.S.-Peru TPA will likely benefit U.S. firms investing in and exporting to Peru. However, because of the relatively high level of transparency in Peru's current standards and regulatory regime, and that country's lack of significant TBT, any increase in revenues for U.S. firms as a result of the TPA TBT provisions will likely be negligible. Among other things, the TPA TBT provisions will benefit U.S. companies by (1) reinforcing transparency obligations in rulemaking, (2) increasing opportunities for direct participation on a nondiscriminatory basis in Peru's standards development activities, (3) establishing informal mechanisms for rapid resolution of disputes, and (4) reinforcing WTO TBT obligations.<sup>36</sup> Product sectors identified as potentially benefiting from the provisions include oil and gas field machinery, mining equipment, food processing equipment, packaging equipment, and pharmaceuticals.<sup>37</sup> There will be little, if any, effect on U.S. industries or the U.S. economy based on U.S. implementation of the TPA because the United States and Peru already generally meet the principal TBT obligations of the agreement.

Information obtained by the Commission indicates that Peru currently has a relatively transparent and open standards, testing, certification, and labeling regime.<sup>38</sup> Its national standards body operates within a regulatory framework similar to that of the United States, which historically has invited participation by interested persons from all countries. Peru's Commission of Technical Regulations publishes all new technical rules and regulations and notifies the WTO TBT committee of all changes in technical requirements that can have an effect on trade.<sup>39</sup> In November 2004, Peru adopted a new uniform labeling and marking regulation<sup>40</sup> for all products that are manufactured, imported, consumed, and sold nationwide, for the purpose of facilitating trade.<sup>41</sup> According to U.S. government and industry officials, the new labeling requirements for food and other products are fairly clear, simple, and flexible.<sup>42</sup> When imported products do not comply with Peru's requirements, importers are permitted to label them properly in private storage before customs clearance.<sup>43</sup> According to U.S. officials, there is little evidence of other certification, testing, or regulatory practices or issues that serve as unreasonable or unnecessary impediments to U.S. exports to Peru.<sup>44</sup>

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<sup>36</sup> U.S.-Peru TPA, article 15.10.1.

<sup>37</sup> U.S. industry representatives, telephone interviews by Commission staff, Feb. 13, 15, and 21, 2006.

<sup>38</sup> U.S. government trade and regulatory officials, interview by Commission staff, Washington, DC, Feb. 8, 2006.

<sup>39</sup> US&FCS and U.S. Department of State, *Doing Business in Peru*, 39–46.

<sup>40</sup> (Ley del Rotulado) Law 28405.

<sup>41</sup> USDA, FAS, "Section II. Labeling Requirements," 7; and US&FCS and U.S. Department of State, *Doing Business in Peru*, 39–46.

<sup>42</sup> U.S. government trade and regulatory officials, interview by Commission staff, Washington, DC, Feb. 8, 2006;

U.S. industry representatives, telephone interviews by Commission staff, Feb. 13, 15, and 21, 2006; and US&FCS and U.S. Department of State, *Doing Business in Peru*, 39–46.

<sup>43</sup> USDA, FAS, "Section II. Labeling Requirements," 7.

<sup>44</sup> U.S. government trade and regulatory officials, interview by Commission staff, Washington, DC, Feb. 8, 2006.

## *Summary of Provisions*

The objectives of the TBT chapter are to affirm and improve on the implementation of the WTO TBT agreement rather than to substantively expand it. The chapter requires both parties to intensify efforts to improve transparency, enhance bilateral cooperation on standards-related issues, increase mutual acceptance of one another's regulations and procedures, and reduce or eliminate unnecessary technical trade barriers.<sup>45</sup> To improve transparency, each party is to allow persons from the other party to participate in the development of its standards, technical regulations, and conformity assessment procedures; transmit proposals for new technical regulations and conformity assessment procedures electronically to the other party at the same time they are transmitted to the WTO pursuant to the TBT agreement; allow the other party at least 60 days to review and comment on such proposals; and publish or otherwise make available to the public its responses to significant comments no later than the date it publishes the final technical regulation or conformity assessment procedure.<sup>46</sup> The chapter encourages each party to consider a broad range of alternatives for accepting the results of the other's conformity assessment procedures and technical regulations, and when this is not possible, to explain why.<sup>47</sup> Finally, the chapter establishes a Committee on Technical Barriers to Trade, comprising representatives of each party, to monitor the implementation and administration of the chapter and address any issues arising from the other's standards, technical regulations, or conformity assessment procedures.<sup>48</sup>

## *Views of Interested Parties*

In general, U.S. industry representatives find the TBT provisions of the TPA conducive to increasing trade and investment with Peru through increased transparency and bilateral coordination.<sup>49</sup> A trade advisory committee representing a wide range of U.S. industries reports that "it fully support[s] the results of the U.S.-Peru Trade Promotion Agreement."<sup>50</sup> It states that the TBT chapter adequately addresses the standards and technical trade barrier issues advanced at the beginning of the negotiations. U.S. industry representatives are especially encouraged by provisions of the TPA that will enhance their opportunities to participate in Peru's standards development activities and have their views taken into account on proposed new Peruvian rules on technical regulations and conformity assessment procedures.<sup>51</sup>

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<sup>45</sup> *U.S.-Peru TPA*, articles 7.1–7.3.

<sup>46</sup> *U.S.-Peru TPA*, article 7.6.

<sup>47</sup> *U.S.-Peru TPA*, articles 7.4–7.5.

<sup>48</sup> *U.S.-Peru TPA*, articles 7.7–7.8.

<sup>49</sup> U.S. industry representatives, telephone interviews by Commission staff, Feb. 13, 15, and 21, 2006.

<sup>50</sup> ITAC 16, *U.S.-Peru Trade Promotion Agreement*, 1–3.

<sup>51</sup> U.S. industry representatives, telephone interviews by Commission staff, Feb. 13, 15, and 21, 2006.

## TPA Chapter 15—Electronic Commerce

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### *Assessment*

Electronic commerce (e-commerce) provisions may provide small, but increasing, opportunities for U.S. suppliers. These opportunities are supported by market growth in Peru, potential reduction in transaction costs as a result of TPA implementation, and improvements in the business environment. IPR and piracy concerns, however, are expected to diminish opportunities for increased e-commerce trade and investment, at least in the short term. Although it is small relative to U.S. and Latin American averages, the e-commerce market in Peru is growing, albeit more slowly than the global market.<sup>52</sup> The Peruvian e-commerce market has grown from \$5 million in 1999 to \$164 million 2004.<sup>53</sup> Of the estimated 1.2 million current Internet users in Peru, the number of e-commerce users has grown from 100,000 to 545,000 during the same period.<sup>54</sup> Growth rates are expected to increase, and the provisions and economic environment established by the TPA can facilitate U.S. providers' ability to profit on this potential future expansion.

The TPA provision providing for nondiscriminatory treatment of digital products may promote e-commerce trade between the parties by limiting the transaction costs associated with electronically traded goods and services. The most prevalent application of e-commerce is commercial transactions between large businesses. Virtual services aimed toward consumers, such as electronic banking, bill-paying, and Internet shopping, exist in the Peruvian market, but are not widely used. Firms within the telecommunications industry are leading purveyors of e-commerce services targeted at consumers, with most having Web sites to interact with consumers and market a variety of services. Peru has recently begun creating a regime favorable to the growth of e-commerce. Peru was one of the first countries in the region to legally recognize digital signatures, and it has established a predictable legal and regulatory framework that applies to e-commerce activities of both business and consumers.<sup>55</sup> Although legal protection for IPR is adequate, software piracy reportedly remains a problem.<sup>56</sup>

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<sup>52</sup> Internet use and e-commerce growth in Peru is limited by the country's relatively few fixed phone lines and personal computers. Telephone density has increased continuously since 1994, but it is still well below the regional average. The Lima Chamber of Commerce reported 511,000 computers were sold in 2004, up from 348,000 the previous year. An estimated 80 percent of Internet users in Peru access the Web through public Internet booths. EIU, *E-commerce*.

<sup>53</sup> Another factor influencing the growth of e-commerce in Peru is the country's status as a developing economy. As such, e-commerce often is not the focus of attention among national economic priorities. For example, Peru took the position that e-commerce should not receive disproportionate attention under the TRIPS agreement at the expense of development-related subjects. WTO, *WTO, E-commerce, and Information Technologies*.

<sup>54</sup> US&FCS, "E-Commerce in Peru."

<sup>55</sup> EIU, "Peru: Telecoms and Technology Background."

<sup>56</sup> USDOC, *Information Technology—Opportunities in Peru*.

As a result of the TPA, Peru will become a signatory to the WTO ITA, which removes tariff and nontariff barriers to information technology (IT) products (box 5-1). Peru's ITA membership is likely to promote e-commerce, reduce or eliminate duties on technology products and components, and strengthen intellectual property protection. U.S. exporters of IT products that facilitate e-commerce, notably software, personal computers, and networking equipment, are also likely to benefit, as Peru imports most of such products, and U.S.-Peru bilateral trade in high technology products has grown in recent years (figure 5-1). As the American Electronics Association notes "The Peruvian Free Trade Agreement holds the promise of new opportunities and expanded markets for U.S. high-tech merchandise exports, manufacturers, services providers, and their employees [as the TPA requires Peru join the WTO's ITA]."<sup>57</sup> To join the ITA, Peru must present a schedule of tariff commitments to the ITA committee, which must then approve the schedule. Peru has agreed to become a full participant in the ITA no later than December 31, 2007.

**Box 5-1** WTO Information Technology Agreement

The Information Technology Agreement (ITA), endorsed by 28 WTO member countries and currently including 63 participants that account for 95 percent of global trade in information technology products, was finalized on March 26, 1997, and entered into force on July 1, 1997. The ITA liberalizes market access for IT products by eliminating tariffs by January 1, 2000 on a wide range of technology products. Developing countries have, however, been granted extensions.

The ITA only addresses tariff reductions. It provides for a review of nontariff barriers, but there are no binding commitments concerning nontariff barriers. The agreement encompasses three basic principles: (1) all listed products must be covered, (2) all tariffs must be reduced to zero, and (3) other duties and charges must be bound at zero. ITA product coverage includes computers and computer equipment, semiconductors and integrated circuits, computer software products, telecommunications equipment, semiconductor manufacturing equipment, and computer-based analytical instruments. Some limited staging up to 2005 was granted on a country-by-country basis for individual products.

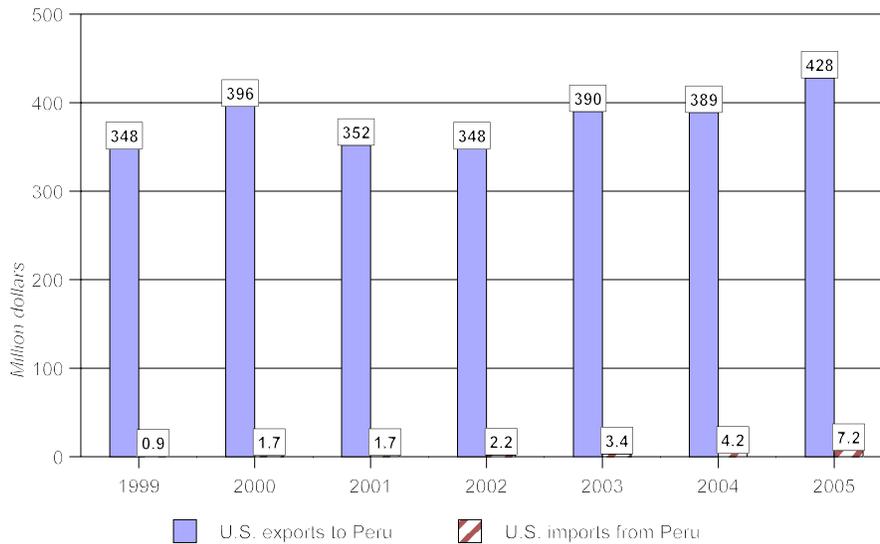
To date, the ITA is the only global sectoral agreement in which participating governments have agreed on a uniform list of products on which all duties will be eliminated. Work to review possibilities for expanding product coverage continues, as do efforts to address nontariff measures affecting trade in ITA-covered products.

Sources: WTO, "Information Technology Agreement"; and American Electronics Association, "Free Trade Peru."

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<sup>57</sup> American Electronics Association, "Free Trade Peru."

**Figure 5–1 U.S.-Peru high-tech trade, 1999–2005**



Source: American Electronics Association, “Free Trade Peru.”

### ***Summary of Provisions***

Broadly, the parties have committed to nondiscriminatory treatment of digital products, agreed not to impose customs duties on such products, and agreed to cooperate in numerous policy areas pertaining to e-commerce.<sup>58</sup> The e-commerce chapter in the U.S.-Peru TPA recognizes the importance of avoiding economic, regulatory, and technical barriers to e-commerce, and the applicability of WTO rules to e-commerce. Chapter 15 also affirms the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent and deceptive commercial practices. The TPA allows for nondiscriminatory treatment of digital products, providing broad national treatment and MFN provisions. A party may not apply customs duties, fees, or other charges on or in connection with the import or export of digital products by electronic transmission. The customs value of imported carrier media that includes a digital product must be determined by the cost of the medium alone, without regard to the value of the digital products stored on the carrier medium.<sup>59</sup> A party may not accord less favorable treatment to some digital products than it accords to other like digital products on the grounds that the digital products were created, stored, transmitted, published, or first made commercially available outside its territory or on the basis of the nationality of the author, performer, producer, developer, or distributor of such digital products. However, the chapter does not prevent any party from imposing internal taxes, charges, or other fees on the domestic sale of such products, provided they are imposed in a manner consistent with the TPA.

<sup>58</sup> USTR, “U.S. Peru Trade Promotion Agreement Policy Brief.”

<sup>59</sup> Currently, countries use different methods to apply customs duties.

## *Views of Interested Parties*

Industry representatives generally support the measures Peru has proposed or initiated that are likely to simplify and encourage the use of e-commerce, such as higher levels of protection regarding IPR, which strengthen the legal infrastructure for e-commerce and improve market conditions for the distribution and transmission of materials over the Internet.<sup>60</sup> Industry representatives recognize the need to make progress in various aspects of e-commerce and emphasizes aspects such as capacity building, consumer protection, network security, favorable and compatible legal frameworks, and the role of e-commerce in trade facilitation to gain full benefit from e-commerce. The provision within the TPA prohibiting parties from applying any additional costs to the trade of electronically transmitted digital products is similar to the WTO Moratorium on Customs Duties and Electronic Transmissions, which members of the Industry Trade Advisory Committee for Information and Communications Technologies, Services, and Electronic Commerce favor making permanent. Industry representatives believe that electronically-delivered goods and services should receive no less favorable treatment under trade rules and commitments than like products delivered in physical form, that trade classification should ensure the most liberal treatment possible, and that trade in software and other digital products should be duty free.<sup>61</sup> While the TPA provides that trade of digital products by electronic transmission should be duty free, assurances that electronically-delivered goods and services receive treatment comparable to that of their physical counterparts are not specifically addressed. Industry representatives also support a moratorium on Internet taxes, although no such requirement appears in the TPA. The International Intellectual Property Alliance also expressed support for the TPA, commenting, “The Peru TPA, once fully implemented, will assist Peru in attracting new foreign investment and new trade in valuable digital and other intellectual property-based products, particularly in the area of e-commerce.”<sup>62</sup>

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<sup>60</sup> ITAC 15, *Report on the U.S.-Peru Trade Promotion Agreement*.

<sup>61</sup> ITAC 8, *U.S.-Peru Free Trade Agreement*, 6.

<sup>62</sup> IIPA, written submission.

# CHAPTER 6

## Effect of Regulatory Provisions

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This chapter assesses the potential effect of provisions in the U.S.-Peru TPA related to the regulatory environment, including investment. These provisions cover 10 TPA chapters and include topics such as government procurement, investment, intellectual property rights, labor, and environment. Each TPA chapter discussion includes an assessment, summary of TPA provisions, and views of interested parties.

### Summary of Assessment

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Though the effects are difficult to quantify, the TPA regulatory-related provisions are likely to improve the regulatory climate for bilateral trade and investment, particularly over the medium and long term.

- ▶ **Small effect:** Benefits are likely to be marginal because of the relative size of the Peruvian market, the relatively high level of transparency already existing in Peru's current regulatory regime, and the country's structural changes resulting from economic reforms and privatization programs.
- ▶ **Investment:** Notably, the TPA incorporates important investor protections, particularly the investor-state dispute settlement mechanism, and includes coverage of all investment agreements concluded before the implementation of the TPA.
- ▶ **Intellectual property rights (IPR):** Additionally, the protection of intellectual property in Peru will likely be significantly improved if the IPR provisions of the TPA are fully and effectively implemented and enforced through appropriate legislation, regulations, and procedures.

### TPA Chapter 8—Trade Remedies

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#### *Assessment*

The trade remedy provisions in the U.S.-Peru TPA mirror bilateral provisions in other FTAs that the United States has implemented with other parties and are not likely to result in a notable effect on U.S. industries or the U.S. economy. Each party will retain all rights and obligations of article XIX of GATT 1994, the WTO Agreement on Safeguards, and the WTO agreements on antidumping and countervailing measures, but gain none under the TPA.

#### *Summary of Provisions*

Chapter 8 of the U.S.-Peru TPA provides the legal framework to allow bilateral safeguards on originating goods under the TPA, under terms similar to corresponding provisions of existing FTAs with other countries. A party must notify the other party when an investigation is initiated and consult before taking any action under the safeguard provisions. A bilateral TPA safeguard measure can be taken only if a party determines that, as a result

of the reduction or elimination of duty under the TPA, an article is being imported from the other party in such increased quantities (in absolute terms or relative to domestic production) as to be a substantial cause of serious injury or threat thereof to a domestic industry producing a like or directly competitive good. The measure imposed can take the form of (1) a suspension of the further reduction of the TPA duty rate on such goods, or (2) an increase in that duty to a level not exceeding the lower of the MFN duty rate at the time the action is taken or the applied MFN rate on the day before the date of entry into force of the TPA. Such a safeguard is aimed at remedying serious injury and facilitating adjustment. A party may not invoke a safeguard after the transition period (10 years after entry into force of the TPA). During the transition period, a safeguard cannot be imposed for a period extending longer than 2 years, unless an additional 2-year extension is deemed necessary by the proper authorities. Measures continuing longer than 1 year must be progressively liberalized, and the party invoking a TPA safeguard cannot subsequently impose another such measure on a particular originating good.

The rate of duty to be applied when the safeguard measure terminates may be no higher than the TPA rate that would have been in effect 1 year after application of the safeguard. Under the chapter, the parties agree to try to provide compensation that will be mutually accepted and will liberalize trade. Concerning antidumping and countervailing measures, the TPA provisions simply state that each party retains its rights and obligations under the WTO, and that the TPA does not impose any rights or obligations on the United States or Peru with respect to antidumping or countervailing measures.

### *Views of Interested Parties*

Most of the trade advisory committee reports do not address the bilateral safeguard provisions in the U.S.-Peru TPA. The report of the Industry Trade Advisory Committee on Steel states that the safeguard language in the U.S.-Peru TPA follows the same pattern as previous FTAs reviewed by the committee, and therefore appears acceptable.<sup>1</sup> However, the report of the Labor Advisory Committee (LAC) states that the safeguard provisions offer inadequate import surge protection for U.S. producers.<sup>2</sup> The LAC report states that the remedies allowed under the safeguard measures in the TPA are not strong enough to prevent or reverse possible negative effects on U.S. workers from implementation of the TPA.

## **TPA Chapter 9—Government Procurement**

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### *Assessment*

U.S. goods and services providers are likely to benefit from the provisions on government procurement in the U.S.-Peru TPA, primarily as a result of improvements in regulatory transparency and market access. However, considering the size of Peru's economy and market relative to the United States, any economic effects from increased access to the Peruvian market for government purchases of goods and services are likely to be moderate. Peru is neither a signatory nor an observer of the WTO Government Procurement Agreement; therefore, the TPA establishes clear procedures, ensures greater predictability in the government procurement process, and grants U.S. suppliers nondiscriminatory rights to bid on goods and services contracts to supply numerous Peruvian central and subcentral

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<sup>1</sup> ITAC 12, *The U.S.-Peru Free Trade Promotion Agreement*.

<sup>2</sup> LAC, *The U.S.-Peru Free Trade Agreement*.

(equivalent to U.S. state level) government entities.<sup>3</sup> Peru has reportedly applied domestic preference policies to government procurement contracts for the purpose of supporting local firms.<sup>4</sup> Although some of these practices have ceased, any further application of such measures will be addressed by the national treatment and nondiscrimination provisions in the chapter.

### ***Summary of Provisions***

Chapter 9 of the U.S.-Peru TPA applies to covered government procurement of goods and services by any contractual means where the value concerned exceeds thresholds set out in an annex to the chapter. The thresholds will be adjusted every 2 years, with the first adjustment taking place on January 1, 2008, according to a formula set out in the annex. The chapter sets out definitions, general principles such as national treatment and nondiscrimination, criteria on the rules of origin used in the normal course of trade, and restrictions on the use of offsets. The chapter's provisions also set forth advance notice requirements for intended procurements, time frames for the tendering process, documentation requirements, rules on the declaration of technical specifications, conditions for participation, criteria for awarding contracts, requirements concerning the publication of information on selected tenders, and a mechanism for the review of supplier challenges. The chapter also sets forth procedures and conditions pertaining to selective tendering and limited tendering, and establishes that a Committee on Procurement of representatives of each party will handle matters related to implementation of the government procurement provisions. The annex to the chapter lists covered entities, covered purchases, and exclusions, and establishes the threshold amounts for purchases of goods and services by covered entities. The annex also contains the threshold adjustment formula. Overall, most goods and services are covered by the agreement; however, both the United States and Peru exclude certain purchases and service sectors. In the case of Peru, for example, excluded procurements include clothing for the armed forces, architectural services, engineering and design services, engineering services during construction and installation, accounting and auditing services, and arbitration and conciliating services, among others. In the case of the United States, excluded procurements include certain procurements by the Departments of Agriculture, Commerce, Defense, Energy, and Homeland Security; research and development services; and operation services for government-owned facilities.

### ***Views of Interested Parties***

In their reports on the draft text of the U.S.-Peru TPA, the trade advisory committees indicate general support for the government procurement chapter, but note that certain reservations remain. The Advisory Committee for Trade Policy and Negotiation (ACTPN) report unanimously supports the U.S.-Peru TPA and states that the government procurement commitments will lead to increased U.S. access to the Peruvian market.<sup>5</sup> The ACTPN report states that the TPA covers most Peruvian government agencies, particularly those of key

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<sup>3</sup> The TPA chapter on government procurement covers the same major provisions as the WTO Government Procurement Agreement, including such areas as national treatment, tendering procedures, and the awarding of contracts. Slight differences in the language of each article, the depth of coverage, and the specific details of compliance can complicate coordination and adherence for countries that are parties to both agreements.

<sup>4</sup> USTR, *2005 National Trade Estimate Report*, 481–82; and APEC, “Fact Sheet: Review of the Individual Action Plan of the Peru Peer Review Study Report.”

<sup>5</sup> ACTPN, *The U.S.-Peru Trade Promotion Agreement*.

interest to U.S. suppliers, and provides for criminal penalties for bribery in government procurement, which will promote fair competition and enhanced procurement processes. The ACTPN expresses regret that some U.S. states have declined to accept the provisions related to subfederal procurement.

The Industry Trade Advisory Committee for Steel reports that the government procurement provisions in the TPA mirror language in previously negotiated FTAs reviewed by the committee and therefore appear acceptable. The report of the Industry Trade Advisory Committee for Information and Communications Technologies, Services, and Electronic Commerce (ITAC 8) expresses support for the TPA government procurement chapter. The ITAC 8 report states that the provisions on government procurement offer greater certainty to U.S. providers of goods and services and ensure access to the Peruvian market, particularly for digital products and IT and communications products and services.<sup>6</sup> ITAC 8 applauds the TPA language that allows for notification and documentation through electronic media, and encourages future trade agreements to include similar language promoting the use of electronic means.

The reports of the Industry Trade Advisory Committees on Services and Finance Industries (ITAC 10) and Small and Minority Business (ITAC 11) indicate mixed support for the government procurement chapter of the TPA. The ITAC 10 report states that the TPA provides “acceptable access” to the government procurement market for construction services, but excludes architectural services, engineering services, and engineering services during the construction and installation phase.<sup>7</sup> ITAC 10 calls for the eventual removal of this exclusion. ITAC 11 also objects to the exclusion of these sectors, in addition to accounting and auditing services, particularly because many small businesses participate in these service industries and are capable of providing such services on an international level.<sup>8</sup> ITAC 11 also indicates that the threshold levels stated in the annex to chapter 9 are exceptionally high; typically, many small businesses handle much smaller contracts, which are not covered by the government procurement provisions of the TPA. At the same time, the ITAC 11 report states that certain elements of the government procurement chapter, namely the offset restrictions, notification measures, and provisions on time limits, are particularly beneficial to small and minority businesses.

Additional concerns with chapter 9 are stated in the reports of the Labor Advisory Committee (LAC) and the Intergovernmental Policy Advisory Committee (IGPAC). The LAC report cautions that the regulations on government procurement in the TPA could encroach on the U.S. government’s ability to advance public policy aims and social objectives through federal level procurement, and hamper procurement practices such as domestic sourcing and responsible contractor requirements.<sup>9</sup>

In its report, IGPAC indicates overall agreement with the trade liberalizing content of the TPA, but expresses significant reservations over the government procurement provisions.<sup>10</sup> The IGPAC report expresses general support for the objectives of increased market access and greater transparency in government procedures and regulatory decisions related to procurement, as well as the preservation of the ability of state and local authorities to adopt

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<sup>6</sup> ITAC 8, *The U.S.-Peru Trade Promotion Agreement*.

<sup>7</sup> ITAC 10, *The U.S.-Peru Free Trade Agreement*.

<sup>8</sup> ITAC 11, *The United States.-Peru Trade Promotion Agreement*.

<sup>9</sup> LAC, *The U.S.-Peru Free Trade Agreement*.

<sup>10</sup> IGPAC, *The U.S.-Peru Trade Promotion Agreement*.

legislation, standards, and procedures to best serve their interests. However, the IGPAC report expresses concern over the “reciprocity policy,” included for the first time in a trade agreement, whereby reciprocal market access in the foreign country is granted at the subcentral level to businesses located in states that agree to the procurement provisions of the TPA. IGPAC points out that the possible benefits to states could be compromised by the processes and boundaries of the policy. The report reiterates comments and feedback concerning the reciprocity agreement provided by IGPAC members to the USTR at an earlier date, and asks that further negotiations take those observations into account. IGPAC also notes that certain government procurement provisions differ from other FTAs and the WTO Government Procurement Agreement, and could cause undue confusion and difficulties in implementation.

## **TPA Chapter 10—Investment**

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### *Assessment*

Investment provisions of the U.S.-Peru TPA are likely to contribute to a more secure and stable investment environment for U.S. investors in Peru. The TPA incorporates important investor protections, particularly the investor-state dispute settlement mechanism, and includes coverage of all investment agreements concluded before the implementation of the TPA.<sup>11</sup> The latter is of particular concern to U.S. investors in the mining industry, both because mining represents the largest share of U.S. foreign investment in Peru<sup>12</sup> and because mining investments have a long time horizon between the initial investment and financial profitability. However, the effect of the TPA on overall U.S. investment in Peru, or on Peruvian investment in the United States, is likely to be small, resulting from the small size of the Peruvian economy compared with that of the United States (box 6-1).

### *Summary of Provisions*

The two principal objectives of the TPA investment chapter are to create a welcoming environment for investors from each party by outlining the rights of investors and the rules that govern new cross-border investment, and to provide a clear outline of the investor-state dispute settlement process. Section A of the chapter outlines the rules governing new investments and sets forth the types of investments to which these rules apply.<sup>13</sup> Specifically, the TPA requires each party to give national and MFN treatment to investors and covered

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<sup>11</sup> All investment agreements are covered; however, to be subject to arbitration under the terms of the TPA, a breach of an investment agreement must occur after entry into force of the TPA.

<sup>12</sup> USITC, hearing transcript, Feb. 10, 2004; and USTR, *2005 National Trade Estimate Report*, 480.

