

SERVICES

With the implementation of the U.S.-Peru TPA, U.S. service providers will gain improved access to the Peruvian market and better intellectual property protections. Peru has made very substantial commitments to liberalize services trade, including telecommunications and financial services. These commitments significantly improve upon Peru's WTO commitments in terms of sectors covered and elimination of restrictions. The U.S.-Peru TPA establishes a solid framework for trade in services by providing for the elimination of obstacles in most service sectors and for improved regulatory transparency.

Why do services commitments matter?

The services sector accounts for the majority of jobs in the United States. In the United States, private services industries accounted for 93.2 million jobs in 2007, or roughly eighty percent of private non-farm employment. U.S. services exports are a vital part of this picture and they continue to grow. In 2007, services exports of \$479 billion accounted for 29 percent of total U.S. exports, generating a services trade surplus of \$107 billion, which offset nearly thirteen percent of the U.S. merchandise trade deficit.ii

U.S. services firms are well positioned relative to their competitors abroad to take advantage of free trade agreements. The intensity and vigor of the U.S. market give rise to extremely competitive companies prepared to meet stringent demands at home and enable them to compete abroad. Consumers in Peru value services that help boost their own productivity and enhance their lives and look to the United States as a model in terms of providing high-quality and cutting-edge services and technologies.

U.S.-Peru TPA Allows Service Providers to Choose Mode of Delivery – a Key Provision for SMEs

Peru's commitments in services cover both the supply of services across the border (such as supplying a service from one country to another through electronic means, or through the travel of nationals), as well as the supply of services through investment and a local presence to supply the service. With limited exceptions, the Peruvian government is prohibited from requiring a U.S. company to incorporate or to make any form of local investment in order to supply services on a cross-border basis. In other words, a U.S. company wishing to provide its service in Peru is not required to have any formal presence there (with very few exceptions). This is a benefit to all U.S. service providers, especially SMEs, who may not have the resources to maintain a presence in Peru or to conduct enough business in Peru to warrant that kind of presence.

U.S.-Peru TPA Opens Services Market to U.S. Exporters

Substantial Market Access Provided

- Peru will accord substantial access across its entire services regime subject to very few exceptions, using the "negative-list" approach

Key Sectors Benefit including

- Telecommunications, distribution services such as wholesaling, retailing and franchising, express delivery services, computer and related services, audiovisual services, transport services, construction and engineering services, tourism, advertising, professional services (e.g. architects, engineers, accountants), environmental services

Regulatory Transparency Required

- Transparency in regulatory processes is absolutely essential for services industries because they are often highly regulated.
- The U.S.-Peru TPA requires regulatory authorities to use open and transparent administrative procedures, and provide advance notice and comment periods for proposed rules and regulations.

The freedom for service providers to choose their mode of delivery becomes increasingly important as technology makes distance less of a service barrier. Providing education services through distance learning, for example, has undergone a dramatic transformation due to technology. Satellites and the Internet are transforming the world into a borderless educational arena, benefiting both previously under-served potential students and education entrepreneurs. Peru is one of the Andean region's leaders in Internet use and innovators in using technology for distance learning and videoconferencing. Major new investments in telecommunications and information systems that are likely to result from the U.S.-Peru TPA will dramatically improve access to IT, benefiting all "e-service" providers.

Barriers to Foreign-Service Suppliers lifted

Peru has a number of barriers to foreign-service suppliers that the U.S.-Peru TPA will address. Removal of these barriers will allow increased access and streamlining of operations for U.S. companies. For example, upon implementation of this Agreement, Peru will eliminate a services barrier requiring U.S. firms located in Peru to hire nationals rather than Americans to provide professional services. Additionally, upon implementation of the Agreement, U.S. companies providing a service under concession to the Peruvian government will be free to purchase on the basis of price and quality, not on the basis of nationality of the goods in these sectors. Currently, such companies, which typically operate in the transportation, energy and mining sectors, are required to buy locally.

Sector-specific Benefits for the Service Sector

Peru's sectoral coverage in the U.S.-Peru TPA is significantly broader than the commitments it undertook in the WTO General Agreement on Trade in Services (GATS). One reason is that the Agreement uses a more inclusive method of sectoral coverage - the "negative list" approach. This means that every sector is completely covered unless an exception is listed and that trade disciplines are automatically extended to services that have yet to be created or brought to market. Such automatic coverage of new services is especially important to industries where market development, technological advances and innovation continuously result in new service offerings and means of delivery, including sectors such as communications, express delivery, financial and computer related services. The GATS uses a "positive list," which means that only those sectors that a country expressly lists are covered by the GATS national treatment and market access obligations. Peru's GATS commitment was fairly limited with relatively few of the possible 150 different sectors and sub sectors listed.

U.S. service providers should immediately benefit from U.S.-Peru TPA commitments in a number of key areas. Some examples are provided below.

Financial Services

Peru will open its financial service sector and will allow U.S. providers to have full rights to establish subsidiaries or branches for banks or insurance providers, enabling them to provide credit to underserved areas, breaking the monopoly of retailers and banks that charge very high interest rates and making credit more readily available to Peruvian consumers.

