STATEMENT OF WHY THE UNITED STATES-PERU TRADE PROMOTION AGREEMENT IS IN THE INTERESTS OF U.S. COMMERCE

INTRODUCTION

The United States-Peru Trade Promotion Agreement (U.S. – Peru TPA or Agreement) provides for reciprocal trade liberalization between the United States and Peru. The U.S. – Peru TPA is a comprehensive, trade liberalizing agreement that will eliminate tariffs and other barriers to trade, open Peru's market for service providers, and promote investment. By promoting economic growth in Peru, the U.S. – Peru TPA will expand U.S. opportunities in an important regional market and further U.S. commercial interests.

In May 2004, the United States initiated free trade negotiations with Colombia, Ecuador and Peru. Negotiations with Peru were completed December 7, 2005, and the U.S. – Peru TPA was signed on April 12, 2006.

WHY A PERU TRADE PROMOTION AGREEMENT?

Peru, like many developing countries, already enjoys duty-free access to the U.S. market for the majority of its exports through trade preference programs. Developing countries often have high tariff and non-tariff barriers to U.S. exports and impose restrictions on U.S. businesses. Free trade agreements like the U.S. – Peru TPA not only reduce barriers to U.S. trade, but also require important reforms of the domestic legal and business environment that are key to encouraging business development and investment. Such reforms include providing greater transparency for government actions such as rule making, anti-corruption measures and other steps to strengthen the rule of law, improving the protection and enforcement of intellectual property rights, and providing clear guidance on customs matters.

> ***Moving from One-Way Preferences to Reciprocity***
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> Currently ninety-eight percent of imports from Peru into the United States benefit from duty free treatment as a result of U.S. unilateral preference programs such as the Andean Trade Preferences Act (ATPA) and the Generalized System of Preferences, or zero normal trade relations (NTR) tariffs. Peru's tariffs on most imports from the United States range from 4-12 percent with some as high as 20 percent.
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> The U.S. – Peru TPA moves beyond one-way preferences to full partnership and reciprocal commitments under which U.S. exports also benefit from duty free treatment

Expanding Economic Opportunities for U.S. Manufacturers, Workers, Farmers and Ranchers

Peru is a growing market for U.S. exporters. Between 2002 and 2006, U.S. exports to Peru grew eighty-eight percent from $1.6 billion in 2002 to $2.9 billion in 2006, outperforming overall U.S. export growth, which was fifty percent for the same period.

The market access and trade disciplines provided by the Agreement offer an opportunity to further expand U.S. exports to a region that is already seeing high export growth rates. In 2006, total trade between the United States and Peru was over $8.8 billion. Peru is our 43rd largest export market.

Peru has one of the strongest economies in the Andean region with an average GDP growth of over five percent annually the past six years. In a region that suffers from frequent instability, the Government of Peru has demonstrated a commitment to economic reform, democratic principles and counter-narcotics enforcement. With the U.S. – Peru TPA, Peru will offer a more stable investment climate, access to international arbitration if disputes do arise and a vibrant market for U.S. exports for years to come.

The World Bank recognized Peru's reform efforts in their 2007 Doing Business Report. Peru placed among the top five reformers worldwide for the 2005-2006 period due to improvements made in procedures to start and close a business, obtain access to credit, protect creditors, and enforce contracts.

The United States is already the leading source of Peru's imports, with an eighteen percent market share. Despite close proximity to other competitive Latin American economies such as Brazil, Argentina and the rest of the Andean group, the high quality and wide selection of competitively priced U.S. products provide U.S. exporters with a distinctive edge, one which will be enhanced under the tariff elimination provisions of the Agreement.

Leveling the Playing Field

The U.S. – Peru TPA will level the playing field for U.S. businesses that sell to Peru. In 2006, 98 percent of imports from Peru into the United States entered duty-free under unilateral U.S. trade preference programs, such as the Andean Trade Preferences Act (ATPA) and the Generalized System of Preferences (GSP), or under zero normal trade relations (NTR) tariffs. The ATPA has been effective in expanding and enhancing the U.S. – Peru commercial relationship, providing the U.S. government a vehicle through which to address issues, as well as encouraging economic growth in Peru and discouraging illicit drug production. However, the ATPA offers U.S. exporters no added access to the Peruvian market. The U.S. – Peru TPA levels the playing field, and enhances competition because it moves the U.S.-Peru commercial relationship beyond one-way preferences to full partnership and reciprocal commitments.

In addition, U.S. products currently face a competitive disadvantage because Peru has been actively negotiating preferential agreements with other countries. Peru grants preferences to Bolivia, Venezuela, Ecuador and Colombia under the Andean Community and, within the framework of the Latin American Integration Association (ALADI), Peru has signed bilateral trade agreements with Argentina, Brazil, Chile, Cuba, Mexico, Paraguay, and Uruguay. The government of Peru also plans to begin free trade negotiations with Singapore and several other countries in Asia as well as with the European Union.