<sup>13</sup> Investment related to financial services is covered separately in the financial services chapter (TPA chap. 12).

### Box 6-1: Foreign investment in Peru

The United States is the world's largest destination for foreign direct investment (FDI), with 2004 inbound direct investment stock of \$1.5 trillion, representing 17 percent of total worldwide inbound investment stock. Inbound FDI accounts for 13 percent of the U.S. GDP. Peru, with a much smaller economy, registered \$13.3 billion in inbound direct investment stock in 2004, equal to 19.4 percent of Peru's GDP.<sup>1</sup>

#### United States and Peru: Investment data, 2004

	Peru	United States
Inbound investment stock (million dollars)	13,310	1,473,860
Inbound stock as percentage of GDP (percent)	19	13
Outbound investment stock (million dollars)	874	2,018,205
Outbound stock as percentage of GDP (percent)	1	17
Investment inflows (million dollars)	1,816	95,859
Bilateral outbound investment stock (million dollars)	N.A.	3,934

Sources: Data on total investment stock and investment inflows: UNCTAD, *World Investment Report 2005*. Data on U.S. bilateral investment: USDOC, BEA, *Survey of Current Business*, Sept. 2005.

Note: Bilateral outbound investment stock reflects U.S. government statistics for U.S. outbound direct investment position in Peru on a historical-cost basis, and U.S. inbound direct investment position from Peru on a historical-cost basis.

Foreign investment in Peru is governed by the 1993 constitution, the Private Investment Growth Law, and the November 1996 Investment Promotion Law.<sup>2</sup> Under these laws, the Peruvian economy has been generally open to FDI from around the world. The United States is the third largest source of FDI in Peru, after Spain and the United Kingdom.<sup>3</sup> The mining and oil industries together account for more than one-half of FDI in Peru, but manufacturing and services, such as accounting and management consulting, are also well represented.<sup>4</sup> In 2005, more than 500 U.S.-based firms were operating in Peru, including Proctor & Gamble, Phelps Dodge, Gillette, Pfizer, Mobil Oil, Bell South, Coca Cola, and Newmont Mining.

<sup>1</sup> UNCTAD, *World Investment Report 2005*, annex tables B.2 and B.3.

<sup>2</sup> U.S. Department of State, "Background Notes: Peru."

<sup>3</sup> USITC, hearing transcript, Feb. 10, 2004; and USTR, *2005 National Trade Estimate Report*, 480.

<sup>4</sup> USITC, hearing transcript, Feb. 10, 2004.

<sup>5</sup> USITC, hearing transcript, Mar. 15, 2006, 10–11; USITC, hearing transcript, Feb. 10, 2004; and Uniworld, *Directory of American Firms*.

investments of the other party. The treatment of investors under the TPA must comply with customary international law. Other provisions are as follows:

- ▶ Expropriation will be only for a public purpose; it must be nondiscriminatory and accompanied by payment of prompt, adequate compensation in accordance with due process of law.
- ▶ All financial transfers relating to covered investments, including, but not limited to, contributions to capital, payment of interest, and payments under contracts, may cover the full value of the investment and may be made freely and without delay.

- ▶ Neither party will impose performance requirements as a condition of investment.<sup>14</sup>
- ▶ Neither party will require that senior management or boards of directors be of any particular nationality.

The benefits of this chapter may be denied only in limited, delineated instances, as outlined in the TPA annexes. This section of the chapter also deals with nonconforming measures, special formalities, and information requirements, and provides for consultation and negotiation of disputes.

Section B of this chapter provides detailed information and procedures on the investor-state dispute settlement process, including submission of claims to arbitration, selection of arbitrators, conduct of the arbitration, transparency of the arbitral proceedings, governing law, and awards of monetary damages (not including punitive damages) or restitution. Under the terms of the provisions of section B, each party will consent to claims being submitted according to the process outlined in the TPA. The awards made by any arbitration tribunal will have binding force only between the disputants and with regard to the particular case. The chapter also contains definitions of terms and relevant conventions for use in the resolution of investment disputes. An annex defines “customary international law” for purposes of the chapter, while another deals with expropriation (direct and indirect) in some detail. To be considered expropriation, a party’s action or series of actions must interfere “with a tangible or intangible property right or property interest in an investment” based on clear transfers of title or outright seizure. Other annexes deal with the service of documents in such matters and the establishment of a possible future appellate body.

The investment chapter incorporates four annexes that have not been included in previous FTAs. All four of these annexes safeguard the rights of the Peruvian or U.S. government in the case of a dispute resolved through the investor-state process. Annex 10-E applies special dispute settlement provisions to the TPA, requiring that investors wait a minimum of 12 months before sending a claim to arbitration, and ensuring that investors have the opportunity to invest returns from investments in cases where they are not permitted to transfer funds outside of Peru. Annex 10-F removes claims related to the rescheduling of sovereign debt from arbitration under the investor-state dispute settlement process, unless there is a claim that the rescheduling agreement violates national treatment or MFN treatment. Annex 10-G requires a U.S. investor to choose to pursue an investment claim either in the Peruvian court system or under the TPA’s investor-state dispute settlement process. This provision states that once the dispute has been submitted to a Peruvian court, the U.S. investor may no longer initiate the investor-state process. Under annex 10-H, the Peruvian government may conclude a “stability agreement” with a foreign investor, under which the investor makes certain guarantees regarding the investment in exchange for a guarantee of tax treatment and other legal treatment over a certain period of time. Under the annex, a breach of a stability agreement does not constitute a breach of an investment agreement unless the stability agreement is one of several components of an investment agreement.

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<sup>14</sup> Such provisions may include requirements to export a given level or percentage of goods or services, to purchase goods produced in a party’s territory, or to transfer a certain technology or other proprietary information.

## Nonconforming Measures Related to Investment

Provisions for the treatment of existing or future measures that are inconsistent with the agreement's investment disciplines are included in annexes I, II, and III of the TPA. Annex I lists exemptions for existing laws or regulations, maintained at the central or regional government level, that violate the provisions of the agreement. Nonconforming measures at the local government level are exempted without requiring any notation in an annex.<sup>15</sup> Annex II lists reservations to ensure that a party maintains flexibility to impose future measures that may be inconsistent with TPA disciplines. The actual content of the reservations in annexes I and II varies widely. Some reservations are horizontal in nature, meaning that they address general policy provisions that affect all investment, whereas others apply only to specific industry segments. Annex III lists nonconforming measures specific to financial services that apply to both existing and potential laws and regulations.

Peru's only investment-related horizontal reservation under annex I states that foreign nationals may not own land or water within 50 km of the Peruvian border, without a special exception authorized through a Supreme Decree of the Council of Ministers. This restriction applies to mines, forest lands, and energy sources, and to Peruvian companies owned wholly or partially by foreign nationals. There is one horizontal reservation listed by Peru under annex II. The measure accords differential treatment to countries that have signed international agreements with Peru before the entry into force of the U.S.-Peru TPA, specifically including agreements involving aviation, fisheries, or maritime matters.

Horizontal reservations taken by the United States under annex I address the programs of the Overseas Private Investment Corporation and the registration of public offerings of securities, as well as existing nonconforming measures at the state level. Under annex II, the first horizontal reservation listed by the United States appears to ensure that U.S. obligations under the TPA concerning the cross-border services trade or establishment of a service enterprise are equivalent to those undertaken in the GATS. The second horizontal reservation taken by the United States mirrors the reservation taken by Peru, which accords differential treatment to countries under international agreements that were signed before the U.S.-Peru TPA.

The specific sectors for which investment-related reservations are listed in annexes I and II are presented in table 6-1.<sup>16</sup> In several cases, the reservation indicates a potential constraint on foreign investment that may not have a significant effect on investors' activities or business results. Consequently, the inclusion of a sector in an annex does not mean that the entire sector has been exempted from coverage under the investment disciplines of the TPA.

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<sup>15</sup> *U.S.-Peru TPA*, article 10.13(1)(a)(iii).

<sup>16</sup> Investment-related reservations related to financial services, including insurance, are listed in annex III, and are presented in table 4-2 of this report.

**Table 6-1 U.S.-Peru TPA: Industry sectors subject to nonconforming measures related to investment**

Peru		United States	
Current measures (Annex I)	Potential measures (Annex II)	Current measures (Annex I)	Potential measures (Annex II)
<ul style="list-style-type: none"> <li>▶ Communications: Radio</li> <li>▶ Audiovisual services</li> <li>▶ Notary services</li> <li>▶ Architecture services</li> <li>▶ Security services</li> <li>▶ Bullfighting</li> <li>▶ Customs warehouses</li> <li>▶ Transportation services: Air transportation</li> <li>▶ Transportation services: Maritime transportation</li> <li>▶ Banking and other financial services</li> </ul>	<ul style="list-style-type: none"> <li>▶ Indigenous communities, peasant, native, and minority affairs</li> <li>▶ Fishing</li> <li>▶ Social services</li> <li>▶ Cultural industries, including publishing, film, music recording, theater arts, visual arts, printed music, handicrafts, radio, and television</li> <li>▶ Handicraft industries</li> <li>▶ Audiovisual services</li> <li>▶ Insurance</li> </ul>	<ul style="list-style-type: none"> <li>▶ Communications: Radio</li> <li>▶ Atomic energy</li> <li>▶ Mining</li> <li>▶ Transportation services: Air transportation</li> <li>▶ Customs brokerage</li> <li>▶ Banking and other financial services</li> <li>▶ Insurance</li> </ul>	<ul style="list-style-type: none"> <li>▶ Minority affairs</li> <li>▶ Satellite broadcasting</li> <li>▶ Social services</li> <li>▶ Transportation services: Maritime transportation</li> <li>▶ Insurance</li> </ul>

Source: *U.S.-Peru TPA*, annex I, annex II, and annex III.

Note: Nonconforming measures are found in annexes I through III of the TPA. Annex I contains reservations for cross-border services, excluding financial services, to preserve existing measures that are inconsistent with the disciplines concerning nondiscrimination, performance requirements, and senior personnel. Annex II contains reservations for cross-border services, excluding financial services, to ensure that a party maintains flexibility to impose measures in the future that may be inconsistent with the disciplines of the TPA. Annex III contains both existing and future nonconforming measures related to financial services, including insurance. For information on the nonconforming measures related to financial services, see table 4-2.

### *Views of Interested Parties*

U.S. industry representatives are satisfied with the investment provisions of the U.S.-Peru TPA, and particularly cite the agreement's enforcement, transparency, and dispute settlement provisions as improving the climate for U.S. investors in Peru. The investor-state dispute settlement process will particularly improve the existing investment climate for U.S. investors in Peru. These representatives assert that the TPA may lead to some new U.S. investment in Peru, but the levels are likely to be small, because of the small size of the Peruvian economy relative to that of the United States.<sup>17</sup> New investment is particularly likely in the mining and energy sectors.<sup>18</sup>

Service sector representatives note that the investment provisions of the TPA are particularly important for service industries, and that the agreement creates new opportunities for U.S. investors in Peru and provides strong protections for such investment.<sup>19</sup> Representatives of the energy industry indicate that the TPA's coverage of existing investment agreements is particularly significant.<sup>20</sup>

<sup>17</sup> USITC, hearing transcript, Mar. 15, 2006, 26–28; and U.S. industry representatives, telephone interview with Commission staff, Feb. 13, 2006.

<sup>18</sup> USITC hearing transcript, Mar. 15, 2006, 74–75.

<sup>19</sup> ITAC 10, *The U.S.-Peru Free Trade Agreement*.

<sup>20</sup> As noted above, the energy industry comprises the largest share of existing U.S. investments in Peru. ITAC 6, *The U.S.-Peru Free Trade Agreement*.

However, industry representatives cite the “extremely lengthy and onerous” review procedure for determining whether certain measures fall within the prudential carve-out for financial services measures<sup>21</sup> as a drawback to the investment provisions. Another drawback cited is the modifications to the dispute settlement procedures outlined in annex 10-E, which prolong the waiting period before investors are permitted to submit certain claims to arbitration.<sup>22</sup>

While industry representatives strongly support of the investor-state dispute settlement process, representatives of U.S. state and local governments are not in favor of investor-state dispute settlement. In their opinion, legal challenges brought by foreign investors against U.S. state and local regulations have overly burdened state and local governments and have caused some confusion regarding the scope of their regulatory authority. However, they also note that they consider the language of annex 10-G to be an improvement over the investment provisions of previous FTAs.<sup>23</sup> In contrast, industry representatives indicate that this language may prove confusing to some investors, leading them to unknowingly forgo their rights under the investor-state dispute settlement process.<sup>24</sup>

Exporamerica, a private association of Peruvian apparel exporters based in Lima, whose aim is to promote increased trade between Peru and the United States, comments that the TPA’s “Investment Chapter will facilitate transactions for U.S. industries and banks, as well as commercial and service companies, among others, that have investments or are interested in investing in Peru [such as U.S. textile companies].”<sup>25</sup>

## **TPA Chapter 13—Competition Policy**

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### ***Assessment***

Implementation of the competition policy provisions of the U.S.-Peru TPA is likely to have little effect on U.S. firms investing in and exporting to Peru, as a result of the relatively high level of transparency that already exists in Peru’s current regulatory regime and the country’s prior economic reforms and privatization programs. Any benefit to U.S. firms stemming from the TPA competition policy provisions will likely be negligible.

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<sup>21</sup> The “prudential carve-out” refers to a provision in the U.S.-Peru TPA and other bilateral and multilateral trade agreements that exempts certain financial services regulations from certain provisions of the agreement, on the grounds that the regulations serve strictly prudential purposes. The generally accepted definition comes from the WTO General Agreement on Trade in Services, as follows. “Notwithstanding any other provisions of the Agreement, a Member shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Member’s commitments or obligations under the Agreement.” WTO, *General Agreement on Trade in Services*, Annex on Financial Services, par. 2.

<sup>22</sup> ITAC 10, *The U.S.-Peru Free Trade Agreement*.

<sup>23</sup> IGPAC, *The US-Peru Trade Promotion Agreement*.

<sup>24</sup> ITAC 10, *The U.S.-Peru Free Trade Agreement*.

<sup>25</sup> Paz-Soldan on behalf of Exporamerica, written submission.

Peru's constitution bans monopolies, oligopolies, and restrictive practices, except in some temporary circumstances.<sup>26</sup> The National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) is the umbrella agency responsible for competition policy as well as intellectual property. The organization administers and enforces the competition laws and cooperates with both public and private institutions (trade associations and academic) to advocate the advantages of competition to Peruvian business and industry leaders, as well as consumers.<sup>27</sup>

INDECOPI has a broad mandate, designated through the Free Competition Law and the Market Access Law, but the mandate fails to include some important competition policy matters, including oversight of government entities acting in a regulatory manner and governance of the telecommunications sector, where the law is enforced by the sectoral regulator OSIPTEL.<sup>28</sup> In addition, the Free Competition Law does not apply to mergers and acquisitions, although in recent years there has been increased interest by INDECOPI in merger control.<sup>29</sup>

### *Summary of Provisions*

Chapter 13 addresses competition policy, designated monopolies, and state enterprises with a view to implementing economically sound policies and proscribing behaviors subject to this chapter that would restrict bilateral trade and investment. The chapter commits the United States and Peru to maintain competition laws that prohibit anticompetitive business conduct and competition agencies to enforce the laws, and to ensure national treatment, due process, and a nondiscriminatory application of these laws. The parties agree to cooperate in the area of competition policy and establish a working group.

The chapter also requires the parties to ensure that any private or public monopolies that they designate, and any state enterprises, are subject to disciplines designed to eliminate abuses of their special status and that they will not operate in a manner that creates obstacles to trade and investment. There are provisions covering transparency, information requests, consultations, and definitions of terms. Neither party will have recourse to dispute settlement under the provisions of this chapter pertaining to national competition laws, cooperation, the working group, or consultations.

### *Views of Interested Parties*

The Coalition of Service Industries reports that, although Peru continues to develop a competitive telecommunications market, there are questions as to the independence of the sectoral regulator OSIPTEL.<sup>30</sup> The coalition reports a lack of transparency in the regulatory decision-making process and problems because of the high interconnection rates for calls to mobile networks. In addition, the coalition cited some limited problems with air and water

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<sup>26</sup> The state is considered an effective monopoly in areas such as water distribution and some types of rural construction projects. In addition, the government of Peru used to be a major supplier of services, particularly for financial services, transportation, and telecommunications, but its involvement in these sectors has declined dramatically since the mid-1990s. WTO, "Trade Policy Review: Peru."

<sup>27</sup> Orbach, "Competition Policy in Transition."

<sup>28</sup> OECD, "Competition Law and Policy in Peru." In addition, although INDECOPI enforces the Free Competition Law in other infrastructure sectors, including transportation and energy, sector regulators have jurisdiction over access issues. INDECOPI's mandate is not specifically addressed in the TPA.

<sup>29</sup> Ibid. Peru has a separate law applicable to mergers and acquisitions in the electricity sector.

<sup>30</sup> Coalition of Service Industries, written submission.

transportation and broadcast media. It is unclear if the provisions in this chapter will specifically address these concerns.

## **TPA Chapter 16—Intellectual Property Rights, including Understanding Regarding Biodiversity and Traditional Knowledge**

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### *Assessment*

Full and effective implementation and enforcement of the U.S.-Peru TPA through appropriate legislation, regulations, and procedures could result in a significant reduction in the current estimated 98 percent music piracy rate, one of the highest rates in the world, and the estimated 75 percent optical disk piracy rate. This reduction will benefit both the U.S. and Peruvian intellectual property industries, as well as related industries, including distributors and other legitimate businesses (box 6-2).<sup>31</sup> According to the Business Software Alliance, decreasing Peru's piracy rate from 73 percent to 63 percent would add \$286 million to its economy, directly creating nearly 1,000 jobs and increasing local industry revenues by \$214 million. The aggregate effect could mean an additional \$24 million in tax revenues for the Peruvian government.<sup>32</sup>

The IPR chapter clarifies and improves upon Peru's Trade-Related Aspects of Intellectual Property Rights (TRIPS) obligations in all areas of intellectual property, taking into account both the U.S. government's experience in enforcing intellectual property since the implementation of TRIPS and advances in technology. These improvements are especially critical in the enforcement section, where TRIPS is perceived to be rather vague and many countries are lax. In negotiating FTAs, a primary objective of the United States is to ensure that the partner country's or countries' laws are brought up to and in line with U.S. intellectual property laws, which exceed TRIPS requirements.<sup>33</sup> In addition, the sections regarding trademarks, geographical indications (GIs), and domain names go beyond TRIPS in order to improve and clarify the obligations.

### *Summary of Provisions*

The chapter on IPR reportedly provides for improved standards for protection and enforcement that are consistent with both U.S. standards and emerging international standards.<sup>34</sup> Such improvements include state-of-the-art protections for digital products such as U.S. software, music, text, and videos; stronger protection for U.S. patents, trademarks and test data, including an electronic system to register and maintain trademarks; and further deterrence of piracy and counterfeiting by criminalizing end-user piracy.<sup>35</sup>

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<sup>31</sup> See also U.S. Department of State, "Peru: Special 301 Review"; and IIPA, *2006 Special 301 Report: Peru*.

<sup>32</sup> BSA and IDC, *Expanding the Frontiers of Our Digital Future*.

<sup>33</sup> U.S. government officials, interview by Commission staff, Washington, DC, Apr. 19, 2006.

<sup>34</sup> USTR, *Peru TPA Facts: Brief Summary*, 1.

<sup>35</sup> *Ibid.*

## **Box 6-2** Recent conditions of IPR protection in Peru

Peru assumed obligations under the WTO TRIPS agreement following its accession to the WTO in January 1995 and acceded to the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) in 2002. Both the ATPA and the ATPDEA required “effective protection” of intellectual property as a criteria for receiving benefits. A summary of recent conditions of IPR protection in Peru appears below.

### *Trademarks and Copyrights*

While Peru's 1996 copyright law contains a broad scope of economic rights, as well as some of the highest levels of criminal penalties in Latin America, and is generally consistent with the TRIPS agreement and the WIPO Internet treaties, there are significant areas in which additional legislation is needed to clarify the rights of artists and producers. In 2003, the Peruvian government published the Government Software Legalization Decree, which states that all public entities must ensure the procurement and use of legal software. While Peruvian law generally provides for the effective protection of intellectual property, effective enforcement of those laws, on both the administrative and the criminal levels, is the trademark and copyright industries' primary concern in Peru.

Piracy of music and sound recordings, business software, books, movies, and entertainment software is rampant in Peru and has largely destroyed the legitimate industry. In 2005, the estimated piracy level for music and recordings was 98 percent, resulting in the near-total collapse of the recording industry in Peru. Recording activity for local artists is disappearing. The Business Software Alliance estimates a 73 percent piracy rate, which includes both illegal duplication of business software within all levels of private-sector business and the sale of pirate copies in markets, bazaars, and stores. Estimated trade losses resulting from book piracy in Peru increased to \$9 million in 2005, including both photocopying and pirated translations. Widespread book piracy over the last decade has reportedly had significant and adverse effects on the local book industry.

### *Patents and Trade Secrets*

Ineffective patent enforcement, lack of data exclusivity and linkage, and market access barriers are the intellectual property concerns of the U.S. pharmaceutical industry. The Institute for the Defense of Competition and Intellectual Property (INDECOP), which is in charge of deciding administrative infringement actions, has raised the evidentiary threshold to an unreasonable standard, making it almost impossible to obtain an injunction against an infringer before significant market access damage has occurred to commercial interests of the patent owner. Also, the government of Peru continues to provide sanitary registrations for marketing approval to copies of innovative pharmaceutical products, many of which are still under patent. PhRMA members have reported that 8 patented products have been copied, for which 294 sanitary registrations have been granted. Seven of these products face competition in the Peruvian market from more than 76 copies. Regarding market access barriers, the government of Peru grants a 20 percent bonus or bidding preference to national manufacturers participating in a public “competitive” bidding process. This includes national manufacturers of copied pharmaceutical products.

### *Enforcement*

In July 2004, the High Level Multi-Sectorial Commission against Contraband and Piracy included the fight against piracy and IPR infringement as one of its missions. This commission, a governmental entity that also has private-sector participants, focuses primarily on recommending regulations to fight contraband and counterfeit goods.

According to the copyright industries, the Peruvian police protect the pirates of Mesa Redondo, a primary market area in Lima that produces and sells pirate and counterfeit products. While the Peruvian authorities do conduct raids, they have little effect on the level of piracy because the actions are inconsistent, the product is quickly replaced, and few criminal cases reach the Peruvian judiciary. When they do, judges do not impose deterrent sentences or fines. No copyright pirate has received deterrent sentences for criminal copyright infringements in Peru, despite the fact that the copyright law contains adequate penalties. During 2005, the High Level Multi-Sectorial Commission against Contraband and Piracy filed a petition before the Peruvian judiciary to request that a special criminal intellectual property court be created. That request was rejected. Interventions by customs authorities to seize pirate or counterfeit products, or blank optical media, are infrequent and ineffective.

Sources: BSA and IDC, *Expanding the Frontiers of Our Digital Future*; U.S. Department of State, “Peru: Special 301 Review”; and PhRMA, *Special 301 Submission: Peru*.

## Trademarks, Geographical Indications, and Domain Names

The TPA clarifies what can be registered as a trademark, allowing for the possibility of registering sound and scent marks; requires the protection of collective and certification marks; enhances the protection for well-known marks, whether registered or not; and eliminates the requirement that trademarks be registered to be protected. It stipulates the concept of “first-in-time, first-in-right” for trademarks and clarifies the relationship between trademarks and GIs, prohibiting the protection or recognition of a GI that is confusingly similar to a previously used, applied for, or registered trademark.<sup>36</sup>

This is important because of the differences between the U.S. and the EU approaches to the protection of trademarks and GIs. The United States protects GIs through the trademark system, with no hierarchy between the two. The EU, on the other hand, has a separate, sui generis, system for GIs that gives preference to GIs. Regarding domain names, articles 16.4.1 and 16.4.2 combine to combat the problems of copyright and trademark cyber-piracy. U.S. industry prefers a direct reference to the “Whois” databases<sup>37</sup>—something included only, to date, in the Singapore FTA.<sup>38</sup>

## Copyrights and Related Rights

Besides the inclusion of the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) (box 6-3) in the general provisions, the copyright and related rights sections contain detailed provisions that require implementation of the new obligations provided in the WCT and WPPT in a manner consistent with the Digital Millennium Copyright Act. These include provisions specifically regarding Technological Protection Measures and Rights Management Information. Peru agreed to extend its terms of protection to life of the author plus 70 years for most copyrighted works—a major advance and significant TRIPS-plus provision. The text also contains some provisions that were originally included in NAFTA regarding “contractual rights,” and protection against the theft of encrypted satellite signals and the manufacture of, and trafficking in, tools to steal those signals.<sup>39</sup> The copyright section does not contain a provision regarding parallel imports of copyrighted works.<sup>40</sup> The Morocco FTA is the only agreement to date to address the treatment of parallel imports of copyrighted works.

## Patents

The patent section of the TPA provides a number of clarifications and improvements to the TRIPS agreement that generally reflect U.S. law and practice, although U.S. industry has expressed concern over several provisions.<sup>41</sup> Peru agreed to accede to the Patent Cooperation Treaty and ratify or accede to the International Convention for the Protection of New Varieties of Plants (also known as the Union for the Protection of New Varieties of Plants

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<sup>36</sup> Ibid., 4.

<sup>37</sup> “Whois” databases are the master directories for domain name registrations, providing a mechanism for finding contact and other registration information.

<sup>38</sup> ITAC 15, *Report on the U.S.-Peru TPA*, 10.

<sup>39</sup> *U.S.-Peru TPA*, articles 16.7.3 and 16.8.

<sup>40</sup> The United States does not provide border enforcement protection for parallel importations of copyrighted works.

<sup>41</sup> ITAC 15, *Report on the U.S.-Peru TPA*, 15.

### **Box 6-3** The WIPO Internet treaties

The WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) are often referred to as the “Internet Treaties” because they provide new international standards for the protection of copyrights and related rights in the digital economy. The two treaties entered into force on March 6, 2002, and May 20, 2002, respectively, once the required minimum 30 countries had ratified each. Peru ratified both of these treaties, as has the United States, which implemented them domestically via the Digital Millennium Copyright Act of 1998.

- ▶ The WCT provides that traditional means for copyright protection (for products such as books, movies, and software) should apply to works transmitted on the Internet or otherwise using digital media, technology, and protections.
- ▶ The WPPT similarly provides intellectual property protections to producers of sound recordings, as well as performers, with respect to works on the Internet or in connection with the use of digital technology and media.
- ▶ Both treaties clarify that traditional rights of reproduction continue to apply in the digital environment, including the storage of material in digital form on an electronic medium.
- ▶ The treaties establish IPR holders’ rights to maintain control of their works over the Internet and other digital transmission of their works.
- ▶ The treaties ensure that rights holders can use digital rights management technology to protect their rights on the Internet. The treaties’ anticircumvention provisions address security and intellectual property infringement risks by requiring that signatories provide minimum levels of legal protection, including civil and criminal penalties, sufficient to deter the unauthorized circumvention of technological protection measures.
- ▶ The treaties require signatory countries to prohibit the intentional modification or removal of digital rights management information. This includes prohibitions against interfering with information and data that can be incorporated into the digital code of a protected work and used “to identify the work, its author, performer or owner, the terms and conditions for its use, and any other relevant attributes.”

Sources: Adapted, and parts excerpted, by Commission staff from information provided in the following sources: WIPO, “WIPO Copyright Treaty”; “WIPO Performances and Phonograms Treaty”; and Gibson, *WIPO Internet Copyright Treaties Coming Into Force*.

Convention) by January 1, 2008. Peru also agreed to provide patent protection for transgenic<sup>42</sup> plants that meet the three-step test,<sup>43</sup> as prescribed in the TRIPS agreement, but did not agree to provide protection for transgenic animals.<sup>44</sup> Peru agreed to place restrictions on how a third party may use a patented invention to generate data needed for the marketing approval of generic pharmaceutical products. Article 16.9.6 compensates for delays in patent approval at the patent office of either country. The patent section does not contain restrictions on compulsory licensing, parallel imports, and pre-grant opposition, nor does it require the protection of “second-use” patents.<sup>45</sup>

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<sup>42</sup> The term “transgenic” describes an organism that has had genes from another organism put into its genome through recombinant DNA techniques.