U.S.-based firms will be able to supply insurance on a cross-border basis, including through electronic means for key markets including reinsurance and reinsurance brokerage upon entry into force, and marine, aviation and transport (MAT) insurance and brokerage within two years of implementation. U.S.-based banking and other non-insurance firms will be able to offer services cross-border in areas such as provision, transfer, and processing of financial data and information;

related software; and the provision of advisory and other auxiliary financial services, excluding intermediation.

U.S.-based asset managers, including insurance companies, will be able to provide investment advice and other portfolio management services to mutual funds and pension funds, including the funds that manage the portfolios of collective investment schemes established in Peru.

Advertising

Peru made full commitments in this important sector. This is an improvement over the GATS, where Peru only made a partial commitment in advertising.

Construction and engineering services

Peru made full commitments for construction services. In addition, improved regulatory regimes and strong investment environments will stimulate growth opportunities for construction consultants and engineers. This is an improvement over the GATS, where Peru only made a limited commitment for engineering services largely based on reciprocal treatment.

Distribution Services, including retail and wholesale services, direct marketing, and direct selling

Retailers will benefit from the removal of barriers that inhibit the movement of products among manufacturers, wholesalers, retailers, and consumers. Intellectual property rights provisions will ensure the concept brands of the franchise companies are protected. Retailers working with transportation, telecommunications, financial, computer and other service providers may be able to improve and streamline the supply chain to better serve consumers in the United States and throughout the hemisphere. Direct marketers should benefit from improved wireless telecommunication services and Internet service that are likely to result from the U.S.-Peru TPA, and from Peru's commitments to open specific services sectors that are important to direct marketers, such as travel and tourism.

Franchising

Peru made full market access commitments in franchising. Furthermore, commitments in other areas of the U.S.-Peru TPA will benefit U.S. franchisers. Trademark provisions will protect the franchiser name, and tariff liberalization will allow the lower-cost import of key equipment needed to supply the franchisee.

Entertainment, including audiovisual and broadcasting

Peru made commitments that will improve market access for U.S. films and television programs over a variety of media including cable, satellite, and the Internet. This market opening is in stark contrast with the GATS, where Peru made no commitments in this area. Additionally, the Agreement provides state-of-the-art intellectual property protection and mandates that each Party criminalize the willful unauthorized receipt or distribution of encrypted satellite signals, thus preventing piracy of satellite television programming. It also requires non-discriminatory treatment for digital products, such as U.S. software, music, text, and videos.

Express delivery services

The Chapter on Services includes an expansive definition of express delivery services, locks in existing competitive opportunities in Peru and prevents cross-subsidization from a postal monopoly. This is in contrast with the GATS, where Peru did not make a commitment in either postal/courier services or in express delivery. The U.S.-Peru TPA provisions on customs trade facilitation will help express delivery service companies provide better services to customers who are seeking to enhance

their competitiveness in the hemisphere and global market place. Express delivery services are in demand from a wide range of companies--from high-tech to agriculture, and auto manufacturing to retail services. Speed-to-market, just-in-time inventory processes and total quality management are critical to success in today's economy. Commitments in this sector will facilitate U.S. investment in Peru.

Energy Services

A framework that can yield opportunities for U.S. energy services firms and facilitate the provision of energy services between the United States and Peru is provided through the Agreement's extensive obligations on regulatory transparency and investment. Energy demand in Peru is increasing and its natural gas reserves are the fourth largest in South America. As the Andean countries pursue their goal of a common electricity market, there will be opportunities for U.S. energy services providers.ⁱⁱⁱ The U.S.-Peru TPA better positions U.S. companies to take advantage of these opportunities. In the GATS, Peru made no commitments in energy services.

Information Services, including computer related services

Peru provides full access to the Peru market with no exceptions in information services sector, which is a major improvement over the GATS where Peru made no commitments. The U.S.-Peru TPA covers all modes of delivery of information services, including electronic delivery, such as via the Internet. The "negative" list approach also ensures that rapidly evolving computer services, driven by continual advances in technology, will be covered by commitments contained in the Agreement. Without such an approach, computer and related services definitions and commitments could quickly become obsolete as new services are introduced. U.S.-Peru TPA obligations cover "digital products" and other e-commerce products, which will also benefit U.S. technology service providers. In addition, as technology users increasingly purchase information technology solutions as a combination of goods and services (including specialized equipment with customized software), Peru's commitment to eliminate tariffs on most IT goods and join the WTO Information Technology Agreement will be beneficial to service providers as well. New market access for U.S. service providers in sectors such as banking, financial services, and telecommunications as a result of the U.S.-Peru TPA will increase demand for strong software development, data processing, and other information services.

Professional Services, including accounting, legal services, and management consulting

Liberalization in such sectors as banking, investment, and financial services will offer increased opportunities for professional service providers. While the U.S.-Peru TPA does not remove licensing requirements to provide certain services, the provisions in the cross-border services chapter provide obligations intended to ensure that administrative decisions related to licensing are prompt and fair. This chapter also calls for Peru and the United States to work together to develop mutually acceptable standards and criteria for licensing, certification and mutual recognition of professional service suppliers.

ⁱ BEA, "Gross Domestic Product by Industry Account" tables, 12/18/2006

ⁱⁱ BEA, "U.S. Trade in Goods and Services" tables, on 2/13/2007

ⁱⁱⁱ Department of Energy, Peru Country Analysis, April 2005, <http://www.eia.doe.gov/emeu/cabs/peru.html>