<sup>43</sup> The “three-step test” refers to TRIPS article 27.1, which states, “Patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step, and are capable of industrial application.”

<sup>44</sup> *U.S.-Peru TPA*, article 16.9.2; and ITAC 15, *Report on the U.S.-Peru TPA*, 16.

<sup>45</sup> *Ibid.*

## **Measures Related to Certain Regulated Products**

The provisions of the TPA clarify the obligations in TRIPS article 39.3 with respect to data exclusivity and provide for additional protection with respect to pharmaceutical products subject to a patent.<sup>46</sup> Of particular importance, article 16.10.1(a) imposes an obligation of “non-reliance” on either the originator’s approval or the originator’s data package itself for a period of at least 5 years from the date of approval for a pharmaceutical product, and 10 years from the date of approval for an agricultural chemical product. The TRIPS agreement does not specify a time period for protection of confidential test data. This lack of clarity has led many countries to allow third parties to “rely” on the confidential test data to get marketing approval for their copy pharmaceuticals, which may be in violation of an innovator company’s patent. Like CAFTA-DR, the TPA includes a 5-year cap for seeking marketing approval. This cap was included to alleviate Peru’s—and previously Central America’s and the Dominican Republic’s—concerns that U.S. pharmaceutical companies would attempt to extend their period of exclusivity indefinitely by delaying seeking marketing approval in different countries.

In tandem with the patent section, this section does not include additional periods of nonreliance for new clinical information related to the new use of a previously approved chemical component. Article 16.10.2 clarifies that the period of protection for confidential test data submitted for marketing approval is independent from the period of protection granted for a patent. Article 16.10.3 requires Peru to implement measures in its marketing approval process to prevent generic drug approvals during the term of the patent covering the pharmaceutical product (i.e., “linkage”) and requires the mandatory disclosure of the identity of the generic applicant that seeks marketing approval to enter the market during the patent term.

## **Enforcement**

The full and effective implementation of the enforcement provisions is key to the success of this chapter. The updated protections afforded in this agreement will be of limited value to U.S. companies without the capability and willingness of the Peruvian government to enforce those standards. The enforcement obligations go well beyond TRIPS in scope and specificity, covering transparency and the dissemination of information, civil and administrative procedures and remedies, provisional measures, special requirements related to border measures, criminal procedures and remedies, and Internet service provider (ISP) liability. Of particular importance is article 16.11.23 that authorizes customs officials to seize suspect items, *ex officio*, without the requirement of a court order.

## **Side Letters and Understandings**

The IPR chapter includes several side letters or “understandings.” The ISP Side Letter details the specific administrative requirements for the notification to an ISP from a copyright holder who believes that infringing material is being posted by one of the ISP’s subscribers and counternotification from a subscriber who believes that removal or disabling of his or her material was a mistake or misidentification.

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<sup>46</sup> *U.S.-Peru TPA*, article 16.10.

The Retransmission Side Letter allows for consultations, at any time after the agreement has been in force for 2 years, to determine the continued applicability of the obligation set out in article 16.7.9 and whether, in light of technological and other relevant developments, it should be modified. The Understanding Regarding Certain Public Health Measures clarifies that the obligations in the IPR chapter do not adversely affect a country's ability to take necessary measures to protect public health by promoting access to medicines for all. Nor does it prevent the effective use of the TRIPS/health solution.

In addition to containing the Understanding, the TPA contains a side letter in which the United States confirms to Peru its view that the references to chapter 16 in the understanding include article 10 on Measures Related to Certain Regulated Products.<sup>47</sup> Although this is a highly unusual inclusion in an FTA, the letter serves only to clarify the understanding and does not impose any additional obligations beyond those already found in the understanding.

The TPA also includes an Understanding Regarding Biodiversity and Traditional Knowledge. The understanding encourages the sharing of information regarding genetic resources and traditional knowledge and the benefits derived from that information through mutually agreed contracts. This is the first time any language regarding biodiversity and traditional knowledge has been included in an FTA. While the understanding does not obligate either country, it creates a precedent for future FTAs and for the continuing discussion in WIPO. The United States has maintained that, because of the difficulty of defining and regulating these subjects, they are best addressed within the context of WIPO. Conversely, the inclusion of these subjects was of particular importance to the Andean countries.

### ***Views of Interested Parties***

Overall, the U.S. intellectual property industry (ITAC 15) supports the U.S.-Peru TPA. It notes, however, that although the Peruvian government has agreed to enhanced protections for IPR, these provisions will not provide stability for the U.S. and Peruvian intellectual property industries unless the Peruvian government has the political will to implement them fully and effectively.<sup>48</sup>

U.S. industry, as a general rule, does not like to see transition periods in FTAs, including those in the TPA. Other than the transition periods, the copyright industry's main cause for concern is the lack of a provision providing for the right of a copyright owner to prevent parallel imports.<sup>49</sup> This concern is mirrored by pharmaceutical and biotechnology industry representative members of ITAC 15 in the patent section regarding the lack of a provision providing for the right of a patent owner to prevent parallel imports of pharmaceuticals.<sup>50</sup> While it is a very important restriction for the U.S. copyright and pharmaceutical industries, it is important to note that the concepts surrounding parallel imports—including national versus international exhaustion—do not have consensus within the U.S. government, and parallel import provisions have been included only, to date, in the Morocco FTA. The pharmaceutical industry also expressed concern regarding the lack of provisions to prohibit pre-grant opposition and compulsory licensing, and the lack of protection for “second-use”

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<sup>47</sup> *U.S.-Peru TPA, Letter Regarding Certain Regulated Products.*

<sup>48</sup> ITAC 15, *Report on the U.S.-Peru TPA*, 18.

<sup>49</sup> *Ibid.*, 12–13.

<sup>50</sup> *Ibid.*, 16.

patents or the accompanying clinical data.<sup>51</sup> While U.S. industry largely supports the advances made in the enforcement chapter, they note that the proof will lie in the implementation of these new standards on the ground by police, prosecutors, judges, and the administrative agencies responsible for enforcement and implementation of the IPR protected in TRIPS and the TPA.<sup>52</sup>

Other associations have expressed support of the TPA with respect to its IPR and Biodiversity provisions. The International Intellectual Property Alliance (IIPA), which is a member of ITAC 15, specifically supports the U.S.-Peru TPA.<sup>53</sup> IIPA notes that “the Peru TPA offers a tool for encouraging compliance with other evolving international trends in copyright standards...as well as outlining specific enforcement provisions.” IIPA notes that copyright-based industries are among the fastest growing and most productive of any U.S. sector, and that effective protection and enforcement can reduce an estimated \$98 million in trade losses in Peru in 2005. IIPA also states that full implementation will benefit U.S. companies and assist in attracting foreign investment to Peru. The U.S.-Peru Trade Coalition also adds that, “The Peru Trade Promotion Agreement serves as a good model of how biodiversity protections can exist without encumbering the patent system, in part by recognizing that ‘access to genetic resource or traditional knowledge,’ and benefit sharing can be adequately addressed through contracts.”<sup>54</sup>

## **TPA Chapter 17—Labor<sup>55</sup>**

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### *Assessment*

Chapter 17 of the U.S.-Peru TPA is expected to have little effect on labor market provisions or on U.S.-Peru trade because of the chapter’s focus on the enforcement of existing regulations. The principal labor provisions of the agreement require the parties to effectively enforce their own existing labor laws (box 6-4) and enable parties to challenge the failure to enforce such laws under certain circumstances through consultations or the dispute settlement procedures established in chapter 21 of the TPA. Industry and labor groups have differing views regarding the adequacy and potential value of TPA labor provisions.

### *Summary of Provisions*

In the TPA, the United States and Peru each agrees to effectively enforce its respective labor laws while providing for reasonable exercise of discretion regarding such enforcement. This requirement is the only provision in chapter 17 that is enforceable through the dispute settlement provisions outlined in chapter 21 of the agreement. In addition, the parties recognize their respective right to create and modify domestic labor laws, and acknowledge that it is not appropriate to encourage trade or investment by weakening or reducing the

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<sup>51</sup> Ibid., 15–16.

<sup>52</sup> Ibid., 19.

<sup>53</sup> IIPA, written submission.

<sup>54</sup> USITC, hearing transcript, Mar. 15, 2006, 16–21; and U.S.-Peru Trade Coalition, written submission.

<sup>55</sup> Under the Trade Act of 2002, the U.S. Department of Labor (DOL) is responsible for the preparation of three reports that address the labor issues associated with each new FTA: (1) Laws Governing Exploitive Child Labor Report, (2) Labor Rights Report, and (3) United States Employment Impact Review. As of April 2006, the DOL had not published those reports related to the U.S.-Peru TPA. DOL, ILAB, “Labor-Related Reports for U.S. Free Trade Agreements.”

#### **Box 6-4 Labor market conditions in Peru**

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Peru has made progress toward the improvement of workers' rights protections in recent years, having passed new labor regulations and undertaken additional international obligations on labor standards. However, several groups indicate that problems persist in Peru's workers' rights regime, most notably with regard to the right to organize, freedom of association, and child labor.

As compared with the United States, Peru's labor market is small and is characterized by relatively high unemployment and low labor costs. Specifically, the Peruvian labor market comprised 10.7 million workers, posted an unemployment rate of 9.7 percent, and registered an average labor cost of \$1.28 per hour in 2003.<sup>1</sup> In that same year, the U.S. labor market comprised 149.4 million workers, had an unemployment rate of 6.0 percent, and had an average hourly labor cost of \$21.83.<sup>2</sup> The service sector is the principal employer in both countries, having accounted for 73 percent and 75 percent of total employment in Peru and the United States, respectively, in 2001.<sup>3</sup>

Peru has undertaken significant international obligations on labor standards, having ratified the eight fundamental International Labour Organization (ILO) conventions on workers' rights.<sup>4</sup> The ILO states that Peru has made progress toward improving labor standards in several areas, such as collective bargaining and the right to organize, freedom of association, and the rights of public-sector employees.<sup>5</sup> The U.S.-Peru Trade Coalition indicates that provisions on collective bargaining, the right to organize and strike, and prohibitions on child labor and forced labor are included in the Peruvian constitution.<sup>6</sup> The USTR notes that Peru has improved workers' rights protections and labor law enforcement in recent years. For example, Peru has increased the power of labor inspectors, provided for higher fines for workers' rights violations, and reduced or removed several limitations on the establishment, membership, and operation of unions.<sup>7</sup> Further, an industry representative from the agricultural sector indicates that inspections have improved in recent years, and that some farms have started to provide transportation to their employees.<sup>8</sup>

Despite these developments, several sources report continuing problems with the observance of labor standards in Peru. The U.S. Department of State has identified a number of workers' rights issues in Peru, such as inadequate protections for union activities and child laborers.<sup>9</sup> The ILO has noted Peru's progress in the application of labor standards, but has requested further improvements regarding, inter alia, the regulations governing the number of votes needed to declare a strike, efforts to eliminate instances of forced labor, and the implementation of measures related to pensions and health care.<sup>10</sup> A report published by the Institute for International Economics indicates that Peruvian workers are subject to restrictions on the ability to strike and engage in collective bargaining, as well as discrimination against unions.<sup>11</sup> Further, the AFL-CIO has provided testimony regarding several workers' rights violations in Peru, such as Peru's failure to implement several recent labor regulations, the reduction in the minimum worker age to 12 years, and the failure to adequately address incidents of forced labor.<sup>12</sup>

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<sup>1</sup> EIU, "Country Briefings: Peru"; and World Bank, *World Development Indicators*.

<sup>2</sup> EIU, "Country Briefings: United States"; and World Bank, *World Development Indicators*.

<sup>3</sup> World Bank, *World Development Indicators*.

<sup>4</sup> ILO, "Ratifications of the Fundamental Human Rights Conventions by Country."

<sup>5</sup> ILO, "General Report of the Committee of Experts."

<sup>6</sup> U.S.-Peru Trade Coalition, "Peru Strong Commitment to Labor Rights."

<sup>7</sup> USTR, "Real Results on Labor Rights."

<sup>8</sup> USITC, hearing transcript, Mar. 15, 2006, 105; and Barmmer, posthearing submission.

<sup>9</sup> U.S. Department of State, "Peru"; and Brevetti, "State Department Report Warns on Labor Rights Problems in Peru."

<sup>10</sup> ILO, "CEACR: Individual Observation Concerning Convention No. 87"; ILO, "CEACR: Individual Observation

protection afforded in those laws. The parties also reaffirm their obligations as members of the International Labour Organization (ILO), seek to make their domestic laws provide for standards consistent with internationally recognized worker rights, and strive to improve those standards.

Each party agrees to provide domestic tribunal proceedings, allowing persons with a recognized interest under its law in a particular matter to seek enforcement of its labor laws. Such proceedings must be fair, equitable, and transparent; adhere to due process of the law; and provide an opportunity for persons involved in such proceedings to support or defend their positions. Each party agrees to ensure independent review of tribunal actions, provide legal remedies to ensure enforcement, and promote public awareness of its labor laws. The TPA defines labor laws as statutes or regulations that directly relate to internationally recognized labor rights, including the right of association, the right to organize and bargain collectively, a ban on forced or compulsory labor, the protection of children and other young laborers, and standards on conditions of work, including minimum wages, hours of work, and occupational health and safety. The establishment of minimum wage standards and levels is specifically excluded from the definition of labor laws, as specified in this chapter.

The TPA establishes a Labor Affairs Council that will oversee the implementation of chapter 17 provisions, prepare public reports on the implementation of the chapter, develop guidelines for the consideration of input from persons of a party, and strive to resolve matters related to cooperative labor consultations. Each party is required to designate an office within its labor ministry to serve as a contact with the other party and the public. The TPA allows each party to establish or consult existing national labor advisory committees, which may include members of the public and representatives of business and labor. The TPA also creates a labor cooperation and capacity-building mechanism to further advance common commitments on labor matters, including the ILO Declaration of Fundamental Principles and Rights at Work and Its Follow-up and ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, and to enhance opportunities to improve labor standards.

A party can request consultations with another party on matters under this chapter with a view toward finding a mutually acceptable resolution. Failing to find a mutually acceptable resolution, a party can call upon the Labor Affairs Council to consider the matter, but TPA dispute settlement actions will not be allowed except for matters regarding a party's failure to enforce its own labor laws. A separate mechanism on disputes dealing with the failure to enforce labor laws (contained in chapter 21) can result in an annual assessment of up to \$15 million payable into a fund set up and administered by the Free Trade Commission (established under chapter 20) for appropriate labor initiatives.

### ***Views of Interested Parties***

U.S. advisory groups and other organizations differ in their views on the potential effect of TPA labor provisions and on whether the TPA meets established negotiating objectives.<sup>56</sup> The Advisory Committee for Trade Policy and Negotiations report states that the TPA fulfills U.S. negotiating objectives on labor issues, ensures that labor measures will not be employed as a disguised means of trade protection, and establishes an efficient

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<sup>56</sup> Under the Trade Act of 2002, U.S. negotiating objectives on labor issue include increasing the observance of core labor standards and eliminating or reducing regulations and measures that comprise sustainable development. USDOC, "The Trade Act of 2002."

implementation process.<sup>57</sup> The U.S. Chamber of Commerce and the U.S.-Peru Trade Coalition state that the TPA demonstrates U.S. support for workers' rights in the countries of the Andean region.<sup>58</sup> Further, the U.S.-Peru Trade Coalition contends that the TPA will have a positive effect on the Peruvian labor regime, as the agreement provides for substantial cooperation on labor issues, and because the enforcement of labor regulations, which is one of the principal concerns regarding the current state of workers' rights protection in Peru, is required under the TPA.<sup>59</sup>

By contrast, the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC) report states that the TPA does not fulfill U.S. negotiating objectives or protect the rights of U.S. or Peruvian workers, noting that, inter alia, the TPA does not obligate parties to adhere to international workers' rights standards, preclude the weakening or elimination of labor regulations. LAC further contends that insufficient safeguards fail to protect workers from possible import surges that may result under the TPA.<sup>60</sup> The AFL-CIO has identified a number of workers' rights violations in Peru, such as the failure to implement certain labor regulations and address instances of forced labor. The AFL-CIO also expresses concern regarding measures that require parties to enforce their own labor laws and to assess fines which are distributed back to the country in violation of the agreement. The AFL-CIO indicates that such measures are insufficient to protect workers' rights.<sup>61</sup> The AFL-CIO contends that the TPA's labor provisions do not guarantee the preservation of existing labor laws and do not require the parties to improve these laws.<sup>62</sup>

## **TPA Chapter 18—Environment<sup>63</sup>**

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### *Assessment*

Chapter 18 of the U.S.-Peru TPA is expected to have little effect on environmental provisions or on U.S.-Peru trade because of the chapter's focus on the enforcement of existing regulations. The environmental provisions in the U.S.-Peru TPA are similar to those in certain recent FTAs, such as the U.S.-Oman FTA and U.S.-Bahrain FTA, but exclude provisions included in CAFTA-DR. Differences include expanded and more specific public participation requirements, expanded access to opportunities for redress of violations of a party's environmental laws, a new Environmental Affairs Council to monitor and report on implementation, and a specific article intended to reflect the parties' support for biodiversity.

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<sup>57</sup> ACTPN, *The U.S.-Peru Trade Promotion Agreement*, 6–7.

<sup>58</sup> U.S.-Peru Trade Coalition, "Why Support the Peru Trade Promotion Agreement?" and U.S. Chamber of Commerce, "U.S. Chamber Welcomes U.S. Peru Trade Deal."

<sup>59</sup> U.S.-Peru Trade Coalition, "Peru's Strong Commitment to Labor Rights."

<sup>60</sup> LAC, *U.S.-Peru Free Trade Agreement*, 1.

<sup>61</sup> USTR, hearing transcript, 82–85.

<sup>62</sup> Samuel, "Legislative Alert!"

<sup>63</sup> In a mandate separate from the Commission's mandate, the USTR is tasked with providing an environmental review of the U.S.-Peru TPA. Although the USTR has not yet released its final environmental review of the U.S.-Peru TPA, it appears unlikely that the agreement will have significant environmental effects in the United States. Pursuant to the Trade Act of 2002 and the environmental review guidelines, the USTR reported to Congress in February 2005 on the probable environmental effects on the United States of a broader U.S.-Andean FTA. In its report, the USTR stated that such an FTA would be unlikely to result in any significant economically driven environmental effects in the United States but that it may have positive environmental consequences for Peru. The USTR added that such an FTA would not be expected to have a negative effect on the ability of U.S. government authorities to enforce or maintain U.S. environmental laws or regulations.

Specific U.S. trade-negotiating objectives regarding environmental matters were (1) to promote trade and environment policies that are mutually supportive, (2) to seek an appropriate commitment by Peru to effectively enforce its environmental laws, (3) to strengthen the capacity of Peru to protect the environment by promoting sustainable development, and (4) to seek market access for U.S. environmental technologies, goods, and services.<sup>64</sup>

### ***Summary of Provisions***

Under the U.S.-Peru TPA, each party must ensure that its environmental protection laws provide for high levels of protection and strive to improve those laws, provide appropriate and effective remedies and sanctions for violations of environmental protection laws, provide opportunities for public participation, and promote public awareness of its environmental laws. The parties agree that trade or investment should not be encouraged by weakening or reducing domestic legal protections. To that end, the parties agree to ensure that domestic judicial, quasijudicial, or administrative proceedings should be available to sanction or remedy violations of environmental laws. Such proceedings must be fair, open, and equitable; comply with due process of law; and provide access to persons with a recognizable legal interest.

The parties agree to establish an Environmental Affairs Council that will meet to consider the implementation of the environmental provisions and the separate Environmental Cooperation Agreement (ECA), and to strive to resolve any controversies that may arise regarding the environmental provisions. There is a draft text of a memorandum of understanding between the parties concerning environmental cooperation, including exchanges of experts or students and a joint forum of government officials that will meet regularly to arrange and administer the various shared activities.

The parties agree to pursue cooperative environmental activities and provide for environmental consultations, but neither party will have recourse to dispute settlement for any matter arising under this chapter except for each party's commitment to enforce its respective domestic laws. A separate mechanism on disputes dealing with environmental claims could result in an annual assessment of up to \$15 million, payable into a fund jointly administered by the two governments for "appropriate environmental initiatives." The parties recognize the importance of conservation and sustainable use of biological diversity, and the preservation of traditional knowledge and practices that contribute to this objective. The parties also commit to working in multilateral forums to enhance the mutual supportiveness of multilateral environmental and trade agreements.

### ***Views of Interested Parties***

The Advisory Committee for Trade Policy and Negotiations (ACTPN) report states that the environmental provisions of the U.S.-Peru TPA meet Congressional environmental objectives. The ACTPN endorses the environmental provisions of the TPA and believes they provide effective ways of contributing to environmental improvement.<sup>65</sup> The ACTPN also supports the establishment of the Environmental Cooperation Commission created under

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<sup>64</sup> USTR, "Letter of Notification to Congress of Intent to Negotiate FTA with Andean Countries," 5.

<sup>65</sup> ACTPN, *The U.S.-Peru Trade Promotion Agreement*, 7.

the ECA, which is intended to strengthen the ability to implement and enforce environmental laws, increase public participation, and promote clean technologies.

Overall, the Trade and Environment Policy Advisory Committee (TEPAC) reports that a majority of the committee members believe that the U.S.-Peru TPA provides adequate safeguards that U.S. environmental negotiating objectives will be met.<sup>66</sup> Although a majority of TEPAC members consider that the public participation provisions in the TPA are acceptable, TEPAC is concerned that the public participation provisions do not go as far as they should and fell short of the public participation framework in CAFTA-DR. A majority also believe that the dispute resolution procedures are sufficient to meet U.S. environmental negotiating objectives, that the monetary penalties in the TPA (up to \$15 million per year for noncompliance with rulings confirming violations of enforcement requirements) are adequate, and that the ECA is a reasonable basis for the fulfillment of objectives regarding capacity building and sustainable development. The minority's differing views highlighted concerns that the increased oversight of environmental issues stemming from increased trade, the use of the "more extensive environment provisions" of other FTAs as a template for Peru, and the integration of the Memorandum of Understanding on environmental capacity building were not necessary.<sup>67</sup>

## **TPA Chapter 19—Transparency**

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### *Assessment*

Transparency improvements already underway in Peru pair well with transparency commitments in the TPA. Additional transparency-related measures in the TPA in regulatory sectors vital to trade, such as investment rules and enforcement and tax authority, may result in additional benefits for U.S. firms. The TPA's transparency requirements reflect broad and ongoing U.S. government efforts and support existing transparency-related reforms by the government of Peru. The U.S.-Peru TPA continues U.S. efforts to obtain bilateral commitments to transparency disciplines for domestic regulation, though several of these provisions will not take effect until 2 years after the agreement's entry into force. Such commitments reportedly bind TPA partners to transparency disciplines that have been extensively tested and very widely applied by the U.S. government.<sup>68</sup> As with recent FTAs, the provisions within the U.S.-Peru TPA regarding transparency and the participation of civil society in settling trade dispute cases are reportedly significant improvements over historical practices.<sup>69</sup>

Transparency-related provisions of the TPA can support increased U.S.-Peru trade and investment. In Peru, many government entities with which foreign businesses frequently interact have relatively transparent and predictable procedures. For example, banks, insurance companies, and private pension funds are regulated primarily by the Superintendency of Banking and Insurance, which is also seen as being transparent.<sup>70</sup> However, industry representatives report that regulations affecting foreign trade and

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<sup>66</sup> TEPAC, *The U.S.-Peru Trade Promotion Agreement*, 2.

<sup>67</sup> *Ibid.*, 3.

<sup>68</sup> ITAC 10, *The U.S.-Peru Free Trade Agreement*.

<sup>69</sup> TEPAC, *The U.S.-Peru Trade Promotion Agreement*.

<sup>70</sup> U.S. Department of State, *2005 Investment Climate Statement—Peru*.

investment are at times uneven and opaque. Rulings and enforcement can be slow, ambiguous, and unpredictable. Consequently, business transactions in Peru can involve cumbersome and complex procedures and regulations that may cause delays, increase costs, and leave foreign firms at a competitive disadvantage. U.S. firms have also noted that Peru's autonomous tax authority's business practices are often contrary to the spirit of the law and intent of government policies, and thereby complicate normal business operations.<sup>71</sup> Legislation has been enacted to improve the situation, but trade barriers related to tax issues remain.<sup>72</sup>

### ***Summary of Provisions***

Chapter 19 of the U.S.-Peru TPA enhances and ensures communication and disclosure between parties. For example, the chapter requires each party to make publicly available all laws, regulations, and procedures regarding any matter covered by the agreement. Each party is to establish or maintain procedures to provide review and appeal capabilities to the entities that will be directly affected by actions, rulings, measures, or procedures under the TPA. Such tribunals are to be impartial and independent, and empowered to correct the final administrative actions of the TPA. Generally, such rights already exist under U.S. law. The chapter also includes anticorruption provisions that seek to improve trading environment by requiring each party to establish criminal prosecution and penalty procedures for bribery and corruption. Specific commitments obligate public officials of each party to protect informers and to work in other international forums to aid and support anticorruption provisions. Each government will also be required to establish transparent procedures for registering trademarks, including GIs.

### ***Views of Interested Parties***

U.S. industry favors promoting independent regulatory authorities and transparency in the regulatory process. Industry also has strong views on market access and transparency in government procurement, to the extent that U.S. representatives have proposed a WTO agreement on transparency in government procurement. Industry also encourages an overall effort to ensure that product testing, licensing and certification requirements, certificate of origin mandates, and customs procedures are fair, transparent, and streamlined.<sup>73</sup>

## **TPA Chapter 21—Dispute Settlement**

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### ***Assessment***

Chapter 21 of the TPA is expected to buttress the potential market access effects of the TPA in part by developing a conducive environment for dispute settlement. The dispute panel procedures of the U.S.-Peru TPA require that hearings be open and public, that the public has access to the legal submissions of the parties to the panel, and that interested parties have the opportunity to submit views to the panel. The major obligations of the TPA, including labor and environment matters, are subject to the dispute settlement provisions of the TPA. The dispute settlement provisions also require the use of special labor or environmental

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<sup>71</sup> US&FCS and U.S. Department of State, *Doing Business In Peru*.

<sup>72</sup> USITC, hearing transcript, Mar. 15, 2006, 44.

<sup>73</sup> ITAC 8, *The U.S.-Peru Trade Promotion Agreement*.

expertise for disputes in these areas. The dispute settlement provisions emphasize the use of consultations and trade-enhancing remedies to promote compliance. The enforcement mechanism includes the use of monetary assessments, as well as trade retaliatory measures.

### ***Summary of Provisions***

Under this chapter, although the parties commit to consult and cooperate on TPA matters, one party can invoke dispute settlement if it believes the other has a TPA-inconsistent measure, has failed to carry out a TPA obligation, or that a benefit it reasonably expected has not been given. Parties can refer issues to the Free Trade Commission (established in chapter 20) for resolution or arbitration; matters can also be referred to the WTO or other forums available to both parties. Once a panel constituted under the chapter has supplied its final report, the report will be made public and the parties will be obliged to agree on the resolution of the dispute in question in a manner “which normally shall conform with the determinations and recommendations, if any, of the panel.” Absent agreement to resolve the issues, compensation can be negotiated. If nonimplementation of the agreed outcome is evident, the complainant can advise the other party that it intends to suspend benefits of equivalent effect. Certain matters—such as labor laws and environmental laws—are treated separately. In such situations, “an annual monetary assessment” set in U.S. dollars (not to exceed \$15 million annually, adjusted for inflation, paid into a fund relating to the pertinent area at issue) can be imposed on the violating party. These assessments will be spent, as directed by the Free Trade Commission, on appropriate labor or environmental initiatives.

This chapter also contains provisions directing compliance reviews and 5-year reviews under the TPA. Matters under the TPA can be referred to the Free Trade Commission from judicial or administrative proceedings of a party. Also, “no Party may provide for a right of action under its domestic law against any other Party on the ground that a measure of another Party is inconsistent with this Agreement.” The chapter also states that parties will encourage the use of alternate dispute resolution to settle international commercial disputes between private parties in the free trade area and authorizes the commission to establish an advisory panel on private commercial disputes. Actions relating to excepted matters cannot be taken. The chapter contains administrative procedures for requesting a panel, establishing a roster of panelists, selecting panelists, and issuing reports.

### ***Views of Interested Parties***

Industry response to the dispute settlement provisions is generally favorable. The Advisory Committee for Trade Policy and Negotiations (ACTPN) states that the provisions meet the requirements of the Trade Act of 2002 and maintain the high standard of other U.S. agreements, especially regarding transparency.<sup>74</sup> However, the Trade and Environment Policy Advisory Committee comments that the provisions regarding public submissions to a dispute panel are less clearly worded than the equivalent provisions of the CAFTA-DR and Australia FTAs.<sup>75</sup>

The Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC) criticizes the dispute settlement provisions, stating that the U.S.-Peru TPA is a step backward from the Jordan FTA and U.S. trade preference programs such as the GSP. LAC believes that the TPA

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<sup>74</sup> ACTPN, *The U.S.-Peru Trade Promotion Agreement*.

<sup>75</sup> TEPAC, *The U.S.-Peru Trade Promotion Agreement*.

procedures “exclude enforceable obligations for governments to meet international standards on workers’ rights” and do not contain enforceable provisions to prevent countries from waiving or weakening existing labor laws to increase trade. LAC also raises concerns about potential use of monetary assessments instead of trade sanctions because the assessments are capped at an absolute level irrespective of the level of harm. LAC also notes that the caps and possibility of trade sanctions are lower for labor disputes.<sup>76</sup> However, the ACTPN favors the use of the monetary assessments in lieu of trade retaliatory measures.<sup>77</sup>

In addition, Exporamerica, a private association of Peruvian apparel exporters based in Lima, whose stated objective is to promote increased trade between Peru and the United States, states that “the PTPA contemplates a dispute settlement mechanism, designed to provide security to U.S. investors in Peru given that any controversy will be resolved on a fair and equitable basis, without the intervention of political or other considerations in the settlement of disputes.”<sup>78</sup>

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<sup>76</sup> LAC, *The U.S.-Peru Trade Promotion Agreement*.

<sup>77</sup> ACTPN, *The U.S.-Peru Trade Promotion Agreement*.

<sup>78</sup> Paz-Soldan on behalf of Exporamerica, written submission.

# CHAPTER 7

## Summary of Views of Interested Parties

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### Eduardo Ferrero, Ambassador to the United States from Peru<sup>1</sup>

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Ambassador Ferrero characterized the U.S.-Peru TPA as a “highly beneficial agreement for the people of both countries.” He cited the historically strong and growing U.S.-Peru trade and investment relationship; the United States is Peru’s largest trading partner and its largest source of foreign direct investment.

Noting the size discrepancy between the United States and Peru in population, GDP, and total trade, the ambassador expressed the view that, “our trade has no real negative impact in the U.S. economy, and on the contrary, we believe it is mutually beneficial.” Major U.S. imports from Peru are minerals, textiles and apparel, and counterseasonal products such as paprika, mangoes, and artichokes, whereas major U.S. exports to Peru are machinery, plastics, wheat, oil, and cotton. He said that although Peru has had largely duty-free access to the U.S. market under APTDEA, the U.S.-Peru TPA “would lock in the benefits of the ATPDEA with additional binding rules.” Also, in light of the tariffs faced by U.S. exports to Peru, the ambassador said that “one of the most important effects of the PTPA is the leveling of the playing field,” and highlighted opportunities for U.S. exports, especially in the areas of agriculture (wheat and cotton), machinery, electronics, and vehicles.

The ambassador said that the TPA would bring additional benefits beyond the liberalization of goods and services trade. For example, he said that it could foster a “safe, predictable and stable environment for investors,” fight drug trafficking, and increase transparency by binding provisions on government procurement and customs administration. He added that such factors could help to reduce poverty, create jobs, promote democracy and stability, and reduce corruption. He concluded that the TPA “is truly a win-win case for all parties that will enhance the partnership, cooperation and friendship between Peru and the United States.”

### American Apparel & Footwear Association<sup>2</sup>

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The American Apparel & Footwear Association (AAFA), a national organization representing firms that produce and market apparel and footwear in the United States and abroad and their suppliers, states that it believes the U.S.-Peru TPA will have no impact on the U.S. economy. The AAFA notes that the presence of restrictive and cumbersome textile and apparel rules of origin will deter the development of trade and that the overall impact in this sector will be marginal. The AAFA states that it supports the agreement's provisions for footwear, which ensure that the growth in footwear trade between the United States and Peru, started under ATPDEA, will continue.

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<sup>1</sup> Eduardo Ferrero, ambassador to the United States from Peru, testimony before the U.S. International Trade Commission, Mar. 15, 2006.

<sup>2</sup> Kevin M. Burke, president and CEO, American Apparel & Footwear Association, written submission, Apr. 17, 2006.

The AAFA states that the TPA contains very restrictive, and in many cases, unworkable rules of origin for apparel and textiles, which it believes represents a missed opportunity to preserve and expand the region's apparel and textile industries. The AAFA notes many of the forward-looking provisions contained in CAFTA-DR that create export opportunities for U.S. textile firms and that ensure that the region has the tools it needs to compete, such as cumulation, an ample short supply list, single transformation for key products, a yarn-forward rule on essential character, and inclusion of all apparel and textile products, are absent from the TPA. The AAFA is also concerned that a possible gap between the expiration of ATPDEA and the implementation of the TPA could erode existing trade between the United States and Peru, and could create huge costs and disincentives for industry. The resulting uncertainty about the duty-free environment of the TPA could drive business out of the region. Finally, because the FTAs with Peru and Colombia currently are on separate tracks, the AAFA notes that the sharing of inputs between the countries will be prohibited, which could disrupt the existing regionally-based industry partnership.

## **Council of the Americas<sup>3</sup>**

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The Council of the Americas is a New York-based business organization representing approximately 175 companies invested in and doing business throughout the Western Hemisphere. The Council states that it represents the majority of the U.S. private investment in Latin America. Its goal is to promote free trade and investment, open markets, democracy, and the rule of law throughout the Americas, with the ultimate trade-related goal of a hemispheric free trade area such as the FTAA.

The council strongly supports the U.S.-Peru TPA. The council views the TPA as moving an existing unilateral trade relationship in which Peru has had substantial duty-free access to the U.S. market, to a reciprocal relationship that opens the Peruvian market to U.S. exports. Another benefit cited by the council is improved discipline in the areas of services, investment, and government procurement that should enhance transparency and accountability, encourage foreign investment, reinforce the democratic process, and reduce corruption. In addition to noting the efforts of the Peruvian government in addressing investment disputes in preparation for the TPA, the council emphasized the TPA's effect on the climate for U.S. investment, commenting that the TPA "provides cutting edge protections which, when fully implemented, will give greater confidence to investors." The council also highlighted the role the TPA plays in the larger goal of enhanced regional integration, especially in the Andes.

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<sup>3</sup> Eric P. Farnsworth, vice president, Council of the Americas, testimony before the U.S. International Trade Commission, Mar. 15, 2006, and posthearing submission, Mar. 29, 2006.

## **Exporamerica<sup>4</sup>**

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Exporamerica, a private association of Peruvian apparel exporters based in Lima, whose aim is to promote increased trade between Peru and the United States, strongly supports the TPA. Exporamerica states that the TPA builds on the benefits of the ATPA and will expand the thriving relationship between the U.S. and Peruvian textile and apparel industries. Exporamerica asserts that strengthening the strategic alliance between Peru and the United States will enable both countries to compete more effectively against Chinese and other Asian suppliers.

Exporamerica cites the importance of the textile and apparel sector to the Peruvian economy—it represents about 10 percent of Peru's total exports and accounts for nearly 20 percent of Peru's manufacturing jobs. Peru's apparel industry allows for substantial value added because it is vertically integrated through the productive chain and specializes in "full package" production. Exporamerica emphasizes that increasing U.S.-Peru textile and apparel trade will benefit the United States because Peru already imports about 50 percent of its total cotton consumption from the United States. Given Peru's shortfall of cotton production for use in export garments, Peru will likely increase its imports of U.S. cotton fiber when the TPA is implemented. The immediate elimination of Peru's import duties on U.S. cotton, synthetic fibers, and yarns and fabrics will help boost U.S. exports of these products and ultimately make Peruvian apparel more price competitive in the U.S. market. The growth of U.S. imports of apparel from Peru will generate benefits to the U.S. economy across the entire transportation, distribution, and retail chain, and to the U.S. consumer in terms of cost savings.

## **General Mills-Green Giant<sup>5</sup>**

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General Mills-Green Giant (GM-GG) is a Delaware corporation with headquarters in Minneapolis, Minnesota. General Mills has owned Green Giant, which produces and distributes frozen and canned vegetables, since 2001. GM-GG believes that, once implemented, the TPA will provide long-term economic benefits to consumers, manufacturers, and producers in both the United States and Peru, particularly with respect to trade in prepared or preserved (canned) asparagus.

Green Giant sources vegetables from around the world. In assessing the source of any individual product, Green Giant considers cost of production, regional processing methods, availability, and cost of transportation (including duties), among other factors. In June 2005, Green Giant began to source asparagus from Peru, particularly because of the year-round growing season and local processing innovations such as glass-jarred asparagus, which is not available from other suppliers. If duties had been retained on U.S. asparagus imports from Peru, GM-GG states that it would have considered China and Mexico as other viable options. Regardless of the duty status of U.S. imports of canned asparagus from Peru, GM-GG does not consider domestically-canned asparagus a financially viable option.

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<sup>4</sup> Carlos Mateo Paz-Soldan, Schmeltzer, Aptaker, & Shepard, P.C., written submission on behalf of Exporamerica, Mar. 30, 2006.

<sup>5</sup> Jeffery A. Shapiro, Washington representative, General Mills-Green Giant, written submission, Mar. 16, 2006.

## **International Intellectual Property Alliance<sup>6</sup>**

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The International Intellectual Property Alliance (IIPA) is a coalition of seven trade associations that report representing a significant segment of the U.S. copyright-based industries that collectively account for 6 percent of the U.S. gross domestic product. It represents more than 1,900 companies producing and distributing materials protected by copyright laws throughout the world. These companies include those producing all types of computer software; theatrical films, television programs, home videos, and digital representations of audiovisual works; music, records, CDs, and audio cassettes; and textbooks, trade books, reference and professional publications, and journals (in both electronic and print media).

The IIPA supports the U.S.-Peru TPA and advocates for the full and effective implementation of the agreement by date of entry into force. If Peru implements the agreement as intended, the IIPA is hopeful that its concerns regarding lack of effective enforcement, both administrative and criminal, will be addressed. The IIPA is recommending that Peru be maintained on the Special 301 Watch List<sup>7</sup> for 2006. The copyright industry estimates the level of piracy for records and music in Peru at 98 percent, one of the highest in the world, and for business software at 73 percent. The IIPA adds that there are also very high levels of book, audiovisual, and entertainment software piracy.

Although Peru's laws are generally consistent with TRIPS and the WIPO treaties, there are significant areas where new legislation will be required in order for Peru to comply with the requirements of the TPA. Besides new legislation required to improve enforcement, the IIPA recommends more police actions against pirates and counterfeiters, especially at the black markets in Lima; increased resources and training for enforcement officials; active pursuit of piracy cases by prosecutors; deterrent sentences and fines; and improved border controls. The IIPA also recommends improved communication and coordination between INDECOPI and SUNAT, the national tax authority.

## **National Asparagus Council<sup>8</sup>**

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The National Asparagus Council (NAC) represents the interests of U.S. asparagus growers and consists of the executive directors and board members of the Michigan Asparagus Advisory Board, the Washington State Asparagus Commission, and the California Asparagus Commission. NAC submitted that U.S. asparagus growers have been economically injured as a result of ATPA duty-free access for U.S. imports of Peruvian asparagus, which will be made permanent by the TPA. NAC believes that increased Peruvian exports to third-country markets have destroyed the market for U.S. asparagus exports. Furthermore, NAC claims that increased U.S. imports of Peruvian asparagus have prevented displaced U.S. processing asparagus from entering the fresh market.

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<sup>6</sup> Maria Strong, vice president and general counsel, IIPA, written submission, Mar. 28, 2006.

<sup>7</sup> Section 301 is the statutory means by which the United States asserts its international trade rights, including its rights under WTO agreements. In particular, under the "Special 301" provisions of the Trade Act of 1974, the USTR identifies trading partners that deny adequate and effective protection of intellectual property or deny fair and equitable market access to U.S. artists and industries that rely upon intellectual property protection. The Special 301 provisions are codified at 19 U.S.C. § 2411 et seq.

<sup>8</sup> John Bakker, National Asparagus Council, and Alan Schreiber, Washington Asparagus Commission, written submission, Mar. 28, 2006.

NAC states that imports of fresh Peruvian asparagus have increased from about 4 million pounds annually before ATPA to the current total of more than 87 million pounds annually. Similarly, U.S. imports of processed asparagus from Peru have increased from 500,000 pounds in 1990 to more than 12 million pounds in 2005. Asparagus processors that annually canned 55 million pounds of Washington State asparagus have relocated to Peru, displacing production and workers. In 3 of the last 5 years, Michigan producers have sold asparagus at prices below the cost of production to retain Michigan's asparagus processing industry. Significant volumes of Peruvian asparagus enter the U.S. market during the domestic growing season, with large portions of the United States, primarily the Southeast and East Coast, relying on Peruvian asparagus throughout the year. NAC attributes decreased U.S. asparagus acreage, from about 90,000 before ATPA to fewer than 53,000 acres in 2004, to increased U.S. imports of Peruvian asparagus. While NAC agrees that U.S. consumers have benefited from ATPA duty-free access for U.S. imports of Peruvian asparagus, NAC believes that these benefits have come at a high cost to domestic asparagus growers and rural communities in California, Washington, and Michigan.

## **Peruvian Asparagus Importers Association<sup>9</sup>**

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The Peruvian Asparagus Importers Association (PAIA) represents 24 U.S. companies that import and distribute fresh asparagus from Peru. PAIA estimates that U.S. imports of Peruvian fresh asparagus directly and indirectly generate 5,000 U.S. jobs. PAIA strongly supports implementation of the TPA, asserting that it will provide tangible and significant economic benefits for both the United States and Peru. PAIA detailed how duty-free treatment of Peruvian asparagus under ATPA resulted in pronounced economic benefits to U.S. consumers, U.S. importing companies, U.S. distributors, and other companies involved in the distribution of fresh asparagus in the United States. Furthermore, PAIA believes that, without the TPA, the loss of duty-free treatment associated with the scheduled expiration of ATPA on December 31, 2006, for fresh asparagus imports from Peru will result in discernible economic harm to these parties.

PAIA estimates that the majority of value generated by imports of fresh Peruvian asparagus accrues to U.S. companies. Of the \$300 million of revenue generated by fresh asparagus imports from Peru in 2003, PAIA estimates that 70 percent, or \$210 million, accrued to U.S. companies, including companies involved in transportation, storage, wholesale distribution, and retail distribution. Furthermore, PAIA believes that imports of fresh Peruvian asparagus are largely counterseasonal to U.S. production, and benefit U.S. consumers by providing year-round availability; 85 percent of U.S. imports from Peru occur from July through January. PAIA believes that U.S. asparagus imports from Peru from February through June are also largely complementary to production in California and Washington because most Peruvian asparagus enters via the port of Miami and is predominately sold in East Coast markets, which are difficult and costly to supply from California or Washington. PAIA directly attributes increased consumption, from 0.6 pounds in 1995 to 1.1 pounds in 2003, to year-round availability associated with imports of fresh asparagus from Peru. Finally, PAIA states that the TPA does not extend additional benefits to U.S. imports of Peruvian asparagus and will preserve the benefits that have accrued to Peruvian exporters as well as

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<sup>9</sup> John-Campbell Barmmer, vice chairman, PAIA, and director of marketing, Chestnut Hill Farms, testimony before the U.S. International Trade Commission, Mar. 15, 2006, and posthearing submission, Mar. 29, 2006.

U.S. consumers, importers, and distributors as a result of nearly 15 years of duty-free access under ATPA.

## **Peruvian Asparagus and Vegetables Institute<sup>10</sup>**

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The Peruvian Asparagus and Vegetables Institute (Instituto Peruano del Espárrago y Hortalizas (IPEH)) represents the firms and associations in Peru that produce and export asparagus, artichokes, peppers, pimientos, and paprika. U.S. imports of the products produced and exported by IPEH members were valued at more than \$183 million in 2005—71 percent consisted of fresh, chilled, and preserved asparagus; 15 percent consisted of dried, crushed, or ground paprika; and 12 percent consisted of fresh and preserved artichokes. The IPEH supports the TPA and believes that it will result in substantial economic benefits for both Peru and the United States.

The IPEH believes that ATPA has provided remarkable benefits to Peruvian agriculture, including economic development that offers alternative employment to the production of illegal narcotics, and that the TPA will allow these benefits to continue and increase. The IPEH states that the Peruvian asparagus industry provides employment for 60,000 workers, many of whom come from areas where coca was traditionally produced. Furthermore, the IPEH indicates that the Peruvian asparagus industry complies with rigorous international standards on labor and environmental management. The IPEH suggests that the asparagus industry has been used as a model to develop other export-oriented agricultural production sectors, including artichokes, peppers, mangoes, and grapes. Artichoke exports have grown rapidly and are expected to exceed \$65 million in 2006; historically, about 50 percent of exports have been to the United States. The paprika industry, with total 2005 exports of close to \$100 million, employs approximately 8,000 workers.

The IPEH believes that trade in these products also benefits the U.S. economy. U.S. consumers benefit from year-round availability of asparagus. U.S. carriers, importers, handlers, and distributors benefit because the IPEH estimates that 70 percent of the retail value of Peruvian exports of these products accrues to U.S. firms. Furthermore, U.S. exporters of seeds, fertilizers, and pesticides benefit as Peruvian growers purchase inputs from U.S. suppliers. Finally, the IPEH points out that the TPA does not increase the level of preferential treatment afforded to U.S. imports of these products from Peru but simply maintains the treatment that has been in place for nearly 15 years.

## **Travel Goods Association<sup>11</sup>**

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The Travel Goods Association (TGA), a national organization representing manufacturers, distributors, and retailers of luggage, leather goods, business and travel accessories, business and computer cases, handbags, and other products for people who travel. The TGA does not support the U.S.-Peru TPA. The TGA states that the TPA has highly restrictive provisions on textile travel goods and consequently the TPA's impact on the U.S. economy—particularly concerning the travel goods sector—will be marginal. Unlike CAFTA-DR, which the TGA asserts has travel goods provisions that allow sufficient

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<sup>10</sup> Carlos Mateo Paz-Soldan and John B. Totaro, Jr., Schmeltzer, Aptaker, & Shepard, P.C., written submission on behalf of the Peruvian Asparagus and Vegetables Institute (Instituto Peruano del Espárrago y Hortalizas), Mar. 29, 2006.

<sup>11</sup> Michele Marini Pittenger, president, Travel Goods Association, written submission, Mar. 30, 2006.

production flexibility to enable the region to compete, including the "cut and sew" rule for travel goods, the TPA's highly restrictive rules prevent U.S. travel goods companies from being able to use the best available inputs.

The TGA urges trade negotiators to craft the TPA so that it provides reciprocal and immediate duty-free access for all travel goods, whether textile or nontextile, under a single, simple, and flexible substantial transformation rule of origin. This modification would allow Andean and U.S. travel goods manufacturers to compete effectively in the U.S. and Andean markets against travel goods imports from Asia and elsewhere.

## **U.S.-Peru Trade Coalition, U.S. Chamber of Commerce, and the Association of American Chambers of Commerce in Latin America<sup>12</sup>**

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The U.S.-Peru Trade Coalition is a broad-based group of over 100 U.S. companies, farmers, business organizations and other groups, and it claims to represent the largest and most dynamic sectors of the U.S. economy. The U.S. Chamber of Commerce is the world's largest business federation, representing three million businesses of every size, sector, and region. The Association of American Chambers of Commerce in Latin America represents 23 American chambers of commerce in 21 Latin American and Caribbean nations, and its 20,000 member companies represent more than 80 percent of all U.S. investment in the region.

The groups' support the U.S.-Peru TPA, stating that it will "promote sustainable economic growth in the Western Hemisphere"; "substantially improve market access for American products, industrial and other nonagriculture goods, and services in Peru"; and "expand two-way trade opportunities and lift employment and living standards in both countries." A spokesman noted that "nearly all tariffs on U.S. manufactured goods would be eliminated on the first day that the agreement goes into effect," which would redress the current difference in average tariffs faced by U.S. exporters to Peru versus Peruvian exporters to the United States. He further noted that Peru and the region present "significant market potential," particularly in certain manufacturing sectors (growth areas include petroleum and coal products; furniture-related products; and boilers, tankers, and shipping containers), agriculture, and services. The groups' spokesman said that the TPA would also benefit Peru by making permanent Peru's preferential access to the U.S. market. He also cited certain parts of the TPA that he said will foster foreign direct investment into Peru, including intellectual property protection, investment protection, dispute settlement, and regulatory transparency. The posthearing submission from the U.S.-Peru Trade Coalition included an assessment of the benefits of and/or statements regarding the TPA for entities representing various sectors including agriculture (farming, meat, and sugar); cotton and textile; distilled spirits; entertainment; express delivery; food/grocery; hi-tech; manufacturing; pharmaceuticals; and various services (telecommunications, financial, distribution, computer, transport, audiovisual and entertainment, energy, construction and engineering, tourism, and advertising).

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<sup>12</sup> Tom Gales, vice president, Latin America Division, Caterpillar, Inc., testimony before the U.S. International Trade Commission, Mar. 15, 2006, and U.S.-Peru Trade Coalition, posthearing submission, Mar. 29, 2006. On behalf of these three groups, Mr. Gales testified at the Commission hearing and the U.S.-Peru Trade Coalition provided the posthearing responses and comments.



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**APPENDIX A**  
**REQUEST LETTER FROM THE USTR**

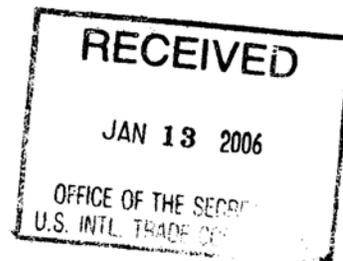
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EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

DOCKET NUMBER <b>2465</b>
Office of the Secretary U.S. Trade Commission

JAN 6 2006



The Honorable Stephen Koplan  
Chairman  
U.S. International Trade Commission  
500 E Street, S.W.  
Washington, D.C. 20436

Dear Chairman Koplan:

As you know, the United States and Peru recently completed the negotiation of the United States—Peru Trade Promotion Agreement, a comprehensive free trade agreement. The advice that the U.S. International Trade Commission ("Commission") provided over the course of these negotiations assisted us greatly in bringing the negotiations to a successful conclusion.

The President notified Congress of his intent to enter into this Agreement with Peru on January 6, 2006. Pursuant to authority delegated to me by the President and in accordance with section 2104(f) of the Trade Act of 2002 (Trade Act), I request the Commission to prepare a report as specified in section 2104(f)(2)-(3) of the Trade Act assessing the likely impact of the Agreement on the United States economy as a whole and on specific industry sectors and the interests of U.S. consumers.

I would greatly appreciate it if the Commission could issue its report as soon as possible. USTR staff will provide the Commission with the details of the Agreement now and will be available to answer questions or provide additional information. We expect to make the text of the Agreement that will be the subject of legal review available to the public shortly.

Thank you for your continued cooperation and assistance in this matter.

Sincerely,

  
Rob Portman



**APPENDIX B**  
***FEDERAL REGISTER NOTICE***

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**INTERNATIONAL TRADE  
COMMISSION**  
**[Investigation No. TA-2104-20]**  
**U.S.-Peru Trade Promotion  
Agreement:**  
**Potential Economy-Wide and  
Selected  
Sectoral Effects**

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of investigation and scheduling of public hearing.

**EFFECTIVE DATE:** February 3, 2006.

**SUMMARY:** Following receipt of a request from the United States Trade Representative (USTR) on January 13, 2006, the Commission instituted investigation No. TA-2104-20, U.S.-Peru Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects, under section 2104(f) of the Trade Act of 2002 (19 U.S.C. 3804(f)), for the purpose of assessing the likely impact of the U.S. Trade Promotion Agreement with Peru on the United States economy as a whole and on specific industry sectors and the interests of U.S. consumers.

**FOR FURTHER INFORMATION**

**CONTACT:**

Project Leaders Nannette Christ, Office of Economics (202-205-3263; [nannette.christ@usitc.gov](mailto:nannette.christ@usitc.gov)) or Laura Polly, Office of Industries (202-205-3408; [laura.polly@usitc.gov](mailto:laura.polly@usitc.gov)). For information on legal aspects, contact William Gearhart of the Office of the General Counsel (202-205-3091; [william.gearhart@usitc.gov](mailto:william.gearhart@usitc.gov)). The media should contact Margaret O'Laughlin, Office of External Relations (202-205-1819; [margaret.olaughlin@usitc.gov](mailto:margaret.olaughlin@usitc.gov)).

*Background:* As requested by the USTR, the Commission will prepare a report as specified in section 2104(f)(2)-(3) of the Trade Act of 2002 assessing the likely impact of the U.S. Trade Promotion Agreement with Peru on the U.S. economy as a whole and on specific industry sectors, including the impact the agreement will have on the gross domestic product, exports and imports, aggregate employment and employment opportunities, the production, employment, and competitive position of industries likely to be significantly affected by the agreement, and the interests of U.S. consumers.

In preparing its assessment, the Commission will review available economic assessments regarding the agreement, including literature concerning any substantially equivalent proposed agreement, and will provide in its assessment a description of the analyses used and conclusions drawn in such literature, and a discussion of areas of consensus and divergence between the various analyses and conclusions, including those of the Commission regarding the agreement. Section 2104(f)(2) requires that the Commission submit its report to the President and the Congress not later than 90 days after the President enters into the agreement, which he can do 90 days after he notifies the Congress of his intent to do so. On January 6, 2006, the President notified the Congress of his intent to enter into a TPA with Peru. The USTR requested that the Commission provide the report as soon as possible.

*Public Hearing:* A public hearing in connection with the investigation is scheduled to begin at 9:30 a.m. on March 15, 2006, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., February 27, 2006.

Any prehearing briefs (original and 14 copies) should be filed no later than 5:15 p.m., March 1, 2006; the deadline for filing posthearing briefs or statements is 5:15 p.m., March 29, 2006.

In the event that, as of the close of business on February 27, 2006, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Secretary to the Commission (202-205-2000) after February 27, 2006, for information concerning whether the hearing will be held.

*Written Submissions:* In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. To be assured of consideration by the Commission, written statements related to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than 5:15 p.m., March 29, 2006. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or copy designated as an original) and fourteen (14) copies of each document be filed.

In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential business information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, [ftp://ftp.usitc.gov/pub/reports/electronic\\_filing\\_handbook.pdf](ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf)).

Persons with questions regarding electronic filing should contact the Secretary (202-205-2000 or [edis@usitc.gov](mailto:edis@usitc.gov)).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "nonconfidential"

version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission intends to prepare only a public report in this investigation. The report that the Commission sends to the President and the Congress and makes available to the public will not contain confidential business information. Any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) <http://edis.usitc.gov>. Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. Issued: February 6, 2006.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E6-1884 Filed 2-9-06; 8:45 am]

**BILLING CODE 7020-02-P**

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**APPENDIX C**  
**HEARING PARTICIPANTS**

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# CALENDAR OF PUBLIC HEARING

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Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

**Subject:** U.S.-Peru Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects

**Inv. No.:** TA-2104-20

**Date and Time:** March 15, 2006 - 9:30 a.m.

Sessions were held in connection with this investigation in the Main Hearing Room (room 101), 500 E Street, S.W., Washington, D.C.

## EMBASSY APPEARANCE:

**Embassy of Peru  
Washington, D.C.**

**His Excellency Eduardo Ferrero, Ambassador to the United States of America,  
Embassy of Peru**

## ORGANIZATION AND WITNESS:

U.S.-Peru Trade Coalition  
U.S. Chamber of Commerce  
Association of American Chambers of Commerce  
in Latin America (AACCLA)

**Tom Gales**, Vice President, Latin America Division,  
Caterpillar, Inc.

Council of the Americas

**Eric P. Farnsworth**, Vice President

Schmeltzer, Aptaker & Shepard, P.C.  
Washington, D.C.  
on behalf of

The Peruvian Asparagus Importers Association (PAIA)

**John-Campbell Barmmer**, Vice Chairman, PAIA;  
*and* Director of Marketing, Chestnut Hill Farms

**Carlos Mateo Paz-Soldan** )  
 )-OF COUNSEL  
**Jeffrey Levin** )



**APPENDIX D**  
**TECHNICAL APPENDIX**

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# The GTAP Model

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The discussion that follows focuses on the quantitative analysis incorporated in this report—the CGE analysis presented in chapter 2. This appendix details the procedures used to adapt the standard GTAP model in order to assess the likely effects of the U.S.-Peru TPA. In the first section, the basic features of the static GTAP model are introduced. In the second section, the adjustments made to the standard database are discussed. The third and fourth sections present various aspects of the baseline construction and model solution techniques. The fifth section discusses the estimation of the likely economic effects of the U.S.-Peru TPA and model limitations.

## The Standard GTAP Model<sup>1</sup>

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The GTAP project consists of a documented global database on international trade, economy-wide interindustry relationships, and national income accounts (the GTAP database), and a standard modeling framework to organize and analyze the data (the GTAP model). It allows for comparisons of the global economy in two environments: one in which the base values of policy instruments such as tariffs or export restrictions are unchanged, and one in which these measures are changed, or “shocked,” to reflect the policies that are being studied. A change in policy makes itself felt throughout the economies depicted in the model. The static model by design does not produce information about the speed with which changes occur or about what happens to various dimensions of the economies in the meantime.

Results from the GTAP model are based on established global trade patterns. This means that the model is unable to estimate changes in trade in commodities that historically have not been traded. That is to say, if a particular commodity is not traded between two economies, the model will assume that there will always be no trade in that commodity. Furthermore, patterns of trade may exist for such reasons as the distance between countries or cultural preferences, which are imperfectly captured by the model. The GTAP model does not directly account for historical or cultural factors as determinants of trade patterns. The model assumes that these factors are unaffected by the trade policy change.

In the GTAP model, domestic products and imports are consumed by firms, governments, and households. Product markets are assumed to be perfectly competitive (implying zero economic profit for the firm), with imports as imperfect substitutes for domestic products (i.e., consumers are aware of the source of the products and may distinguish between them based on the foreign or domestic origin), and sectoral production determined by global demand and supply of the output.

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<sup>1</sup> For further information, see Hertel, ed., *Global Trade Analysis*.

## Updating the GTAP Database

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The current version of the GTAP database (release 6.1) covers trade in 56 commodity and service aggregates, or GTAP sectors, among 92 economies.<sup>2</sup> For the purpose of the present analysis, the database has been aggregated into 8 economies, leaving all 56 sectors disaggregated (table D-1).

In addition to the data on bilateral trade in each of the sectors in the model, data are incorporated on the domestic production and use of each sector (including use in the production of other commodities and services); the supply and use of land, labor, and capital; population; and GDP. The database also contains information on tariffs, some nontariff barriers, and other taxes. An additional component of the data is a set of parameters which, in the context of the model's equations, determine economic behavior. These are principally a set of elasticity values that determine, among other things, the extent to which imports and domestically produced goods are substitutes for one another.

The standard GTAP data are based on the year 2001—i.e., trade flows and barriers and other data refer to the world in that year. For the purpose of the present study, the standard data were projected to reflect 2007; the benchmark update incorporates actual increases in U.S. and Peruvian trade flows, as well as U.S. trade flows with the world at large, through 2005,<sup>3</sup> and projections of regional and global GDP growth through 2007.<sup>4</sup> Data are from the U.S. Department of Commerce (U.S. imports and exports, as well as U.S.-Peru bilateral trade), and the World Bank (GDP projections). The trade protection data were also adjusted to reflect policy measures ratified under the Uruguay Round and the Agreement on Textiles and Clothing (ATC), ATPA as amended by ATPDEA, full implementation of NAFTA, tariff liberalization in the metals sector stemming from the U.S.-Chile FTA, and preferences on sugar imports granted to members of the U.S. FTA with Central America and the Dominican Republic. Other recent bilateral FTAs between the United States and Australia, Bahrain, Morocco, and Singapore are reflected only in the updated U.S. import and export flows. Trade with these countries is aggregated into larger groups (the rest of the Americas and the rest of the world), in which their contribution to average tariff rates is small.

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<sup>2</sup> The previously published version of GTAP, version 6.0, includes 87 economies. Among those additional economies in version 6.1 is Ecuador.

<sup>3</sup> Compiled from official statistics of the U.S. Department of Commerce. The years over which the model was updated span a period of tremendous growth in certain commodity prices, particularly oil, in 2005. As a consequence, it was not possible to fully update trade flows in this product. Note, however, that a relatively small amount of oil is traded between Peru and the United States.

<sup>4</sup> USDA, ERS, "Real Projected Gross Domestic Product."

**Table D-1** GTAP commodity and regional aggregation

Commodities and Services		Regions
Paddy (unprocessed) rice	Leather products	United States
Wheat	Wood products	Peru
Cereal grains n.e.c.	Paper products, publishing	Colombia
Vegetables, fruit, nuts	Petroleum and coal products	Ecuador
Oil seeds	Chemical, rubber, plastic products	Bolivia
Sugar cane, sugar beet	Mineral products n.e.c.	Rest of NAFTA
Plant-based fibers	Ferrous metals	Rest of the Americas
Crops n.e.c.	Metals n.e.c.	Rest of the world
Bovine cattle, sheep and goats, horses	Metal products	
Animal products n.e.c.	Motor vehicles and parts	
Raw milk	Transport equipment n.e.c.	
Wool, silk-worm cocoons	Electronic equipment	
Forestry	Machinery and equipment n.e.c.	
Fishing	Manufactures n.e.c.	
Coal	Electricity	
Oil	Gas manufacture and distribution	
Gas	Water	
Minerals n.e.c.	Construction	
Bovine meat products	Trade	
Meat products n.e.c.	Transport n.e.c.	
Vegetable oils and fats	Water transport	
Dairy products	Air transport	
Processed rice	Communication	
Sugar	Financial services n.e.c.	
Food products n.e.c.	Insurance	
Beverages and tobacco products	Business services n.e.c.	
Textiles	Recreational and other services	
Wearing apparel	Public administration, defense, education, health	

Note: The abbreviation "n.e.c." stands for "not elsewhere classified."

## Key Assumptions

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The Commission's simulation liberalizes trade completely in all goods subject to liberalization under the U.S.-Peru TPA. There is no implicit or explicit time elapsing in the model, and no adjustment costs are considered. This assumption means, first, that all provisions of the TPA are assumed to be fully phased in immediately on January 1, 2007, rather than staged in over a period of up to 17 years per the TPA. The assumption also means that the modeled results are long-run effects of a fully implemented TPA in an economy otherwise identical to the benchmark 2007 economy—i.e., an economy with the same resources, population, and other characteristics as the 2007 economy.

A full list of the initial measured trade barriers in the model is shown in table D-2. These barriers essentially constitute price gaps, or wedges, between world prices and domestic prices in the importing country. The differences are accounted for principally by tariffs and other barriers.<sup>5</sup> As tabulated, they consist of tariffs and price premiums due to TRQs, measured in the GTAP database as AVEs.<sup>6</sup> The sectors listed in table D-2, and their corresponding import tariff equivalent measures, are highly aggregated. For example, the "other crops" category includes commodities such as coffee, tea, cut flowers, cotton, spices, and tobacco. As a result, the listed import tariff equivalent measures are trade-weighted averages of the measures faced by the individual commodities composing the aggregates. The tariff equivalents listed here include the effects of TRQs imposed on certain agricultural products. As shown in table D-2, the tariffs on Peru's imports from the United States (i.e., U.S. exports) are significantly higher than the tariffs on U.S. imports from Peru. Services are restricted by nontariff barriers but these barriers are not measured in the GTAP data, precluding a quantitative assessment of the TPA on this sector. In addition, the Commission did not explicitly model the impact of rules of origin, but the simulation performed is consistent with the existence of such rules. In the simulation, it is assumed that traded commodities are differentiated by country of origin, which implies a limit to the substitutability of imports sourced from a third country.

## Solution Technique

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The analysis employs a comparative static framework in which a benchmark equilibrium depiction of the U.S. economy, as of January 1, 2007, is derived through a set of balanced accounts of trade, production, consumption, and taxes. Once this benchmark has been created, policy shocks are imposed on the balanced model. A policy shock simply means a change in policy imposed on the model to measure its effect. In this analysis the policy shocks consist of the reduction or elimination of tariffs and measurable TRQs agreed to in the TPA shown in table D-2.

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<sup>5</sup> A price gap summarizes the price impact of several border measures: ad valorem duties, specific duties, and variable levies (such as the price-band support systems in Peru) that insulate domestic prices from short-term fluctuations in world markets. These price gaps are modeled as constant ad valorem gaps between domestic and world prices.

<sup>6</sup> Version 6.1 of the GTAP data has not been published or publicly released at the time of this writing. Version 6 has been released and is documented online at [https://www.gtap.agecon.purdue.edu/databases/v6/v6\\_doco.asp](https://www.gtap.agecon.purdue.edu/databases/v6/v6_doco.asp). Version 5 is described in Dimaranan and McDougall (2002). Version 6.1 includes additional information, including data for Ecuador.

**Table D-2** U.S.-Peru TPA: Bilateral benchmark tariffs, GTAP sector estimates for 2007 (percent)

GTAP sector	Tariffs on U.S. imports from Peru	Tariffs on Peruvian imports from the United States
Paddy (unprocessed) rice	0.00	23.63
Wheat	0.00	17.52
Cereal grains n.e.c.	0.00	14.49
Vegetables, fruit, nuts	0.00	24.98
Oil seeds	0.00	12.00
Sugar cane, sugar beet	0.00	0.00
Plant-based fibers	0.00	12.00
Crops n.e.c.	0.01	12.02
Bovine cattle, sheep and goats, horses	0.00	12.00
Animal products n.e.c.	0.00	12.04
Raw milk	0.00	0.00
Wool, silk-worm cocoons	0.00	0.00
Forestry	0.00	12.00
Fishing	0.00	12.00
Coal	0.00	12.00
Oil	0.00	0.00
Gas	0.00	0.00
Minerals n.e.c.	0.00	12.00
Bovine meat products	1.90	13.50
Meat products n.e.c.	0.00	27.54
Vegetable oils and fats	0.00	12.00
Dairy products	0.00	24.23
Processed rice	0.00	25.00
Sugar	46.31	14.49
Food products n.e.c.	0.00	16.00
Beverages and tobacco products	0.00	15.60
Textiles	0.40	15.30
Wearing apparel	0.30	19.39
Leather products	2.80	16.64
Wood products	0.00	12.00
Paper products, publishing	0.01	12.00
Petroleum and coal products	0.00	12.00
Chemical, rubber, plastic products	0.00	12.01
Mineral products n.e.c.	0.00	12.00
Ferrous metals	0.00	12.00
Metals n.e.c.	0.41	12.00
Metal products	0.00	12.00
Motor vehicles and parts	0.00	12.00
Transport equipment n.e.c.	0.00	12.00
Electronic equipment	0.00	12.00
Machinery and equipment n.e.c.	0.00	12.17
Manufactures n.e.c.	0.00	12.15
Services	NA	NA

Note: The abbreviation "n.e.c." stands for "not elsewhere classified." Benchmark tariffs include tariff equivalents of agricultural TRQs facing both U.S. and Peruvian imports. Sugar imports to the United States are subject to tariff-rate quotas. The TPA will initially increase these quotas for Peru by about 20 percent of Peru's 2005 exports, and up to another 5 percent over the first 10 years of the agreement.

To estimate the marginal effect of the TPA, the trade policies (tariffs and TRQs) shown in table 2-3 are replaced with new levels (generally zero) to represent the new, post-TPA economic state. The model is rebalanced, and new values for trade flows, outputs, employment, welfare, and GDP are generated. The difference between the benchmark values of these variables and their new values is the estimated marginal effect of the removal of tariffs and measurable TRQs under the TPA. It is expected that sectors facing relatively high trade barriers will show relatively larger effects as a result of the implementation of the TPA.

For sugar, the rate reported is the gap between the world price of sugar and its price in the United States, resulting from duties and TRQs. This tariff equivalent is not directly changed, but sugar imports from Peru are moved up to a higher quota level, as provided for in the TPA. The assumption in this simulation is that over 10 years, imports of sugar from Peru increase by 24 percent, which would represent the proportional value of the initial increase of 9,000 MT in the quota for Peru, plus an incremental 180 MT per year applied over 9 years, on a base quota of 43,000 MT.

As is typical of experiments conducted in the standard GTAP framework, this analysis measures the long-term effects of a one-time, full implementation of an agreement.<sup>7</sup> The model assumes that sufficient time is allowed to let the full effect of the agreement work its way through the economy. Reported figures show the marginal effects of a trade policy shock as it would have appeared in the base year of the data. Said differently, effects are expressed in terms of proportional effects relative to the projected 2007 economy, although those effects would take several years to be actually felt.

## Measuring the Impacts of the TPA and Model Limitations

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The probable effects of the U.S.-Peru TPA reported are simply the deviations of the relevant variables from their levels in the projected baseline at any given solution point. Reported deviations in economic variables, such as production, trade, and income, indicate the likely degree to which the policy causes the modeled economies to deviate from the baseline levels. As stated, changes in the variables of interest are calculated as percentage deviations from the baseline, and are quite stable with respect to changes in the baseline. That is to say, if the actual levels of trade in 2007 differ from the values projected in this analysis (as they are likely to do), the marginal percent change effects of the TPA on trade flows estimated by the model will still likely be similar to those presented here, relative to the new baseline.

Economic models capture the most important factors for the question under consideration. They are limited in their ability to reflect the degree of complexity evident in the real world, however;<sup>8</sup> thus, a number of caveats are in order regarding this modeling framework. One source of bias, found in virtually any quantitative analysis of economic data, arises from the process of data aggregation. In particular, international trade occurs in thousands of different

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<sup>7</sup> See, for example, USITC, *The Impact on the U.S. Economy*; or USITC, *Overview and Analysis of the Economic Impact of U.S. Sanctions*.

<sup>8</sup> Examples of real world complexities that are difficult to reflect in the model include the changing relative growth of different economies; politically motivated, export-oriented investment; relationships between multinational subsidiaries that influence trade patterns; and such things as catastrophic weather or violence that are inherently unpredictable (at least in their details).

products and services. The United States collects trade data under about 17,000 statistical categories and some 10,000-plus tariff rate lines. For most general equilibrium analyses, these groupings represent far too much detail to be tractable computationally. Furthermore, analysis and comparison of data collected from different economies require that data be aggregated into categories that are generally comparable from one economy to another. This aggregation process introduces two general types of bias into a modeling exercise.

One type involves the calculation of tariffs for aggregated product categories. In this study, trade-weighted average tariffs were calculated. The value of trade in a tariff line provides the weight for the tariff in that line. This procedure tends to mask the importance of those products within the aggregate that have particularly high tariffs, and that therefore present a greater barrier to imports than would be the case if all goods within the aggregation had the same average tariff. As a result, the analysis may understate the effect of reducing the tariff of a high-tariff component of the aggregate.

Another type of aggregation bias is the likelihood that goods within an aggregate may not be close substitutes for one another. Imported goods of a particular category may be quite dissimilar to an economy's domestic product in that category. However, when the price of an import falls, for example, the model may indicate a certain amount of substitution of that import for the domestic product when, in fact, they are not close substitutes. In this case, the model would overstate the effect of a given average tariff reduction.<sup>9</sup>

Despite these limitations, the simulations performed here can be quite useful in providing insights on the effects of an FTA, stemming solely from the implementation of the FTA's tariff and TRQ liberalization, on a number of economic measures. The model presents a unified framework in which to assess the likely effects of the policy.

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<sup>9</sup> This type of bias is reduced in empirical trade models, like the GTAP model, that apply the Armington assumption, which treats products produced in different economies as imperfect substitutes.



**APPENDIX E**  
**GENERAL EFFECTS OF TRADE**  
**AGREEMENTS**

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# General Effects of Trade Agreements

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Studying the economic impact of an FTA entails investigating static effects such as trade creation and trade diversion, as well as terms of trade (i.e., the price of exports relative to the price of imports). In addition, issues related to scale effects and less tangible effects have to be considered. These issues are discussed below.

## Static Effects: Trade Creation and Trade Diversion

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Trade liberalization can in general be undertaken in two different manners. First, trade liberalization can be based on the MFN principle, where better market access is granted to all trading partners equally. The classical “gains from trade” argument asserts that such trade liberalization will offer consumers access to more goods at lower prices, and producers more sources for their inputs and more markets for their products (for which they may receive higher prices). Second, trade liberalization can be done in a *preferential* way, with better market access granted to one partner but not to others. It should be noted that better market access can result not only from bilateral tariff removal but also from other negotiated provisions in the areas of cross-border trade in services, telecommunications, electronic commerce, and government procurement, all of which are not readily quantifiable. An FTA such as the one between the United States and Peru is an agreement in which preferential liberalization is undertaken reciprocally between participating countries.<sup>1</sup>

To the extent that FTAs are designed to liberalize trade, they are likely to engender economic gains similar to those of an MFN liberalization. However, given their discriminatory nature, studying the economic impact of FTAs involves additional issues that are not present in an MFN liberalization. The traditional way to study an FTA is to categorize the FTA-induced trade expansion into trade creation or trade diversion.<sup>2</sup> Trade creation improves net welfare and occurs when partner-country production displaces higher cost domestic production. Trade diversion reduces net welfare and occurs when partner-country production displaces lower cost imports from the rest of the world.<sup>3</sup> The combined effect of an FTA on intrabloc trade will then reflect trade creation as well as trade diversion. Whether the trade creation (welfare-enhancing) or the trade diversion (welfare-reducing) effects dominate depends on a variety of factors, including external trade barriers, cost differences, relative supply and demand responses, and other domestic policies. Thus, the overall welfare impact of an FTA can be empirically determined.

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<sup>1</sup> It should be noted that, although negotiated bilaterally, some FTA provisions such as those related to customs administration, labor, or environment tend to be applied in a nondiscriminatory manner and are closer to the MFN principle.

<sup>2</sup> The seminal works on this issue are Viner, *The Customs Union Issue*; and Meade, *The Theory of Customs Union*.

<sup>3</sup> Losses from trade diversion occur when lost tariff revenue associated with changes in the pattern of trade exceeds efficiency gains from the decline of the prices paid by consumers. These losses will be larger the higher the FTA's margin of preferences (i.e., the trade barriers facing nonmembers relative to intra-FTA barriers).

## Static Effects: Terms of Trade

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The impact of an FTA also can be studied from a “terms-of-trade” (i.e., the price of exports relative to the price of imports) viewpoint. If the participating countries are large enough to be able to affect world import and export prices by their actions, the establishment of an FTA is likely to affect the terms of trade of a given FTA member principally in three ways. First, by increasing the demand for its partner’s products, the country’s own preferential trade liberalization may increase the (pretariff) price of its imports from the partner country, leading to a deterioration in its terms of trade. Second, tariff reductions by the partner country can increase the demand (and the price) for the FTA member’s exports and improve its terms of trade. Third, the decreased demand for imports originating from nonmember countries tends to decrease their price and improve the FTA members’ terms of trade. Therefore, the impact on economic welfare will depend on whether the terms of trade have improved or deteriorated for a given partner country.

## Nonquantifiable Effects

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In addition to the generally more easily quantifiable effects discussed so far, regional integration can provide other potential benefits that are more difficult to evaluate because of data limitations. A World Bank publication discusses a variety of additional effects (or classes of effects) that may result from regional integration agreements.<sup>4</sup> One such effect is enhanced security (either against nonmembers or between members).<sup>5</sup> Another potential benefit is that by forming a unit and pooling their bargaining power, FTA members can negotiate more efficiently in international forums. Regional integration can also be useful in “locking in” domestic (trade or other policy) reforms by raising the cost of policy reversal. Another potential gain is the increased possibilities for cooperation in environmental or technological assistance projects. Effects stemming from these nontariff-related FTA aspects assessed in the Commission’s report pertaining to the U.S.-Peru FTA are associated with market access provisions related to cross-border trade in services, telecommunications, and government procurement; trade facilitation provisions related to customs administration and technical barriers; and regulatory environment provisions related to investment, intellectual property rights, trade remedies, and labor and environment.<sup>6</sup>

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<sup>4</sup> The World Bank, *Trade Blocs*, 66.

<sup>5</sup> For additional information, see Schiff and Winters, “Regional Integration as Diplomacy,” 271–96. As has been mentioned above, the data estimating potential impact of negotiated commitments of an FTA related to, for example, intellectual property rights and customs administration and services, are not readily available.

<sup>6</sup> Qualitative assessments of the impact of the U.S.-Peru TPA on these negotiated objectives are provided in chaps. 4 through 6 of this report.

**APPENDIX F**  
**GTAP TABLES**

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Four Andean countries (Bolivia, Colombia, Ecuador, and Peru) are beneficiaries of ATPA, as amended by ATPDEA. As this unilateral trade preferences program is set to expire at the end of 2006, two policy scenarios are assessed in this report with regard to market access provisions. The first policy simulation, analyzed in chapter 2 and referred to as “ATPA preferences remain,” assumes implementation of a U.S.-Peru TPA and that ATPA preferences for Bolivia, Colombia, and Ecuador continue in force after implementation of the TPA. The second policy simulation, referred to as “ATPA preferences expire,” assumes implementation of the U.S.-Peru TPA and the simultaneous expiration of ATPA preferences for Bolivia, Colombia, and Ecuador. As there are many model sectors that exhibit minimal changes, expanded version of tables 2-5 through 2-7 are provided in this appendix (tables F-1 through F-3). In addition, although the two simulations are described in chapter 2, given the minimal difference between the results of the two scenarios for most economic indicators and sectors, tables associated with the second simulation (representing the results of the economy-wide analysis for the “ATPA preferences expire” scenario) are provided in this appendix (tables F-5 through F-8). These tables correspond to the abbreviated tables in chapter 2 for the “ATPA preferences remain” scenario (and three of them also correspond to expanded tables F-1 through F-3).

**Table F-1** U.S.-Peru TPA: Simulated effect on U.S.-Peru bilateral trade (landed, duty paid) from a projected 2007 baseline

GTAP sector	U.S. imports from Peru			Peruvian imports from United States		
	Base before TPA	Change after TPA		Base before TPA	Change after TPA	
	<i>Million dollars</i>		<i>Percent</i>	<i>Million dollars</i>		<i>Percent</i>
Paddy (unprocessed) rice	0.001	0.000	12.50	0.031	0.154	495.84
Wheat	0.037	0.007	18.93	116.893	111.355	95.26
Cereal grains n.e.c.	1.241	0.026	2.07	27.378	4.467	16.32
Vegetables, fruit, nuts	497.531	11.984	2.41	8.471	5.538	65.38
Oil seeds	0.627	0.030	4.83	0.084	0.044	51.68
Sugar cane, sugar beet	0.006	0.000	5.07	0.000	0.000	0.00
Plant-based fibers	0.000	0.000	0.00	50.008	6.519	13.04
Crops n.e.c.	116.360	7.901	6.79	12.397	4.209	33.95
Bovine cattle, sheep and goats, horses	0.196	0.007	3.80	0.111	0.026	23.52
Animal products n.e.c.	3.376	0.066	1.97	7.050	0.423	6.00
Raw milk	0.041	0.003	8.46	0.001	-0.000	-5.56
Wool, silk-worm cocoons	0.000	0.000	0.00	0.000	0.000	0.00
Forestry	0.329	0.017	5.01	1.730	0.592	34.22
Fishing	9.002	0.136	1.51	0.583	0.095	16.29
Coal	0.000	0.000	4.76	1.340	0.943	70.32
Oil	20.623	0.991	4.81	0.028	-0.000	-1.39
Gas	0.000	0.000	0.00	0.000	0.000	0.00
Minerals n.e.c.	133.454	1.110	0.83	2.510	0.263	10.50
Bovine meat products	0.593	0.138	23.29	12.242	3.858	31.52
Meat products n.e.c.	3.846	0.397	10.32	0.967	3.461	357.99
Vegetable oils and fats	184.405	12.610	6.84	12.862	8.656	67.30
Dairy products	0.205	0.017	8.46	8.071	14.987	185.69
Processed rice	0.163	0.014	8.51	16.508	6.451	39.08
Sugar	15.756	3.014	19.13	0.002	0.002	75.31
Food products n.e.c.	126.291	5.251	4.16	32.663	14.843	45.44
Beverages and tobacco products	8.298	0.125	1.51	2.289	0.409	17.87
Textiles	266.973	29.359	11.00	33.280	34.994	105.15
Wearing apparel	524.495	49.298	9.40	11.930	12.681	106.30
Leather products	2.241	0.730	32.56	2.037	3.340	163.99
Wood products	78.435	5.022	6.40	10.281	7.266	70.68
Paper products, publishing	22.495	1.391	6.18	85.007	41.549	48.88
Petroleum and coal products	352.391	5.813	1.65	176.727	57.825	32.72
Chemical, rubber, plastic products	117.695	10.427	8.86	494.979	223.037	45.06
Mineral products n.e.c.	107.982	5.494	5.09	30.403	15.139	49.79

**Table F-1—Continued** U.S.-Peru TPA: Simulated effect on U.S.-Peru bilateral trade (landed, duty paid) from a projected 2007 baseline

GTAP sector	U.S. imports from Peru			Peruvian imports from United States		
	Base before TPA	Change after TPA		Base before TPA	Change after TPA	
	<i>Million dollars</i>		<i>Percent</i>	<i>Million dollars</i>		<i>Percent</i>
Ferrous metals	0.347	0.021	6.00	19.543	11.694	59.84
Metals n.e.c.	2,297.791	260.742	11.35	0.667	0.786	117.88
Metal products	23.405	2.047	8.75	87.869	25.097	28.56
Motor vehicles and parts	1.303	0.075	5.78	87.170	38.780	44.49
Transport equipment n.e.c.	6.229	0.677	10.88	37.343	15.158	40.59
Electronic equipment	4.915	0.624	12.69	267.986	133.779	49.92
Machinery and equipment n.e.c.	100.220	9.467	9.45	655.561	337.871	51.54
Manufactures n.e.c.	121.863	9.980	8.19	62.933	36.143	57.43
Electricity	0.000	0.000	0.00	0.000	0.000	0.00
Gas manufacture and distribution	0.000	0.000	0.00	0.005	-0.000	-3.03
Water	0.007	0.000	5.11	3.227	-0.042	-1.30
Construction	0.093	0.003	3.39	1.492	-0.030	-2.04
Trade	7.198	0.236	3.27	101.380	-2.112	-2.08
Transport n.e.c.	29.639	0.940	3.17	49.256	-0.782	-1.59
Water transport	1.308	0.039	3.01	9.422	-0.158	-1.68
Air transport	20.439	0.694	3.40	252.587	-4.530	-1.79
Communication	6.216	0.198	3.18	106.603	-2.119	-1.99
Financial services n.e.c.	0.427	0.013	2.96	76.089	-0.944	-1.24
Insurance	5.372	0.154	2.87	107.965	-1.527	-1.41
Business services n.e.c.	9.657	0.322	3.33	686.941	-9.156	-1.33
Recreational and other services	6.649	0.233	3.51	135.352	-2.738	-2.02
Public administration, defense, education, health	31.069	0.958	3.08	613.248	-12.626	-2.06
<b>Total</b>	<b>5,269.236</b>	<b>438.806</b>	<b>8.33</b>	<b>4,521.502</b>	<b>1,145.669</b>	<b>25.34</b>

Source: Commission calculations and GTAP version 6.1.

Notes: The abbreviation "n.e.c." stands for "not elsewhere classified." Expanded version of table 2-5. Zero values represent rounded numbers.

**Table F-2** U.S.-Peru TPA: Simulated effect on U.S. global trade from a projected 2007 baseline

GTAP sector	U.S. imports from the world (landed, duty-paid)			U.S. exports to the world (f.o.b.)		
	Base before TPA	Change after TPA		Base before TPA	Change after TPA	
	<i>Million dollars</i>		<i>Percent</i>	<i>Million dollars</i>		<i>Percent</i>
Paddy (unprocessed) rice	45.365	0.152	0.33	524.311	-1.198	-0.23
Wheat	188.975	2.040	1.08	4,876.625	82.812	1.70
Cereal grains n.e.c.	411.027	0.364	0.09	5,854.666	4.989	0.09
Vegetables, fruit, nuts	10,524.808	10.250	0.10	8,189.847	-2.088	-0.03
Oil seeds	348.961	0.492	0.14	6,638.230	-5.953	-0.09
Sugar cane, sugar beet	0.709	0.002	0.22	0.060	-0.000	-0.15
Plant-based fibers	197.829	0.306	0.15	3,905.917	5.599	0.14
Crops n.e.c.	9,128.844	20.663	0.23	3,201.863	-3.651	-0.11
Bovine cattle, sheep and goats, horses	1,492.262	1.483	0.10	490.072	-0.388	-0.08
Animal products n.e.c.	1,907.795	0.793	0.04	3,078.735	0.271	0.01
Raw milk	32.234	0.057	0.18	0.417	-0.001	-0.34
Wool, silk-worm cocoons	28.522	0.015	0.05	39.524	-0.052	-0.13
Forestry	480.786	0.168	0.03	1,544.488	0.127	0.01
Fishing	1,487.789	0.008	0.00	306.184	0.057	0.02
Coal	1,293.039	0.710	0.05	2,899.693	-0.505	-0.02
Oil	153,418.547	58.250	0.04	5.507	-0.006	-0.10
Gas	19,308.973	4.484	0.02	280.783	-0.270	-0.10
Minerals n.e.c.	4,014.577	-0.514	-0.01	2,627.429	-2.021	-0.08
Bovine meat products	4,897.194	4.962	0.10	1,960.432	3.017	0.15
Meat products n.e.c.	2,375.468	2.618	0.11	5,492.470	-1.749	-0.03
Vegetable oils and fats	1,973.913	5.948	0.30	1,057.888	7.992	0.76
Dairy products	1,990.421	1.932	0.10	1,346.258	13.738	1.02
Processed rice	378.814	0.232	0.06	842.336	7.226	0.86
Sugar	1,667.781	2.005	0.12	531.900	-0.368	-0.07
Food products n.e.c.	25,801.658	10.404	0.04	16,809.439	8.635	0.05
Beverages and tobacco products	14,936.767	2.727	0.02	3,696.756	0.030	0.00
Textiles	46,384.617	24.969	0.05	13,525.035	27.145	0.20
Wearing apparel	72,649.461	34.391	0.05	4,323.503	10.931	0.25
Leather products	33,202.898	7.031	0.02	2,392.141	1.423	0.06
Wood products	64,269.664	25.164	0.04	9,142.157	2.411	0.03
Paper products, publishing	30,392.398	13.727	0.05	22,374.684	33.842	0.15
Petroleum and coal products	33,727.254	4.414	0.01	14,798.519	70.221	0.47
Chemical, rubber, plastic products	170,172.844	74.641	0.04	126,709.227	184.836	0.15
Mineral products n.e.c.	30,190.404	12.391	0.04	15,213.836	9.342	0.06
Ferrous metals	31,373.049	12.098	0.04	11,708.529	7.196	0.06
Metals n.e.c.	33,324.480	58.273	0.17	13,791.521	-3.135	-0.02
Metal products	38,284.410	15.398	0.04	17,925.385	23.244	0.13
Motor vehicles and parts	196,769.797	48.609	0.02	79,066.625	28.609	0.04

**Table F-2**—Continued U.S.-Peru TPA: Simulated effect on U.S. global trade from a projected 2007 baseline

GTAP sector	U.S. imports from the world (landed, duty-paid)			U.S. exports to the world (f.o.b.)		
	Base before TPA	Change after TPA		Base before TPA	Change after TPA	
	<i>Million dollars</i>		<i>Percent</i>	<i>Million dollars</i>		<i>Percent</i>
Transport equipment n.e.c.	38,944.953	18.395	0.05	59,780.758	-11.488	-0.02
Electronic equipment	231,362.281	74.891	0.03	105,021.000	103.086	0.10
Machinery and equipment n.e.c.	304,697.844	119.406	0.04	200,889.953	286.594	0.14
Manufactures n.e.c.	80,287.102	20.703	0.03	22,393.809	28.631	0.13
Electricity	708.703	0.308	0.04	3,942.181	-3.517	-0.09
Gas manufacture and distribution	8.945	0.004	0.05	1,746.334	-0.980	-0.06
Water	130.374	0.062	0.05	2,005.073	-0.972	-0.05
Construction	504.248	0.170	0.03	10,616.718	-3.853	-0.04
Trade	16,597.162	5.291	0.03	64,411.566	-28.695	-0.04
Transport n.e.c.	26,794.475	7.016	0.03	63,560.871	-20.938	-0.03
Water transport	1,722.730	0.476	0.03	5,937.692	-2.278	-0.04
Air transport	26,943.029	5.863	0.02	54,666.730	-20.500	-0.04
Communication	4,677.190	1.376	0.03	26,501.377	-11.180	-0.04
Financial services n.e.c.	4,498.936	1.441	0.03	41,830.926	-13.832	-0.03
Insurance	3,522.869	1.144	0.03	22,547.582	-10.066	-0.04
Business services n.e.c.	31,907.016	9.736	0.03	229,649.891	-82.500	-0.04
Recreational and other services	7,777.023	2.579	0.03	80,835.805	-27.578	-0.03
Public administration, defense, education, health	17,706.961	6.129	0.03	151,816.734	-52.109	-0.03
<b>Total</b>	<b>1,837,866.174</b>	<b>736.745</b>	<b>0.04</b>	<b>1,555,327.991</b>	<b>640.134</b>	<b>0.04</b>

Source: Commission calculations and GTAP version 6.1.

Notes: The abbreviation "n.e.c." stands for "not elsewhere classified." Expanded version of table 2-6. Zero values represent rounded numbers.

**Table F-3** U.S.-Peru TPA: Simulated effects on U.S. output and employment from a projected 2007 baseline  
(percent changes)

GTAP sector	Output		Labor quantity	
	Quantity	Revenue	Skilled	Unskilled
Paddy (unprocessed) rice	-0.14	-0.07	-0.12	-0.12
Wheat	0.93	1.16	1.01	1.01
Cereal grains n.e.c.	0.00	0.07	0.02	0.02
Vegetables, fruit, nuts	-0.09	-0.01	-0.06	-0.06
Oil seeds	-0.10	-0.02	-0.08	-0.08
Sugar cane, sugar beet	-0.02	0.07	0.01	0.01
Plant-based fibers	0.01	0.10	0.04	0.04
Crops n.e.c.	-0.11	-0.02	-0.09	-0.09
Bovine cattle, sheep and goats, horses	-0.02	0.04	0.01	0.01
Animal products n.e.c.	-0.02	0.03	0.01	0.01
Raw milk	0.01	0.06	0.03	0.03
Wool, silk-worm cocoons	-0.05	-0.03	-0.02	-0.02
Forestry	-0.01	0.01	-0.01	-0.01
Fishing	0.00	0.00	-0.01	-0.01
Coal	-0.01	0.00	-0.01	-0.01
Oil	-0.01	-0.00	-0.01	-0.01
Gas	-0.01	-0.01	-0.01	-0.01
Minerals n.e.c.	-0.03	-0.01	-0.03	-0.03
Bovine meat products	-0.01	0.02	-0.01	-0.01
Meat products n.e.c.	-0.01	0.01	-0.01	-0.01
Vegetable oils and fats	0.00	0.03	0.00	0.00
Dairy products	0.01	0.04	0.01	0.01
Processed rice	0.28	0.31	0.28	0.28
Sugar	-0.02	0.00	-0.02	-0.02
Food products n.e.c.	0.00	0.01	0.00	0.00
Beverages and tobacco products	0.00	0.02	0.00	0.00
Textiles	0.00	0.01	0.00	0.00
Wearing apparel	-0.02	-0.01	-0.02	-0.02
Leather products	-0.02	-0.01	-0.02	-0.02
Wood products	-0.01	0.00	-0.01	-0.01
Paper products, publishing	0.01	0.02	0.01	0.01
Petroleum and coal products	0.03	0.03	0.03	0.03
Chemical, rubber, plastic products	0.02	0.04	0.02	0.02
Mineral products n.e.c.	0.00	0.01	0.00	0.00
Ferrous metals	0.00	0.02	0.00	0.00
Metals n.e.c.	-0.16	-0.16	-0.16	-0.16
Metal products	0.01	0.02	0.01	0.01
Motor vehicles and parts	0.00	0.01	0.00	0.00
Transport equipment n.e.c.	-0.01	-0.00	-0.01	-0.02
Electronic equipment	0.02	0.03	0.02	0.02
Machinery and equipment n.e.c.	0.03	0.04	0.03	0.03
Manufactures n.e.c.	0.02	0.03	0.02	0.02
Electricity	0.00	0.01	0.00	0.00
Gas manufacture and distribution	0.00	0.01	0.00	0.00
Water	0.00	0.01	0.00	0.00
Construction	0.00	0.02	0.00	0.00
Trade	0.00	0.02	0.00	0.00
Transport n.e.c.	-0.01	0.01	-0.01	-0.01
Water transport	0.00	0.01	0.00	0.00
Air transport	-0.01	-0.00	-0.01	-0.01
Communication	0.00	0.01	0.00	0.00
Financial services n.e.c.	0.00	0.02	0.00	0.00
Insurance	0.00	0.01	0.00	0.00
Business services n.e.c.	-0.01	0.01	-0.01	-0.01
Recreational and other services	0.00	0.01	0.00	0.00
Public administration, defense, education, health	0.00	0.01	0.00	0.00

Source: Commission calculations and GTAP version 6.1.

Notes: The abbreviation "n.e.c." stands for "not elsewhere classified." Expanded version of table 2-7. Zero values represent rounded numbers.

**Table F-4** Estimated increase in duties on U.S. imports from selected Andean partner countries, ATPA assumed to expire (*percent*)

GTAP sector	Duty on imports from		
	Colombia	Ecuador	Bolivia
Paddy (unprocessed) rice	0.00	0.00	0.00
Wheat	0.00	0.00	0.00
Cereal grains n.e.c.	0.00	0.17	0.94
Vegetables, fruit, nuts	0.05	0.00	0.01
Oil seeds	0.00	0.00	0.00
Sugar cane, sugar beet	0.00	0.00	0.00
Plant-based fibers	0.00	0.00	0.00
Crops n.e.c.	2.63	2.38	0.00
Bovine cattle, sheep and goats, horses	0.00	0.00	0.00
Animal products n.e.c.	0.00	0.00	0.00
Raw milk	0.00	0.00	0.00
Wool, silk-worm cocoons	0.00	0.00	0.00
Forestry	0.00	0.00	0.00
Fishing	0.00	0.00	0.00
Coal	0.00	0.00	0.00
Oil	0.17	0.11	0.21
Gas	0.00	0.00	0.00
Minerals n.e.c.	0.00	0.00	0.55
Bovine meat products	0.00	0.00	0.00
Meat products n.e.c.	0.02	3.27	0.00
Vegetable oils and fats	0.13	0.00	1.90
Dairy products	3.68	13.36	0.00
Processed rice	0.00	0.00	0.00
Sugar	0.00	0.24	0.00
Food products n.e.c.	0.36	1.66	0.54
Beverages and tobacco products	10.74	0.00	0.00
Textiles	11.26	13.58	15.70
Wearing apparel	13.79	13.62	18.20
Leather products	6.96	6.36	4.54
Wood products	0.00	0.00	0.00
Paper products, publishing	0.00	0.00	0.00
Petroleum and coal products	0.11	0.08	0.00
Chemical, rubber, plastic products	0.01	0.03	0.00
Mineral products n.e.c.	0.96	1.17	1.50
Ferrous metals	0.00	0.00	0.00
Metals n.e.c.	0.02	0.08	0.00
Metal products	0.05	0.00	0.00
Motor vehicles and parts	0.00	0.00	0.00
Transport equipment n.e.c.	0.29	0.00	0.00
Electronic equipment	0.00	0.00	0.00
Machinery and equipment n.e.c.	0.00	0.00	0.00
Manufactures n.e.c.	0.00	0.00	0.00
Services	NA	NA	NA

Source: Commission calculations and GTAP version 6.1.

Notes: The abbreviation "n.e.c." stands for "not elsewhere classified." Benchmark tariffs include tariff equivalents of agricultural TRQs facing both U.S. and Peruvian imports. Sugar imports to the United States are subject to tariff-rate quotas. The TPA will initially increase these quotas for Peru by about 20 percent of Peru's 2005 exports, and up to

**Table F-5** U.S.-Peru TPA: Simulated effects of trade liberalization and ATPA expiration on U.S. welfare, GDP, and payments to factors (relative to projected 2007 baseline)

Indicator	Million dollars	Percent
Welfare	440.22	0.00
Efficiency	-6.70	-0.00
Terms of trade	446.92	0.00
GDP	2,824.00	0.02
Payments to factors		
Land	108.31	0.47
Unskilled labor	954.00	0.02
Skilled labor	665.50	0.02
Capital	970.50	0.02
Natural resources	-13.83	-0.12

Source: Commission calculations and GTAP version 6.1.

Note: Zero values represent rounded numbers.

**Table F-6 U.S.-Peru TPA: Simulated effect on U.S.-Peru bilateral trade (landed, duty paid) from a projected 2007 baseline, ATPA assumed to expire**

GTAP sector	U.S. imports from Peru			Peruvian imports from United States		
	Base before TPA	Change after TPA		Base before TPA	Change after TPA	
	<i>Million dollars</i>		<i>Percent</i>	<i>Million dollars</i>		<i>Percent</i>
Paddy (unprocessed) rice	0.001	0.000	12.50	0.031	0.154	495.68
Wheat	0.037	0.007	18.90	116.893	111.368	95.27
Cereal grains n.e.c.	1.241	0.026	2.08	27.378	4.462	16.30
Vegetables, fruit, nuts	497.531	11.572	2.33	8.471	5.536	65.35
Oil seeds	0.627	0.030	4.85	0.084	0.043	50.53
Sugar cane, sugar beet	0.006	0.000	5.07	0.000	0.000	0.00
Plant-based fibers	0.000	0.000	0.00	50.008	6.493	12.98
Crops n.e.c.	116.360	9.214	7.92	12.397	4.195	33.84
Bovine cattle, sheep and goats, horses	0.196	0.007	3.81	0.111	0.026	23.44
Animal products n.e.c.	3.376	0.066	1.95	7.050	0.423	6.00
Raw milk	0.041	0.003	8.46	0.001	-0.000	-5.56
Wool, silk-worm cocoons	0.000	0.000	0.00	0.000	0.000	0.00
Forestry	0.329	0.017	5.02	1.730	0.592	34.21
Fishing	9.002	0.133	1.48	0.583	0.095	16.28
Coal	0.000	0.000	4.76	1.340	0.894	66.72
Oil	20.623	1.020	4.95	0.028	-0.001	-1.89
Gas	0.000	0.000	0.00	0.000	0.000	0.00
Minerals n.e.c.	133.454	1.111	0.83	2.510	0.262	10.42
Bovine meat products	0.593	0.138	23.31	12.242	3.857	31.51
Meat products n.e.c.	3.846	0.394	10.25	0.967	3.457	357.63
Vegetable oils and fats	184.405	12.608	6.84	12.862	8.635	67.14
Dairy products	0.205	0.019	9.03	8.071	14.969	185.47
Processed rice	0.163	0.014	8.53	16.508	6.451	39.08
Sugar	15.756	3.015	19.14	0.002	0.002	74.07
Food products n.e.c.	126.291	5.337	4.23	32.663	14.745	45.14
Beverages and tobacco products	8.298	0.130	1.57	2.289	0.407	17.80
Textiles	266.973	29.879	11.19	33.280	34.839	104.68
Wearing apparel	524.495	51.866	9.89	11.930	12.662	106.14
Leather products	2.241	0.732	32.67	2.037	3.333	163.66
Wood products	78.435	5.025	6.41	10.281	7.221	70.24
Paper products, publishing	22.495	1.395	6.20	85.007	41.103	48.35
Petroleum and coal products	352.391	6.072	1.72	176.727	57.574	32.58
Chemical, rubber, plastic products	117.695	10.477	8.90	494.979	221.623	44.77
Mineral products n.e.c.	107.982	5.525	5.12	30.403	15.042	49.48

**Table F-6—Continued** U.S.-Peru TPA: Simulated effect on U.S.-Peru bilateral trade (landed, duty paid) from a projected 2007 baseline, ATPA assumed to expire

GTAP sector	U.S. imports from Peru			Peruvian imports from United States		
	Base before TPA	Change after TPA		Base before TPA	Change after TPA	
	<i>Million dollars</i>		<i>Percent</i>	<i>Million dollars</i>		<i>Percent</i>
Ferrous metals	0.347	0.021	6.03	19.543	11.663	59.68
Metals n.e.c.	2,297.791	259.374	11.29	0.667	0.775	116.21
Metal products	23.405	2.056	8.78	87.869	25.020	28.47
Motor vehicles and parts	1.303	0.075	5.79	87.170	38.780	44.49
Transport equipment n.e.c.	6.229	0.678	10.89	37.343	15.156	40.58
Electronic equipment	4.915	0.625	12.72	267.986	133.757	49.91
Machinery and equipment n.e.c.	100.220	9.479	9.46	655.561	337.420	51.47
Manufactures n.e.c.	121.863	9.994	8.20	62.933	36.104	57.37
Electricity	0.000	0.000	0.00	0.000	0.000	0.00
Gas manufacture and distribution	0.000	0.000	0.00	0.005	-0.000	-3.03
Water	0.007	0.000	5.11	3.227	-0.042	-1.31
Construction	0.093	0.003	3.40	1.492	-0.030	-2.04
Trade	7.198	0.236	3.28	101.380	-2.110	-2.08
Transport n.e.c.	29.639	0.942	3.18	49.256	-0.786	-1.60
Water transport	1.308	0.039	3.02	9.422	-0.159	-1.68
Air transport	20.439	0.695	3.40	252.587	-4.532	-1.79
Communication	6.216	0.197	3.17	106.603	-2.122	-1.99
Financial services n.e.c.	0.427	0.013	2.97	76.089	-0.942	-1.24
Insurance	5.372	0.155	2.88	107.965	-1.522	-1.41
Business services n.e.c.	9.657	0.323	3.34	686.941	-9.121	-1.33
Recreational and other services	6.649	0.234	3.52	135.352	-2.734	-2.02
Public administration, defense, education, health	31.069	0.959	3.09	613.248	-12.611	-2.06
<b>Total</b>	<b>5,269.236</b>	<b>441.931</b>	<b>8.39</b>	<b>4,521.502</b>	<b>1,142.424</b>	<b>25.27</b>

Source: Commission calculations and GTAP version 6.1.

Note: The abbreviation "n.e.c." stands for "not elsewhere classified." Zero values represent rounded numbers.

**Table F-7 U.S.-Peru TPA: Simulated effect on U.S. global trade from a projected 2007 baseline, ATPA assumed to expire**

GTAP sector	U.S. imports from the world (landed, duty-paid)			U.S. exports to the world (f.o.b.)		
	Base before TPA	Change after TPA		Base before TPA	Change after TPA	
	<i>Million dollars</i>		<i>Percent</i>	<i>Million dollars</i>		<i>Percent</i>
Paddy (unprocessed) rice	45.365	0.156	0.34	524.311	-1.461	-0.28
Wheat	188.975	2.039	1.08	4,876.625	78.981	1.62
Cereal grains n.e.c.	411.027	0.411	0.10	5,854.666	2.800	0.05
Vegetables, fruit, nuts	10,524.808	12.053	0.11	8,189.847	-5.094	-0.06
Oil seeds	348.961	0.520	0.15	6,638.230	-6.659	-0.10
Sugar cane, sugar beet	0.709	0.002	0.26	0.060	-0.000	-0.40
Plant-based fibers	197.829	0.345	0.17	3,905.917	4.651	0.12
Crops n.e.c.	9,128.844	-2.792	-0.03	3,201.863	-8.942	-0.28
Bovine cattle, sheep and goats, horses	1,492.262	1.636	0.11	490.072	-0.372	-0.08
Animal products n.e.c.	1,907.795	0.968	0.05	3,078.735	0.236	0.01
Raw milk	32.234	0.070	0.22	0.417	-0.002	-0.39
Wool, silk-worm cocoons	28.522	0.017	0.06	39.524	-0.079	-0.20
Forestry	480.786	0.214	0.04	1,544.488	0.150	0.01
Fishing	1,487.789	-0.037	-0.00	306.184	0.077	0.03
Coal	1,293.039	4.932	0.38	2,899.693	-2.004	-0.07
Oil	153,418.547	49.938	0.03	5.507	-0.007	-0.12
Gas	19,308.973	4.225	0.02	280.783	-0.345	-0.12
Minerals n.e.c.	4,014.577	-0.575	-0.01	2,627.429	-2.199	-0.08
Bovine meat products	4,897.194	5.410	0.11	1,960.432	2.860	0.15
Meat products n.e.c.	2,375.468	4.142	0.17	5,492.470	-2.324	-0.04
Vegetable oils and fats	1,973.913	6.312	0.32	1,057.888	7.281	0.69
Dairy products	1,990.421	-4.566	-0.23	1,346.258	13.438	1.00
Processed rice	378.814	0.254	0.07	842.336	7.256	0.86
Sugar	1,667.781	2.123	0.13	531.900	-0.965	-0.18
Food products n.e.c.	25,801.658	6.293	0.02	16,809.439	3.748	0.02
Beverages and tobacco products	14,936.767	3.530	0.02	3,696.756	0.012	0.00
Textiles	46,384.617	18.098	0.04	13,525.035	15.885	0.12
Wearing apparel	72,649.461	-29.828	-0.04	4,323.503	8.087	0.19
Leather products	33,202.898	8.895	0.03	2,392.141	0.656	0.03
Wood products	64,269.664	30.328	0.05	9,142.157	1.912	0.02
Paper products, publishing	30,392.398	16.854	0.06	22,374.684	26.646	0.12
Petroleum and coal products	33,727.254	2.664	0.01	14,798.519	65.809	0.44
Chemical, rubber, plastic products	170,172.844	81.891	0.05	126,709.227	139.781	0.11
Mineral products n.e.c.	30,190.404	12.820	0.04	15,213.836	5.712	0.04
Ferrous metals	31,373.049	14.273	0.05	11,708.529	5.873	0.05

**Table F-7—Continued U.S.-Peru TPA: Simulated effect on U.S. global trade from a projected 2007 baseline, ATPA assumed to expire**

GTAP sector	U.S. imports from the world (landed, duty-paid)			U.S. exports to the world (f.o.b.)		
	Base before TPA		Change after TPA	Base before TPA		Change after TPA
	<i>Million dollars</i>		<i>Percent</i>	<i>Million dollars</i>		<i>Percent</i>
Metals n.e.c.	33,324.480	62.809	0.19	13,791.521	-4.428	-0.03
Metal products	38,284.410	18.547	0.05	17,925.385	21.457	0.12
Motor vehicles and parts	196,769.797	58.531	0.03	79,066.625	25.531	0.03
Transport equipment n.e.c.	38,944.953	20.848	0.05	59,780.758	-18.859	-0.03
Electronic equipment	231,362.281	82.812	0.04	105,021.000	90.312	0.09
Machinery and equipment n.e.c.	304,697.844	132.281	0.04	200,889.953	253.391	0.13
Manufactures n.e.c.	80,287.102	27.164	0.03	22,393.809	25.260	0.11
Electricity	708.703	0.309	0.04	3,942.181	-3.433	-0.09
Gas manufacture and distribution	8.945	0.005	0.05	1,746.334	-0.876	-0.05
Water	130.374	0.086	0.07	2,005.073	-1.380	-0.07
Construction	504.248	0.199	0.04	10,616.718	-3.252	-0.03
Trade	16,597.162	6.443	0.04	64,411.566	-31.875	-0.05
Transport n.e.c.	26,794.475	8.422	0.03	63,560.871	-25.734	-0.04
Water transport	1,722.730	0.572	0.03	5,937.692	-2.909	-0.05
Air transport	26,943.029	7.297	0.03	54,666.730	-25.047	-0.05
Communication	4,677.190	1.855	0.04	26,501.377	-15.361	-0.06
Financial services n.e.c.	4,498.936	1.691	0.04	41,830.926	-16.109	-0.04
Insurance	3,522.869	1.354	0.04	22,547.582	-11.625	-0.05
Business services n.e.c.	31,907.016	11.348	0.04	229,649.891	-76.719	-0.03
Recreational and other services	7,777.023	3.114	0.04	80,835.805	-31.617	-0.04
Public administration, defense, education, health	17,706.961	7.748	0.04	151,816.734	-59.750	-0.04
<b>Total</b>	<b>1,837,866.174</b>	<b>707.046</b>	<b>0.04</b>	<b>1,555,327.991</b>	<b>448.376</b>	<b>0.03</b>

Source: Commission calculations and GTAP version 6.1.

Note: The abbreviation "n.e.c." stands for "not elsewhere classified." Zero values represent rounded numbers.

**Table F-8** U.S.-Peru TPA: Simulated effects on U.S. output and employment from a projected 2007 baseline, ATPA assumed to expire (*percent changes*)

GTAP sector	Output		Labor quantity	
	Quantity	Revenue	Skilled	Unskilled
Paddy (unprocessed) rice	-0.17	-0.09	-0.15	-0.15
Wheat	0.88	1.11	0.96	0.96
Cereal grains n.e.c.	-0.01	0.07	0.01	0.01
Vegetables, fruit, nuts	-0.12	-0.04	-0.09	-0.09
Oil seeds	-0.11	-0.03	-0.09	-0.09
Sugar cane, sugar beet	-0.02	0.08	0.01	0.01
Plant-based fibers	0.00	0.10	0.03	0.03
Crops n.e.c.	0.03	0.15	0.06	0.06
Bovine cattle, sheep and goats, horses	-0.02	0.05	0.01	0.01
Animal products n.e.c.	-0.02	0.03	0.01	0.01
Raw milk	0.02	0.08	0.04	0.04
Wool, silk-worm cocoons	-0.07	-0.04	-0.03	-0.03
Forestry	-0.01	0.02	-0.01	-0.01
Fishing	0.00	0.00	-0.01	-0.01
Coal	-0.05	-0.06	-0.06	-0.06
Oil	-0.02	-0.01	-0.02	-0.02
Gas	-0.01	-0.01	-0.02	-0.02
Minerals n.e.c.	-0.03	-0.02	-0.03	-0.03
Bovine meat products	-0.01	0.02	-0.01	-0.01
Meat products n.e.c.	-0.02	0.02	-0.01	-0.02
Vegetable oils and fats	-0.01	0.03	-0.01	-0.01
Dairy products	0.02	0.06	0.02	0.02
Processed rice	0.28	0.31	0.28	0.28
Sugar	-0.02	0.01	-0.02	-0.02
Food products n.e.c.	0.00	0.02	0.00	0.00
Beverages and tobacco products	0.00	0.03	0.00	0.00
Textiles	0.03	0.05	0.03	0.03
Wearing apparel	0.07	0.10	0.07	0.07
Leather products	-0.01	0.01	-0.01	-0.01
Wood products	-0.01	0.01	-0.01	-0.01
Paper products, publishing	0.00	0.02	0.00	0.00
Petroleum and coal products	0.03	0.03	0.03	0.03
Chemical, rubber, plastic products	0.01	0.03	0.01	0.01
Mineral products n.e.c.	-0.01	0.01	-0.01	-0.01
Ferrous metals	-0.01	0.01	-0.01	-0.01
Metals n.e.c.	-0.18	-0.18	-0.18	-0.18
Metal products	0.00	0.02	0.01	0.00
Motor vehicles and parts	0.00	0.02	0.00	0.00
Transport equipment n.e.c.	-0.02	-0.00	-0.02	-0.02
Electronic equipment	0.01	0.03	0.01	0.01
Machinery and equipment n.e.c.	0.02	0.04	0.02	0.02
Manufactures n.e.c.	0.01	0.03	0.01	0.01
Electricity	0.00	0.01	0.00	0.00
Gas manufacture and distribution	0.00	0.02	0.00	0.00
Water	0.00	0.02	0.00	0.00
Construction	0.00	0.02	0.01	0.00
Trade	0.00	0.02	0.00	0.00
Transport n.e.c.	-0.01	0.01	-0.01	-0.01
Water transport	-0.01	0.01	-0.01	-0.01
Air transport	-0.01	-0.00	-0.01	-0.01
Communication	0.00	0.02	0.00	0.00
Financial services n.e.c.	0.00	0.02	0.00	0.00
Insurance	0.00	0.02	0.00	0.00
Business services n.e.c.	-0.01	0.02	0.00	-0.01
Recreational and other services	0.00	0.02	0.00	-0.01
Public administration, defense, education, health	0.00	0.02	0.00	0.00

Source: Commission calculations and GTAP version 6.1.

Note: The abbreviation "n.e.c." stands for "not elsewhere classified." Zero values represent rounded numbers.



**APPENDIX G**  
**U.S.-PERU TPA: CHAPTER-BY-CHAPTER**  
**SUMMARY**

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## **TPA Chapter 1—Initial Provisions and General Definitions**

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The text states that the parties agree to set up the TPA in a way that is consistent with the 1994 General Agreement on Tariffs and Trade (GATT), and that reaffirms the existing application of bilateral rights and obligations continue to apply. The text also states that nothing in the TPA is to be read as altering any legal obligation under another international pact. Among the general definitions in the TPA, the term "territory" is defined by both parties to cover the "land, maritime, and air space under its sovereignty and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law" without any mention of free trade zones or other areas.

## **TPA Chapter 2—National Treatment and Market Access for Goods**

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The commitments on national treatment and market access are similar in form to the corresponding provisions of the GATT 1994. Under this chapter, the parties agree to eliminate their customs duties on originating goods under the attached schedules, and to refrain from increasing any duty rate, imposing a new rate, or imposing or expanding performance requirements to obtain a TPA benefit. Further, they can agree to accelerate the elimination of any duty. Duty-level ceilings are provided in the event that a concession must be withdrawn; a party can impose a duty authorized by the WTO Dispute Settlement Body or return to a higher TPA scheduled rate after a unilateral duty reduction.

Other provisions in this chapter are similar to those of other FTAs and deal with temporary importations, re-entry of repaired or altered goods, and other customs procedures. Article XI of GATT 1994 controls whether a specific measure is allowed under the TPA. Legitimate prohibitions or restrictions on trade with nonparties are to be allowed and are recognized under this article. Import licensing must comply with the WTO agreement on that subject, and the partners are barred from restricting or banning imports from another party on the grounds of alleged violations of local law. Still other provisions ban consular transactions and the U.S. merchandise processing fee (the so-called "customs user fee") and would require other fees and charges that are not duties or their equivalent to be directly related to administrative services being rendered. All fees and charges on trade in goods are required to be published on the Internet. The parties are required to recognize Bourbon Whiskey and Tennessee Whiskey as distinctive U.S. products; they can request that the TPA Committee on Trade in Goods offer amendments to the agreement to recognize a good as a distinctive product. The agreement establishes a Committee on Trade in Goods to consider matters arising under Chapter 4—Rules of Origin Procedures and Chapter 5—Customs Administration and Trade Facilitation.

The Agricultural Market Access Text (section G) deals with the implementation and administration of TRQs, agricultural export subsidies and export state trading enterprises, agricultural safeguard measures, a sugar compensation mechanism, and consultations on trade in chickens, and establishes a Committee on Agricultural Trade. There is an annex on agricultural safeguard measures for beef, bone-in chicken legs, rice, milk powder, butter and dairy spreads, and cheese. This section also includes the agricultural tariff schedules and appendixes for both parties, as well as both parties' industrial and textile tariff schedules.

There is also a side letter in which Peru acknowledges its commitment to become a full participant in the WTO Information Technology Agreement (ITA) no later than December 31, 2007.

## **TPA Chapter 3—Textiles and Apparel**

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The TPA will immediately eliminate all tariffs on U.S. trade with Peru in textiles and apparel that meet the TPA rules of origin (“originating goods”), thereby making permanent the duty-free benefits currently available under ATPA for almost all U.S. imports of Peruvian apparel.<sup>1</sup> The TPA will grant duty-free treatment for the first time to U.S. imports of textiles from Peru and to U.S. exports of textiles and apparel to Peru. The rules of origin under the TPA for textiles and apparel will generally be based on the “yarn-forward rule” found in most other U.S. FTAs, which requires that imports of such goods from the TPA party be made in the United States or Peru from the yarn stage forward to qualify for duty-free benefits.<sup>2</sup> Although ATPA also generally requires apparel to be made in beneficiary countries from the yarn stage forward to qualify for duty-free preferences, the TPA contains provisions relating to allowable foreign content and application of the rules of origin that will likely provide the parties more flexibility than ATPA in using third-country inputs. However, the TPA does not contain certain provisions found in other recent U.S. FTAs that expand opportunities for parties to use third-country inputs, such as tariff preference levels (TPLs) and cumulation provisions (discussed below).

The TPA rules of origin for textiles and apparel (annex 3.2 to TPA chapter 3) are based on changes in tariff classification from third-country inputs to goods processed or made in one or both parties. The rules will generally apply only to the component that determines the tariff classification of the garment, rather than to all fabric components of the garment, as is the case under ATPA. For example, a garment subject to the yarn-forward rule will be eligible for TPA preferences if the component that determines the tariff classification of the good is made of originating yarns and fabrics, without regard to the source of any collar, cuffs, or most other components incorporated into the garment.<sup>3</sup> Apparel components that must be originating include certain visible linings,<sup>4</sup> narrow elastic fabrics,<sup>5</sup> sewing thread, and pocketing fabrics.

In addition, the de minimis foreign content rule under the TPA will, like in CAFTA-DR, permit up to 10 percent of the total weight of the component that determines the tariff classification of the good to consist of third-country fibers or yarns, except for elastomeric

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<sup>1</sup> U.S. imports of textiles and apparel from Peru totaled \$821 million in 2005 and consisted almost entirely of apparel (data are from the U.S. Department of Commerce, Office of Textiles and Apparel). Apparel and a few textile articles (textile luggage and handloomed, handmade, and folklore articles) are eligible for special tariff benefits under ATPA, as amended by ATPDEA, as provided for in subchapter XXI of chap. 98 of the HTS (subheadings 9821.11.01 through 9821.11.25).

<sup>2</sup> A “fiber-forward rule” applies to a limited number of articles (mainly yarns and knit fabrics).

<sup>3</sup> ATPA allows originating garments to contain findings, trimmings, and interlinings of foreign origin if the value of these items (e.g., zippers, buttons, and lace trim) does not exceed 25 percent of the cost of the components of the assembled article.

<sup>4</sup> Applies only to the visible lining fabric in the main body of certain suits, sport coats, skirts, and coats (excluding sleeves), which covers the largest surface area; it does not apply to removable linings. The fabrics include woven fabrics of wool, cotton, and manmade fibers (except certain artificial-filament-yarn fabric), and certain pile, warp, and other knitted fabrics.

<sup>5</sup> Applies to narrow fabrics of HTS subheading 5806.20 (woven) or heading 6002 (knitted), of a width not exceeding 30 centimeters, containing by weight 5 percent or more of elastomeric yarn or rubber thread.

yarns, which must be made in a TPA party. By contrast, the ATPA de minimis foreign content rule permits third-country yarns to account for not more than 7 percent of the total weight of the garment. Unlike ATPA, the TPA will grant duty-free benefits to garments made in Peru from U.S. fabrics that are dyed, printed, and finished in Peru and to unlimited quantities of garments made in Peru from Peruvian fabrics of U.S. or Peruvian yarns.<sup>6</sup>

Notwithstanding these enhancements of ATPA, the TPA does not contain certain provisions found in other recent U.S. FTAs that permit the parties to use third-country inputs in originating goods.<sup>7</sup> For example, the TPA does not include any TPLs that would provide duty preferences to specified quantities of U.S. imports of specific apparel articles made in Peru from third-country inputs. It also does not contain a single-transformation rule that permits certain garments to be made of third-country fabrics as long as the fabrics are cut and sewn in an agreement party.<sup>8</sup> With respect to cumulation provisions, which permit the use of inputs from other FTA partner countries in originating goods, the TPA contains a single, limited specific rule (introduced in ATPA) that allows the use of nylon filament yarn only from pre-1995 FTA partner countries (Canada, Mexico, and Israel) in originating apparel (article 3.3(11)).

TPA chapter 3 also sets out the general legal principles on origin (article 3.3), including a consultation provision for the parties to consider whether to revise the rules of origin after the agreement has been implemented to address issues of availability of fibers, yarns, or fabrics. Article 3.3 also provides an expedited process to add to the “short supply list” a fiber, yarn, or fabric in an unrestricted or restricted quantity, if the United States determines that such input is not available in commercial quantities in a timely manner in any party, or if no interested entity objects to the request.<sup>9</sup> TPA chapter 3 also includes authority to apply bilateral textile safeguard measures (article 3.1), under which either party may reinstate MFN tariffs if imports from the other party cause serious damage or threat of serious damage to the domestic industry. It has detailed customs enforcement and cooperation provisions to ensure the accuracy of claims of origin, to prevent circumvention of the agreement, and to enforce measures affecting textiles and apparel (article 3.2).

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<sup>6</sup> ATPA grants duty-free treatment to U.S. imports of apparel made in Andean countries from fabrics formed in the Andean region of U.S. or Andean yarns, subject to an annual cap (the cap for the 12-month period ending Sept. 30, 2005, had a fill rate of just 3.5 percent).

<sup>7</sup> The tighter regime under the TPA, compared with other recent U.S. FTAs, likely reflects the fact that Peru has an integrated textile and apparel sector with the capacity to produce fibers, yarns, and fabrics.

<sup>8</sup> CAFTA-DR contains a single-transformation rule for certain boxer shorts, pajamas, and girls’ dresses of woven fabrics; umbrellas; and textile luggage.

<sup>9</sup> The United States may, within 6 months after adding a restricted quantity of a fiber, yarn, or fabric to the list, modify or eliminate the restriction. A total of 20 yarns and fabrics are included in the short supply list in annex 3.3 to TPA chap. 3.

## **TPA Chapter 4—Rules of Origin Procedures**

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The TPA's tariff benefits would apply to "originating goods" unless otherwise provided. Such goods fall into two categories—namely, those comprising inputs only from the parties, and those complying with rules of origin based largely on stated changes in tariff classification from foreign inputs to finished goods or containing allowable de minimis foreign content. Eligibility for some goods containing third-party inputs are covered by value content or other specified requirements. Goods containing de minimis foreign content that do not undergo the requisite tariff shifts (limited in the aggregate for all such materials to 10 percent of the adjusted value of the good, with the component-based formula applicable to textile and apparel products) can also qualify as originating, though their value will still be counted as "nonoriginating" when a regional value content test applies. A limited number of products—all in the agricultural sector and primarily sensitive commodities covered by U.S. TRQs—cannot use the de minimis rule to become originating goods. In general, the principles used parallel the rules in NAFTA and in FTAs with Singapore and Chile.

The provisions of this chapter are similar to that in recent FTAs. An originating material of one party that is used in another party to make a good will be considered to originate in the latter party; a good involving production in multiple parties or by multiple firms within the region will be considered to originate if it meets the specific tests of this chapter. Rules and formulas for computing regional value content are provided, with two types of computations—the build-down method and the build-up method—designed to take into account all nonoriginating content. As is true under existing U.S. FTAs and preference programs, direct shipment is required, and a good that undergoes subsequent production or other operations outside the parties (not counting minor preservation or loading operations) will not be considered originating. Rules for goods classified as sets pursuant to Harmonized System (HS) general interpretive rule 3 are provided and are quite technical in nature.

Other provisions of the chapter deal with consultations among the parties and the verification and documentation of origin needed under the TPA. Benefits are to be given unless the parties learn that particular goods do not qualify and make a "factual or legal determination that the claim is invalid." Importers who make errors are not to be punished if they act in good faith or correct the entry documents and pay necessary duties within 1 year or a longer period set by a party. Written or electronic certifications of origin can be required and are valid for 4 years from the date of issuance; records must be kept for 5 years after entry to establish the origin of goods. The parties are to publish agreed "common guidelines for the interpretation, application, and administration" of the rules, preferably before the date of entry into force of the agreement.

## **TPA Chapter 5—Customs Administration and Trade Facilitation**

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This chapter is structured similarly to corresponding sections of CAFTA-DR and supports many of the GATT goals in the areas of fees and formalities (article VIII) and publication and administration of trade regulations (article X) (table 5-1). The TPA will facilitate the goods clearance process through greater use of information technology to enhance automation, establish procedures for resolving disputes, and improve risk management and cooperation among parties. The parties will commit to immediate cooperation in the areas of information exchange, technical advice and assistance for trade facilitation, and

enforcement of customs rules and regulations. They will also continue to explore other means of cooperation.<sup>10</sup> Additionally, chapter 5 calls for the immediate implementation of articles that provide for customs automation,<sup>11</sup> the use of risk maintenance systems,<sup>12</sup> the advanced publication of Peruvian customs regulations,<sup>13</sup> confidential information guidelines,<sup>14</sup> review and appeal of customs matters,<sup>15</sup> and penalties for customs violations.<sup>16</sup>

The express shipments section,<sup>17</sup> which will be subject to a 2-year deferment,<sup>18</sup> includes two notable provisions not incorporated in CAFTA-DR that will further liberalize such activity. Such shipments will not be limited by a maximum weight or customs value, and under normal circumstances, express shipments valued at \$200 or less will not be assessed duties or taxes and will not require any formal entry documents, except when expressly identified by each party's laws and regulations. Like CAFTA-DR, the TPA will require each party to adopt separate customs administration measures for express shipments. These measures will facilitate express shipment processing to allow (1) electronic submission of documents, (2) prearrival processing of information, and (3) submission of a single manifest covering all goods in an express shipment, as well as minimize release documentation, where possible. Chapter 5 requires release of express shipments within 6 hours.

Staggered implementation schedules comparable to those incorporated in CAFTA-DR will also defer the entry into force of other provisions. Simplified release procedures will be deferred for 1 year,<sup>19</sup> and Internet access to Peruvian customs information and assistance will be subject to a 2-year deferment.<sup>20</sup> The requirement that importers be able to obtain binding advanced rulings will not apply to Peru until 3 years after the date of entry into force of the TPA.<sup>21</sup> The United States already has a system in place allowing requests for advance rulings.

## **TPA Chapter 6—Sanitary and Phytosanitary Measures**

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This chapter covers the protection of human, animal, or plant life or health in the parties' territories, insofar as they directly or indirectly affect trade between them, and the enhancement of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS agreement). The United States and Peru agree to establish a Standing Committee on Sanitary and Phytosanitary Matters to coordinate administration of the chapter (article 6.3). The Standing Committee shall provide for consultation and cooperation regarding implementation of the SPS agreement and provide a forum for resolving future bilateral animal and plant health matters with a view to facilitate trade and engage in scientific and technical cooperation regarding animal and plant health matters that affect

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<sup>10</sup> *U.S.-Peru TPA*, article 5.5.

<sup>11</sup> *U.S.-Peru TPA*, article 5.3.

<sup>12</sup> *U.S.-Peru TPA*, article 5.4.

<sup>13</sup> *U.S.-Peru TPA*, article 5.1.3.

<sup>14</sup> *U.S.-Peru TPA*, article 5.6.

<sup>15</sup> *U.S.-Peru TPA*, article 5.8.

<sup>16</sup> *U.S.-Peru TPA*, article 5.9.

<sup>17</sup> *U.S.-Peru TPA*, article 5.7.

<sup>18</sup> Deferral of certain provisions has been provided to allow parties to develop the necessary technical capacity to implement these requirements.

<sup>19</sup> *U.S.-Peru TPA*, article 5.2.

<sup>20</sup> *U.S.-Peru TPA*, article 5.1.1–5.1.2.

<sup>21</sup> *U.S.-Peru TPA*, article 5.10.

trade.<sup>22</sup> The chapter further outlines the process by which the standing committee will review issues of interest to either the United States or Peru. The chapter specifies that no party has recourse to dispute settlement under the TPA for any matter arising under the chapter. Any SPS issue that requires formal dispute resolution would be resolved through the formal process established under the WTO SPS Agreement.

The TPA includes letters of exchange on SPS/TBT issues from both the United States and Peru. The letters from the governments of Peru and the United States (1) confirm that Peru will continue to recognize the U.S. meat and poultry inspection system as equivalent to its own; (2) confirm that the certification statements from the U.S. inspection system, attached in annexes 1 and 2, meet Peru's import requirements; (3) recognize that measures taken by the United States regarding BSE<sup>23</sup> and avian influenza meet WTO guidelines; and (4) confirm that Peru has taken steps to eliminate restrictions on U.S. rice exports to Peru.<sup>24</sup> These letters of exchange further recognize the TPA's annexes 1 and 2 that provide certification statements for certain livestock and poultry products.<sup>25</sup>

## **TPA Chapter 7—Technical Barriers to Trade**

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The objectives of the TBT chapter are to affirm and improve on the implementation of the WTO TBT agreement rather than to substantively expand it. The chapter requires both parties to intensify efforts to improve transparency, enhance bilateral cooperation on standards-related issues, increase mutual acceptance of one another's regulations and procedures, and reduce or eliminate unnecessary technical trade barriers.<sup>26</sup> To improve transparency, each party is to allow persons from the other party to participate in the development of its standards, technical regulations, and conformity assessment procedures; transmit proposals for new technical regulations and conformity assessment procedures electronically to the other party at the same time they are transmitted to the WTO pursuant to the TBT agreement; allow the other party at least 60 days to review and comment on such proposals; and publish or otherwise make available to the public its responses to significant comments no later than the date it publishes the final technical regulation or conformity assessment procedure.<sup>27</sup> The chapter encourages each party to consider a broad range of alternatives for accepting the results of the other's conformity assessment procedures and technical regulations, and when this is not possible, to explain why.<sup>28</sup> Finally, the chapter establishes a Committee on Technical Barriers to Trade, comprising representatives of each party, to monitor the implementation and administration of the chapter and address any issues arising from the other's standards, technical regulations, or conformity assessment procedures.<sup>29</sup>

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<sup>22</sup> U.S. government trade officials, interviews by Commission staff, Washington, DC, Feb. 9, 2006. The U.S.-Australia FTA also provided for the establishment of a bilateral SPS working group; however, that group is directed to resolve specific bilateral animal and plant health matters.

<sup>23</sup> See chap. 3 of this report for additional sector-specific information.

<sup>24</sup> Peru's Council of Ministers, "Letter Exchange on SPS/TBT Issues"; and USTR, "Letter Exchange on SPS/TBT issues."

<sup>25</sup> Annex 1 Certification Statements: (1) matured, partially cooked (scalded) or cooked pork ham; (2) edible offal products from refrigerated or frozen porcine species; and (3) de-boned meat, refrigerated or frozen meat, channels, half channels and cuts of porcine species. Annex 2 Certification Statements: fresh/frozen poultry meat.

<sup>26</sup> *U.S.-Peru TPA*, articles 7.1–7.3.

<sup>27</sup> *U.S.-Peru TPA*, article 7.6.

<sup>28</sup> *U.S.-Peru TPA*, articles 7.4–7.5.

<sup>29</sup> *U.S.-Peru TPA*, articles 7.7–7.8.

## **TPA Chapter 8—Trade Remedies**

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Chapter 8 of the U.S.-Peru TPA provides the legal framework to allow bilateral safeguards on originating goods under the TPA, under terms similar to corresponding provisions of existing FTAs with other countries. A party must notify the other party when an investigation is initiated and consult before taking any action under the safeguard provisions. A bilateral TPA safeguard measure can be taken only if a party determines that, as a result of the reduction or elimination of duty under the TPA, an article is being imported from the other party in such increased quantities (in absolute terms or relative to domestic production) as to be a substantial cause of serious injury or threat thereof to a domestic industry producing a like or directly competitive good. The measure imposed can take the form of (1) a suspension of the further reduction of the TPA duty rate on such goods, or (2) an increase in that duty to a level not exceeding the lower of the MFN duty rate at the time the action is taken or the applied MFN rate on the day before the date of entry into force of the TPA. Such a safeguard is aimed at remedying serious injury and facilitating adjustment. A party may not invoke a safeguard after the transition period (10 years after entry into force of the TPA). During the transition period, a safeguard cannot be imposed for a period extending longer than 2 years, unless an additional 2-year extension is deemed necessary by the proper authorities. Measures continuing longer than 1 year must be progressively liberalized, and the party invoking a TPA safeguard cannot subsequently impose another such measure on a particular originating good.

The rate of duty to be applied when the safeguard measure terminates may be no higher than the TPA rate that would have been in effect 1 year after application of the safeguard. Under the chapter, the parties agree to try to provide compensation that will be mutually accepted and will liberalize trade. Concerning antidumping and countervailing measures, the TPA provisions simply state that each party retains its rights and obligations under the WTO, and that the TPA does not impose any rights or obligations on the United States or Peru with respect to antidumping or countervailing measures.

## **TPA Chapter 9—Government Procurement**

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Chapter 9 of the U.S.-Peru TPA applies to covered government procurement of goods and services by any contractual means where the value concerned exceeds thresholds set out in an annex to the chapter. The thresholds will be adjusted every 2 years, with the first adjustment taking place on January 1, 2008, according to a formula set out in the annex. The chapter sets out definitions, general principles such as national treatment and nondiscrimination, criteria on the rules of origin used in the normal course of trade, and restrictions on the use of offsets. The chapter's provisions also set forth advance notice requirements for intended procurements, time frames for the tendering process, documentation requirements, rules on the declaration of technical specifications, conditions for participation, criteria for awarding contracts, requirements concerning the publication of information on selected tenders, and a mechanism for the review of supplier challenges. The chapter also sets forth procedures and conditions pertaining to selective tendering and limited tendering, and establishes that a Committee on Procurement of representatives of each party will handle matters related to implementation of the government procurement provisions. The annex to the chapter lists covered entities, covered purchases, and exclusions, and establishes the threshold amounts for purchases of goods and services by covered entities. The annex also contains the threshold adjustment formula. Overall, most goods and services

are covered by the agreement; however, both the United States and Peru exclude certain purchases and service sectors. In the case of Peru, for example, excluded procurements include clothing for the armed forces, architectural services, engineering and design services, engineering services during construction and installation, accounting and auditing services, and arbitration and conciliating services, among others. In the case of the United States, excluded procurements include certain procurements by the Departments of Agriculture, Commerce, Defense, Energy, and Homeland Security; research and development services; and operation services for government-owned facilities.

## **TPA Chapter 10—Investment**

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The two principal objectives of the TPA investment chapter are to create a welcoming environment for investors from each party by outlining the rights of investors and the rules that govern new cross-border investment, and to provide a clear outline of the investor-state dispute settlement process. Section A of the chapter outlines the rules governing new investments and sets forth the types of investments to which these rules apply.<sup>30</sup> Specifically, the TPA requires each party to give national and MFN treatment to investors and covered investments of the other party. The treatment of investors under the TPA must comply with customary international law. Other provisions are as follows:

- ▶ Expropriation will be only for a public purpose; it must be nondiscriminatory and accompanied by payment of prompt, adequate compensation in accordance with due process of law.
- ▶ All financial transfers relating to covered investments, including, but not limited to, contributions to capital, payment of interest, and payments under contracts, may cover the full value of the investment and may be made freely and without delay.
- ▶ Neither party will impose performance requirements as a condition of investment.<sup>31</sup>
- ▶ Neither party will require that senior management or boards of directors be of any particular nationality.

The benefits of this chapter may be denied only in limited, delineated instances, as outlined in the TPA annexes. This section of the chapter also deals with nonconforming measures, special formalities, and information requirements, and provides for consultation and negotiation of disputes.

Section B of this chapter provides detailed information and procedures on the investor-state dispute settlement process, including submission of claims to arbitration, selection of arbitrators, conduct of the arbitration, transparency of the arbitral proceedings, governing law, and awards of monetary damages (not including punitive damages) or restitution. Under the terms of the provisions of section B, each party will consent to claims being submitted according to the process outlined in the TPA. The awards made by any arbitration tribunal will have binding force only between the disputants and with regard to the particular case.

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<sup>30</sup> Investment related to financial services is covered separately in the financial services chapter (TPA chap. 12).

<sup>31</sup> Such provisions may include requirements to export a given level or percentage of goods or services, to purchase goods produced in a party's territory, or to transfer a certain technology or other proprietary information.

The chapter also contains definitions of terms and relevant conventions for use in the resolution of investment disputes. An annex defines “customary international law” for purposes of the chapter, while another deals with expropriation (direct and indirect) in some detail. To be considered expropriation, a party’s action or series of actions must interfere “with a tangible or intangible property right or property interest in an investment” based on clear transfers of title or outright seizure. Other annexes deal with the service of documents in such matters and the establishment of a possible future appellate body.

The investment chapter incorporates four annexes that have not been included in previous FTAs. All four of these annexes safeguard the rights of the Peruvian or U.S. government in the case of a dispute resolved through the investor-state process. Annex 10-E applies special dispute settlement provisions to the TPA, requiring that investors wait a minimum of 12 months before sending a claim to arbitration, and ensuring that investors have the opportunity to invest returns from investments in cases where they are not permitted to transfer funds outside of Peru. Annex 10-F removes claims related to the rescheduling of sovereign debt from arbitration under the investor-state dispute settlement process, unless there is a claim that the rescheduling agreement violates national treatment or MFN treatment. Annex 10-G requires a U.S. investor to choose to pursue an investment claim either in the Peruvian court system or under the TPA’s investor-state dispute settlement process. This provision states that once the dispute has been submitted to a Peruvian court, the U.S. investor may no longer initiate the investor-state process. Under annex 10-H, the Peruvian government may conclude a “stability agreement” with a foreign investor, under which the investor makes certain guarantees regarding the investment in exchange for a guarantee of tax treatment and other legal treatment over a certain period of time. Under the annex, a breach of a stability agreement does not constitute a breach of an investment agreement unless the stability agreement is one of several components of an investment agreement.

*Nonconforming Measures Related to Investment.* Provisions for the treatment of existing or future measures that are inconsistent with the agreement’s investment disciplines are included in annexes I, II, and III of the TPA. Annex I lists exemptions for existing laws or regulations, maintained at the central or regional government level, that violate the provisions of the agreement. Nonconforming measures at the local government level are exempted without requiring any notation in an annex.<sup>32</sup> Annex II lists reservations to ensure that a party maintains flexibility to impose future measures that may be inconsistent with TPA disciplines. The actual content of the reservations in annexes I and II varies widely. Some reservations are horizontal in nature, meaning that they address general policy provisions that affect all investment, whereas others apply only to specific industry segments. Annex III lists nonconforming measures specific to financial services that apply to both existing and potential laws and regulations.

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<sup>32</sup> *U.S.-Peru TPA*, article 10.13(1)(a)(iii).

Peru's only investment-related horizontal reservation under annex I states that foreign nationals may not own land or water within 50 km of the Peruvian border, without a special exception authorized through a Supreme Decree of the Council of Ministers. This restriction applies to mines, forest lands, and energy sources, and to Peruvian companies owned wholly or partially by foreign nationals. There is one horizontal reservation listed by Peru under annex II. The measure accords differential treatment to countries that have signed international agreements with Peru before the entry into force of the U.S.-Peru TPA, specifically including agreements involving aviation, fisheries, or maritime matters.

Horizontal reservations taken by the United States under annex I address the programs of the Overseas Private Investment Corporation and the registration of public offerings of securities, as well as existing nonconforming measures at the state level. Under annex II, the first horizontal reservation listed by the United States appears to ensure that U.S. obligations under the TPA concerning the cross-border services trade or establishment of a service enterprise are equivalent to those undertaken in the GATS. The second horizontal reservation taken by the United States mirrors the reservation taken by Peru, which accords differential treatment to countries under international agreements that were signed before the U.S.-Peru TPA.

The specific sectors for which investment-related reservations are listed in annexes I and II are presented in table 6-1.<sup>33</sup> In several cases, the reservation indicates a potential constraint on foreign investment that may not have a significant effect on investors' activities or business results. Consequently, the inclusion of a sector in an annex does not mean that the entire sector has been exempted from coverage under the investment disciplines of the TPA.

## **TPA Chapter 11—Cross-Border Trade in Services**

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Chapter 11 covers services other than financial services and air transport services.<sup>34</sup> The TPA will guarantee national and MFN treatment for providers of the covered services. Local presence is not required, and regulation of services and qualification requirements may not be unduly burdensome. There are transparency requirements in addition to those set out in TPA chapter 19 on transparency. The parties are permitted but not required to recognize education, experience, licenses, or certifications obtained in particular nonparty countries.

The parties must permit unfettered transfers and payments relating to the cross-border supply of services and must allow such transactions to occur in a freely usable currency at the prevailing exchange rate on the date of transfer, subject to explicit exceptions. The benefits of this chapter may be denied under limited circumstances if the service supplier is controlled by persons of a nonparty. Chapter 11 includes specific language on express delivery services, which defines the scope of coverage, confirms the desire to maintain market access no less favorable than that in effect when the TPA was signed, and delineates the relationship between covered services and each party's postal monopoly (annex 11-D)

In annex 11-A, the parties agree that if a party establishes or maintains a fund to promote a particular service within its territory, discriminatory disbursement of such funds will be

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<sup>33</sup> Investment-related reservations related to financial services, including insurance, are listed in annex III, and are presented in table 4-2 of this report.

<sup>34</sup> The covered measures include those adopted or maintained by central, regional, or local governments and authorities and by nongovernmental bodies exercising powers delegated by such governments and authorities.

allowed under the TPA, even when the fund is administered in part or wholly by a privately-owned entity. In annex 11-B, the parties agree to encourage relevant bodies to develop mutually acceptable standards and criteria for licensing and certification of professional service suppliers. This annex permits the parties, by mutual agreement, to encourage the relevant bodies in their respective territories to develop procedures for the temporary licensing of one another's professionals. Moreover, this annex establishes a Working Group on Professional Services, including representatives of each party, to facilitate the activities listed previously, with priority consideration given to engineering, architecture, and accounting services. At its first meeting, the working group shall consider establishing procedures for the temporary licensing of engineers. Annex 11-C will allow Peru to reserve the right to maintain certain limitations regarding labor mobility, except to the extent that these limitations restrict the ability of enterprises to employ professionals and specialty personnel of other parties on a temporary basis. Finally, the TPA includes U.S. side letters concerning the review of selected state permanent residency and citizenship requirements and the maintenance of certain Peruvian measures relating to costs associated with archaeological research projects, the granting of monetary prizes to Peruvian cinematographic works, and tax credits and refunds for publishing activities in Peru.

## **TPA Chapter 12—Financial Services**

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Chapter 12 will generally require each party to allow cross-border trade in financial services, accord national treatment and MFN treatment to investors of the other party, and provide market access for financial institutions without limitations on the number of financial institutions, value of transactions, number of service operations, or number of persons employed. As in previous bilateral U.S. FTAs, cross-border trade is limited to certain segments of the financial services industry. For insurance, TPA coverage of cross-border trade is limited to marine, aviation, and transit insurance; reinsurance; and insurance intermediation services such as brokerage and agency services. For banking and securities, TPA coverage of cross-border trade is limited to the provision and transfer of financial information and financial data processing, advisory, and other auxiliary financial services as defined in the text of the chapter. Cross-border intermediation services (i.e., deposit-taking and lending) are prohibited. Under the TPA, securities firms may not establish branches, whereas banks may do so, though the operations of bank branches are limited by the amount of capital they hold in Peru. However, the two parties confirm that they will permit financial institutions to offer portfolio management services from one party to another on a cross-border basis.

Each party will be required to permit a financial institution of the other party to provide new financial services similar to those that it permits its own domestic institutions to provide, without additional legislative action. The chapter will not require either party to furnish or allow access to information related to individual customers or confidential information, the disclosure of which would impede law enforcement, be contrary to the public interest, or prejudice legitimate commercial concerns.

Under chapter 12, a party could not require financial institutions of the other party to hire individuals of a particular nationality as senior managers or other essential personnel, and could not require more than a simple majority of the board of directors to be nationals or residents of the party. The parties agree that transparent regulations and policies are important, commit to publishing in advance all regulations of general application, and agree to maintain or establish mechanisms to respond to inquiries from interested persons. Where

a party requires membership in a self-regulatory organization, the chapter provides that such organizations are subject to the national treatment and MFN obligations of this chapter. The two parties state that they recognize the importance of maintaining and developing expedited procedures for offering insurance services.

The TPA will establish a financial services committee to implement the provisions of chapter 12. Chapter 12 also provides for consultations and dispute resolution, and includes cross-references to the provisions covering dispute settlement procedures. Under the TPA, parties may retain specific financial services measures that do not conform to the TPA by including the measures in annex III of the agreement.

## **TPA Chapter 13—Competition Policy**

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Chapter 13 addresses competition policy, designated monopolies, and state enterprises with a view to implementing economically sound policies and proscribing behaviors subject to this chapter that would restrict bilateral trade and investment. The chapter commits the United States and Peru to maintain competition laws that prohibit anticompetitive business conduct and competition agencies to enforce the laws, and to ensure national treatment, due process, and a nondiscriminatory application of these laws. The parties agree to cooperate in the area of competition policy and establish a working group.

The chapter also requires the parties to ensure that any private or public monopolies that they designate, and any state enterprises, are subject to disciplines designed to eliminate abuses of their special status and that they will not operate in a manner that creates obstacles to trade and investment. There are provisions covering transparency, information requests, consultations, and definitions of terms. Neither party will have recourse to dispute settlement under the provisions of this chapter pertaining to national competition laws, cooperation, the working group, or consultations.

## **TPA Chapter 14—Telecommunications**

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Chapter 14 will commit each party to ensure a high degree of openness, transparency, and nondiscrimination in providing both basic and value-added telecommunications services. For example, it will require each party to ensure that enterprises of the other party have access to, and use of, any public telecommunications service offered in its territory on reasonable and nondiscriminatory terms and conditions. The chapter imposes obligations on telecommunications service providers related to interconnection, number portability, dialing parity, and resale services.<sup>35</sup> In addition, major suppliers<sup>36</sup> of one party are also required to offer telecommunications services to entities of the other party on terms no less favorable than those accorded to their own subsidiaries, affiliates, and nonaffiliated partners,<sup>37</sup>

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<sup>35</sup> Paragraph 2 (resale), paragraph 3 (number portability), and paragraph 4 (dialing parity) of article 14.3 (Obligations Relating to Suppliers of Public Telecommunications Services) do not apply to suppliers of commercial mobile services.

<sup>36</sup> TPA chap. 13 defines “major supplier” as a supplier of public telecommunication services that has the ability to materially affect the terms of participation in the relevant market due to its market position and control over essential facilities.

<sup>37</sup> Each party is required to maintain measures preventing major suppliers from engaging in anticompetitive practices. Such practices include, *inter alia*, cross-subsidization, using information obtained from competitors with anticompetitive results, and not making relevant technical and commercial

particularly regarding the availability, provisioning, rates, and technical quality of such services. Major suppliers also face additional obligations related to network unbundling, co-location, interconnection, leased circuits, resale services, and access to poles, ducts, conduits, rights-of-way, and submarine cable systems.<sup>38</sup>

Chapter 14 will require the governments of the United States and Peru to make all regulations and measures publicly available, ensure the independence of the national telecommunications regulator, maintain dispute resolution procedures, and bestow competent regulatory entities with the authority to enforce compliance with TPA obligations. The chapter also contains commitments and obligations related to universal service, licensing, and the allocation/use of scarce resources. Chapter 14 will also allow each party to exercise latitude regarding the application of regulations to public telecommunications services, if the telecommunications regulatory body determines that enforcement is not necessary to protect consumers, promote competition, or prevent discriminatory practices. Two annexes to chapter 14 establish exemptions, in both the United States<sup>39</sup> and Peru,<sup>40</sup> to provide telecommunications services in rural areas.

## **TPA Chapter 15—Electronic Commerce**

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Broadly, the parties have committed to nondiscriminatory treatment of digital products, agreed not to impose customs duties on such products, and agreed to cooperate in numerous policy areas pertaining to e-commerce.<sup>41</sup> The e-commerce chapter in the U.S.-Peru TPA recognizes the importance of avoiding economic, regulatory, and technical barriers to e-commerce, and the applicability of WTO rules to e-commerce. Chapter 15 also affirms the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent and deceptive commercial practices. The TPA allows for nondiscriminatory treatment of digital products, providing broad national treatment and MFN provisions. A party may not apply customs duties, fees, or other charges on or in connection with the import or export of digital products by electronic transmission. The customs value of imported carrier media that includes a digital product must be determined by the cost of the medium alone, without regard to the value of the digital products stored

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information available to suppliers on a timely basis.

<sup>38</sup> Paragraph 1 (treatment by major suppliers), subparagraph (2)(b)(iii) (availability of technical information), paragraph 3 (resale), paragraph 4 (unbundling), paragraph 5 (interconnection), paragraph 6 (leased circuits), paragraph 7 (co-location), and paragraph 8 (access to poles, ducts, conduits, and rights-of-way) of article 14.4 (Additional Obligations Relating to Major Suppliers of Public Telecommunications Services) do not apply to major suppliers of mobile services.

<sup>39</sup> In the United States, a state regulatory authority may exempt rural local exchange carriers from obligations contained in article 13.4 and paragraph 2 (resale), paragraph 3 (number portability), and paragraph 4 (dialing parity) of article 14.3 (Obligations Relating to Suppliers of Public Telecommunications Services).

<sup>40</sup> In Peru, rural telephone companies may be exempted from obligations contained in paragraph 2 (resale), paragraph 3 (number portability), and paragraph 4 (dialing parity) of article 14.3 (Obligations Relating to Suppliers of Public Telecommunications Services) and the obligations in article 14.4 (Additional Obligations Relating to Major Suppliers of Public Telecommunications Services). In addition, for 10 years, Peru may exempt service suppliers that supply public telecommunications services in rural areas from the obligations contained in paragraph 2 (resale), paragraph 3 (number portability), and paragraph 4 (dialing parity) of article 14.3 (Obligations Relating to Suppliers of Public Telecommunications Services) and from the obligations contained in paragraph 3 (resale), paragraph 4 (unbundling), and paragraph 7 (co-location) of article 14.4 (Additional Obligations Relating to Major Suppliers of Public Telecommunications Services).

<sup>41</sup> USTR, “U.S. Peru Trade Promotion Agreement Policy Brief.”

on the carrier medium.<sup>42</sup> A party may not accord less favorable treatment to some digital products than it accords to other like digital products on the grounds that the digital products were created, stored, transmitted, published, or first made commercially available outside its territory or on the basis of the nationality of the author, performer, producer, developer, or distributor of such digital products. However, the chapter does not prevent any party from imposing internal taxes, charges, or other fees on the domestic sale of such products, provided they are imposed in a manner consistent with the TPA.

## **TPA Chapter 16—Intellectual Property Rights**

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The chapter on IPR reportedly provides for improved standards for protection and enforcement that are consistent with both U.S. standards and emerging international standards.<sup>43</sup> Such improvements include state-of-the-art protections for digital products such as U.S. software, music, text, and videos; stronger protection for U.S. patents, trademarks and test data, including an electronic system to register and maintain trademarks; and further deterrence of piracy and counterfeiting by criminalizing end-user piracy.<sup>44</sup>

*Trademarks, Geographical Indications, Domain Names.* The TPA clarifies what can be registered as a trademark, allowing for the possibility of registering sound and scent marks; requires the protection of collective and certification marks; enhances the protection for well-known marks, whether registered or not; and eliminates the requirement that trademarks be registered to be protected. It stipulates the concept of “first-in-time, first-in-right” for trademarks and clarifies the relationship between trademarks and GIs, prohibiting the protection or recognition of a GI that is confusingly similar to a previously used, applied for, or registered trademark.<sup>45</sup>

This is important because of the differences between the U.S. and the EU approaches to the protection of trademarks and GIs. The United States protects GIs through the trademark system, with no hierarchy between the two. The EU, on the other hand, has a separate, sui generis, system for GIs that gives preference to GIs. Regarding domain names, articles 16.4.1 and 16.4.2 combine to combat the problems of copyright and trademark cyber-piracy. U.S. industry prefers a direct reference to the “Whois” databases<sup>46</sup>—something included only, to date, in the Singapore FTA.<sup>47</sup>

*Copyrights and Related Rights.* Besides the inclusion of the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) (box 6-3) in the general provisions, the copyright and related rights sections contain detailed provisions that require implementation of the new obligations provided in the WCT and WPPT in a manner consistent with the Digital Millennium Copyright Act. These include provisions specifically regarding Technological Protection Measures and Rights Management Information. Peru agreed to extend its terms of protection to life of the author plus 70 years for most copyrighted works—a major advance and significant TRIPS-plus provision. The text also contains some provisions that were originally included in NAFTA regarding “contractual

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<sup>42</sup> Currently, countries use different methods to apply customs duties.

<sup>43</sup> USTR, *Peru TPA Facts: Brief Summary*, 1.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*, 4.

<sup>46</sup> “Whois” databases are the master directories for domain name registrations, providing a mechanism for finding contact and other registration information.

<sup>47</sup> ITAC 15, *Report on the U.S.-Peru TPA*, 10.

rights,” and protection against the theft of encrypted satellite signals and the manufacture of, and trafficking in, tools to steal those signals.<sup>48</sup> The copyright section does not contain a provision regarding parallel imports of copyrighted works.<sup>49</sup> The Morocco FTA is the only agreement to date to address the treatment of parallel imports of copyrighted works.

*Patents.* The patent section of the TPA provides a number of clarifications and improvements to the TRIPS agreement that generally reflect U.S. law and practice, although U.S. industry has expressed concern over several provisions.<sup>50</sup> Peru agreed to accede to the Patent Cooperation Treaty and ratify or accede to the International Convention for the Protection of New Varieties of Plants (also known as the Union for the Protection of New Varieties of Plants Convention) by January 1, 2008. Peru also agreed to provide patent protection for transgenic<sup>51</sup> plants that meet the three-step test,<sup>52</sup> as prescribed in the TRIPS agreement, but did not agree to provide protection for transgenic animals.<sup>53</sup> Peru agreed to place restrictions on how a third party may use a patented invention to generate data needed for the marketing approval of generic pharmaceutical products. Article 16.9.6 compensates for delays in patent approval at the patent office of either country. The patent section does not contain restrictions on compulsory licensing, parallel imports, and pre-grant opposition, nor does it require the protection of “second-use” patents.<sup>54</sup>

*Measures Related to Certain Regulated Products.* The provisions of the TPA clarify the obligations in TRIPS article 39.3 with respect to data exclusivity and provide for additional protection with respect to pharmaceutical products subject to a patent.<sup>55</sup> Of particular importance, article 16.10.1(a) imposes an obligation of “non-reliance” on either the originator’s approval or the originator’s data package itself for a period of at least 5 years from the date of approval for a pharmaceutical product, and 10 years from the date of approval for an agricultural chemical product. The TRIPS agreement does not specify a time period for protection of confidential test data. This lack of clarity has led many countries to allow third parties to “rely” on the confidential test data to get marketing approval for their copy pharmaceuticals, which may be in violation of an innovator company’s patent. Like CAFTA-DR, the TPA includes a 5-year cap for seeking marketing approval. This cap was included to alleviate Peru’s—and previously Central America’s and the Dominican Republic’s—concerns that U.S. pharmaceutical companies would attempt to extend their period of exclusivity indefinitely by delaying seeking marketing approval in different countries.

In tandem with the patent section, this section does not include additional periods of nonreliance for new clinical information related to the new use of a previously approved chemical component. Article 16.10.2 clarifies that the period of protection for confidential test data submitted for marketing approval is independent from the period of protection granted for a patent. Article 16.10.3 requires Peru to implement measures in its marketing

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<sup>48</sup> *U.S.-Peru TPA*, articles 16.7.3 and 16.8.

<sup>49</sup> The United States does not provide border enforcement protection for parallel importations of copyrighted works.

<sup>50</sup> ITAC 15, *Report on the U.S.-Peru TPA*, 15.

<sup>51</sup> The term “transgenic” describes an organism that has had genes from another organism put into its genome through recombinant DNA techniques.

<sup>52</sup> The “three-step test” refers to TRIPS article 27.1, which states, “Patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step, and are capable of industrial application.”

<sup>53</sup> *U.S.-Peru TPA*, article 16.9.2; and ITAC 15, *Report on the U.S.-Peru TPA*, 16.

<sup>54</sup> *Ibid.*

<sup>55</sup> *U.S.-Peru TPA*, article 16.10.

approval process to prevent generic drug approvals during the term of the patent covering the pharmaceutical product (i.e., “linkage”) and requires the mandatory disclosure of the identity of the generic applicant that seeks marketing approval to enter the market during the patent term.

*Enforcement.* The full and effective implementation of the enforcement provisions is key to the success of this chapter. The updated protections afforded in this agreement will be of limited value to U.S. companies without the capability and willingness of the Peruvian government to enforce those standards. The enforcement obligations go well beyond TRIPS in scope and specificity, covering transparency and the dissemination of information, civil and administrative procedures and remedies, provisional measures, special requirements related to border measures, criminal procedures and remedies, and Internet service provider (ISP) liability. Of particular importance is article 16.11.23 that authorizes customs officials to seize suspect items, ex officio, without the requirement of a court order.

*Side Letters and Understandings.* The IPR chapter includes several side letters or “understandings.” The ISP Side Letter details the specific administrative requirements for the notification to an ISP from a copyright holder who believes that infringing material is being posted by one of the ISP’s subscribers and counternotification from a subscriber who believes that removal or disabling of his or her material was a mistake or misidentification.

The Retransmission Side Letter allows for consultations, at any time after the agreement has been in force for 2 years, to determine the continued applicability of the obligation set out in article 16.7.9 and whether, in light of technological and other relevant developments, it should be modified. The Understanding Regarding Certain Public Health Measures clarifies that the obligations in the IPR chapter do not adversely affect a country’s ability to take necessary measures to protect public health by promoting access to medicines for all. Nor does it prevent the effective use of the TRIPS/health solution.

In addition to containing the Understanding, the TPA contains a side letter in which the United States confirms to Peru its view that the references to chapter 16 in the understanding include article 10 on Measures Related to Certain Regulated Products.<sup>56</sup> Although this is a highly unusual inclusion in an FTA, the letter serves only to clarify the understanding and does not impose any additional obligations beyond those already found in the understanding.

*Understanding Regarding Biodiversity and Traditional Knowledge.* The understanding encourages the sharing of information regarding genetic resources and traditional knowledge and the benefits derived from that information through mutually agreed contracts. This is the first time any language regarding biodiversity and traditional knowledge has been included in an FTA. While the understanding does not obligate either country, it creates a precedent for future FTAs and for the continuing discussion in WIPO. The United States has maintained that, because of the difficulty of defining and regulating these subjects, they are best addressed within the context of WIPO. Conversely, the inclusion of these subjects was of particular importance to the Andean countries.

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<sup>56</sup> U.S.-Peru TPA, Letter Regarding Certain Regulated Products.

## TPA Chapter 17—Labor

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In the TPA, the United States and Peru each agrees to effectively enforce its respective labor laws while providing for reasonable exercise of discretion regarding such enforcement. This requirement is the only provision in chapter 17 that is enforceable through the dispute settlement provisions outlined in chapter 21 of the agreement. In addition, the parties recognize their respective right to create and modify domestic labor laws, and acknowledge that it is not appropriate to encourage trade or investment by weakening or reducing the protection afforded in those laws. The parties also reaffirm their obligations as members of the International Labour Organization (ILO), seek to make their domestic laws provide for standards consistent with internationally recognized worker rights, and strive to improve those standards.

Each party agrees to provide domestic tribunal proceedings, allowing persons with a recognized interest under its law in a particular matter to seek enforcement of its labor laws. Such proceedings must be fair, equitable, and transparent; adhere to due process of the law; and provide an opportunity for persons involved in such proceedings to support or defend their positions. Each party agrees to ensure independent review of tribunal actions, provide legal remedies to ensure enforcement, and promote public awareness of its labor laws. The TPA defines labor laws as statutes or regulations that directly relate to internationally recognized labor rights, including the right of association, the right to organize and bargain collectively, a ban on forced or compulsory labor, the protection of children and other young laborers, and standards on conditions of work, including minimum wages, hours of work, and occupational health and safety. The establishment of minimum wage standards and levels is specifically excluded from the definition of labor laws, as specified in this chapter.

The TPA establishes a Labor Affairs Council that will oversee the implementation of chapter 17 provisions, prepare public reports on the implementation of the chapter, develop guidelines for the consideration of input from persons of a party, and strive to resolve matters related to cooperative labor consultations. Each party is required to designate an office within its labor ministry to serve as a contact with the other party and the public. The TPA allows each party to establish or consult existing national labor advisory committees, which may include members of the public and representatives of business and labor. The TPA also creates a labor cooperation and capacity-building mechanism to further advance common commitments on labor matters, including the ILO Declaration of Fundamental Principles and Rights at Work and Its Follow-up and ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, and to enhance opportunities to improve labor standards.

A party can request consultations with another party on matters under this chapter with a view toward finding a mutually acceptable resolution. Failing to find a mutually acceptable resolution, a party can call upon the Labor Affairs Council to consider the matter, but TPA dispute settlement actions will not be allowed except for matters regarding a party's failure to enforce its own labor laws. A separate mechanism on disputes dealing with the failure to enforce labor laws (contained in chapter 21) can result in an annual assessment of up to \$15 million payable into a fund set up and administered by the Free Trade Commission (established under chapter 20) for appropriate labor initiatives.

## **TPA Chapter 18—Environment**

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Under the U.S.-Peru TPA, each party must ensure that its environmental protection laws provide for high levels of protection and strive to improve those laws, provide appropriate and effective remedies and sanctions for violations of environmental protection laws, provide opportunities for public participation, and promote public awareness of its environmental laws. The parties agree that trade or investment should not be encouraged by weakening or reducing domestic legal protections. To that end, the parties agree to ensure that domestic judicial, quasijudicial, or administrative proceedings should be available to sanction or remedy violations of environmental laws. Such proceedings must be fair, open, and equitable; comply with due process of law; and provide access to persons with a recognizable legal interest.

The parties agree to establish an Environmental Affairs Council that will meet to consider the implementation of the environmental provisions and the separate Environmental Cooperation Agreement (ECA), and to strive to resolve any controversies that may arise regarding the environmental provisions. There is a draft text of a memorandum of understanding between the parties concerning environmental cooperation, including exchanges of experts or students and a joint forum of government officials that will meet regularly to arrange and administer the various shared activities.

The parties agree to pursue cooperative environmental activities and provide for environmental consultations, but neither party will have recourse to dispute settlement for any matter arising under this chapter except for each party's commitment to enforce its respective domestic laws. A separate mechanism on disputes dealing with environmental claims could result in an annual assessment of up to \$15 million, payable into a fund jointly administered by the two governments for "appropriate environmental initiatives." The parties recognize the importance of conservation and sustainable use of biological diversity, and the preservation of traditional knowledge and practices that contribute to this objective. The parties also commit to working in multilateral forums to enhance the mutual supportiveness of multilateral environmental and trade agreements.

## **TPA Chapter 19—Transparency**

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Chapter 19 of the U.S.-Peru TPA enhances and ensures communication and disclosure between parties. For example, the chapter requires each party to make publicly available all laws, regulations, and procedures regarding any matter covered by the agreement. Each party is to establish or maintain procedures to provide review and appeal capabilities to the entities that will be directly affected by actions, rulings, measures, or procedures under the TPA. Such tribunals are to be impartial and independent, and empowered to correct the final administrative actions of the TPA. Generally, such rights already exist under U.S. law. The chapter also includes anticorruption provisions that seek to improve trading environment by requiring each party to establish criminal prosecution and penalty procedures for bribery and corruption. Specific commitments obligate public officials of each party to protect informers and to work in other international forums to aid and support anticorruption provisions. Each government will also be required to establish transparent procedures for registering trademarks, including GIs.

## **TPA Chapter 20—Administration of the Agreement and Trade Capacity Building**

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This chapter sets up a Free Trade Commission of cabinet-level representatives to supervise the implementation of the TPA, consider all types of matters raised under it, resolve disputes that may arise regarding the interpretation or application of this agreement, establish and task working groups, and fulfill other similar duties. The Free Trade Commission comprises the USTR and the Peruvian Ministro de Comercio Exterior y Turismo. Under this chapter, each party shall also designate a TPA coordinator to prepare for Free Trade Commission meetings and follow up on its decisions. The chapter also includes provisions on administering dispute settlement proceedings.

In recognition that trade capacity building is a catalyst for the reforms and investments needed to foster trade-driven economic growth and reduce poverty, section B of this chapter establishes a Committee on Trade Capacity Building. This committee will seek to prioritize trade capacity-building projects and invite the participation of international donor organizations, private-sector entities, and nongovernmental organizations to encourage trade and reform. The committee also will provide oversight to a working group on customs administration and trade facilitation created under the provisions of this chapter, but tasked to implement the provisions of Chapter 5—Customs Administration and Trade Facilitation.

## **TPA Chapter 21—Dispute Settlement**

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Under this chapter, although the parties commit to consult and cooperate on TPA matters, one party can invoke dispute settlement if it believes the other has a TPA-inconsistent measure, has failed to carry out a TPA obligation, or that a benefit it reasonably expected has not been given. Parties can refer issues to the Free Trade Commission (established in chapter 20) for resolution or arbitration; matters can also be referred to the WTO or other forums available to both parties. Once a panel constituted under the chapter has supplied its final report, the report will be made public and the parties will be obliged to agree on the resolution of the dispute in question in a manner “which normally shall conform with the determinations and recommendations, if any, of the panel.” Absent agreement to resolve the issues, compensation can be negotiated. If nonimplementation of the agreed outcome is evident, the complainant can advise the other party that it intends to suspend benefits of equivalent effect. Certain matters—such as labor laws and environmental laws—are treated separately. In such situations, “an annual monetary assessment” set in U.S. dollars (not to exceed \$15 million annually, adjusted for inflation, paid into a fund relating to the pertinent area at issue) can be imposed on the violating party. These assessments will be spent, as directed by the Free Trade Commission, on appropriate labor or environmental initiatives.

This chapter also contains provisions directing compliance reviews and 5-year reviews under the TPA. Matters under the TPA can be referred to the Free Trade Commission from judicial or administrative proceedings of a party. Also, “no Party may provide for a right of action under its domestic law against any other Party on the ground that a measure of another Party is inconsistent with this Agreement.” The chapter also states that parties will encourage the use of alternate dispute resolution to settle international commercial disputes between private parties in the free trade area and authorizes the commission to establish an advisory panel on private commercial disputes. Actions relating to excepted matters cannot be taken. The

chapter contains administrative procedures for requesting a panel, establishing a roster of panelists, selecting panelists, and issuing reports.

## **TPA Chapter 22—Exceptions**

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This chapter discusses general exceptions to various chapters of the TPA and mentions specific provisions of various WTO agreements, which are incorporated by reference. This chapter also exempts the disclosure of essential security, taxation, or other information, which would impede law enforcement or be contrary to the public interest.

## **TPA Chapter 23—Final Provisions**

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This chapter contains the mechanisms for acceding to the TPA and putting it into force as well as an article on the legal significance of annexes. The parties must consult on any changes made to provisions of the WTO agreement incorporated in this text to determine if the same principle will apply herein. If the parties agree, any country or group of countries may accede to the TPA. The TPA will enter into force on or after the exchange of written notifications by the United States and Peru that each has completed its respective domestic legal procedures. “The English and Spanish texts of the Agreement are to be equally authentic.”<sup>57</sup> Any withdrawal from the TPA will take effect 6 months after written notice.

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<sup>57</sup> *U.S.-Peru TPA*, article 23.7.