Advancing the U.S. Trade Agenda

The U.S. – Peru TPA is a key part of the Administration's regional and global efforts to open markets and enable U.S. businesses to sell goods and services around the world. It signals that Peru is ready to join the United States, Mexico, Canada, Chile, Central America and the Dominican Republic as free trade leaders in the hemisphere. As these countries' stake in the trading system expands, the United States and Peru will look for new opportunities to work together in other multilateral fora such as the World Trade Organization (WTO). The common disciplines and trade objectives developed through the U.S. – Peru TPA will enhance our ability to forge consensus on the global trading level.

Supporting Democracy, Economic Reform and Regional Integration

Like the ATPA, the U.S. – Peru TPA promotes close cooperation between the United States and Peru on a number of important regional issues such as counter-narcotics, economic development and support for democracy. During the past decade Peru has implemented economic reforms to promote privatization, competition and open markets. The United States supported this transition to democratic institutions, enhanced economic growth, and security for human rights through a number of programs including the ATPA.

Peru is strongly committed to democracy and is an important pillar of democratic strength in a region with growing instability. Peru is a strong partner in counter narcotics efforts and an improved economic relationship will further efforts to slow the illicit drug trade. The U.S. – Peru TPA commits Peru to adopt more open and transparent procedures that should deepen the roots of democracy, civil society, and the rule of law in the region, as well as reinforce market reforms. These reforms, coupled with increased trade and investment flows, should promote expanded growth and openness in the region, as well as support common efforts to achieve stronger labor and environmental protection.

U.S. SMALL AND MEDIUM-SIZED ENTERPRISES: KEY EXPORTERS TO PERU

The U.S. – Peru TPA will be of particular benefit to U.S. small and medium sized businesses (enterprises with fewer than 500 employees). Almost eighty percent of the U.S. businesses exporting to Peru are small businesses. In 2005, small and medium sized businesses (SMEs) exported almost $774 million in merchandise to Peru, representing thiry-eight percent of total U.S. exports to Peru -- well above the twenty-nine percent SME share of U.S. exports to the world.

U.S. small and medium-sized enterprises particularly benefit from the tariff eliminating provisions of free trade agreements, and should benefit from the significant tariff cuts under the U.S. – Peru TPA.

The transparency obligations, particularly those contained in the Chapter on Customs Administration and Trade Facilitation, are also very important to U.S. SMEs, which may not have the resources to deal with unclear and burdensome customs and regulatory requirements.

Free Trade is important to U.S. SMEs

- U.S. SMEs are already taking advantage of U.S. efforts to open markets throughout the world. In 2005, more than ninety percent of all U.S. companies that exported to our NAFTA partner Canada were SMEs.

- SMEs represented a majority of U.S. exporting companies to our other free trade partners in 2005 including Mexico (ninety-three percent), Australia (ninety percent), Singapore (eighty-nine percent), Chile (eighty-four percent), and Morocco (seventy-one percent).

- U.S. SMEs also represented at least seventy-five percent of all U.S. exporters to the individual Central America-Dominican Republic Free Trade Agreement partner countries (Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua) in 2005.

ENHANCED MARKET ACCESS TO PERU

Eighty percent of U.S. exports of consumer and industrial products to Peru will be duty-free immediately upon entry into force of the Agreement, with remaining tariffs phased out over ten years. Within each of the following key industrial sectors, almost all products will gain immediate duty-free access to the Peruvian market: information technology products, mining, agriculture and construction equipment, medical and scientific equipment, auto parts, paper products and chemicals. U.S. farmers and ranchers also gain tremendous access from the U.S. – Peru TPA with nearly ninety percent of current exports receiving duty-free treatment immediately upon entry into force of the Agreement. Moreover, Peru will phase-out all other agricultural tariffs within 17 years. Key U.S. agriculture exports such as cotton, wheat, soybeans, high quality beef, apples, pears, peaches, cherries and almonds, will receive immediate duty-free treatment. —

Best Prospects for Increased Market Growth for Non-Textile Industrial Goods

Information Technology Products

Virtually all U.S. exports of information technology products will be duty-free upon entry into force of the Agreement. Despite tariffs that average almost six percent and range up to twelve percent, U.S. exports of information technology products were over

Average Peruvian tariffs on imports of goods from the United States

Information Technology Equipment	5.8%
Chemicals	7.1%
Metals and Ores	8.8%
Infrastructure and Machinery	5.9%
Transportation Equipment	5.5%
Autos and Auto parts	7.4%
Building Products	7.9%
Paper and Paper Products	9.7%
Consumer Goods	11.1%

$376 million in 2006, accounting for over sixteen percent of total U.S. exports to Peru. With the immediate removal of most tariffs, U.S. exports will become much more competitive and affordable to Peruvians. Best prospects in this sector include computers and computer parts, radio and television broadcasting apparatus, and software.

Peru has agreed to join the WTO Information Technology Agreement (ITA) by January 1, 2008. U.S. exporters of information technology products will all benefit from this. Peru is forging ahead in the digital age and ranks third in Latin America in terms of Internet connectivity.

Industrial Machinery

Depending on the category, up to ninety percent of U.S. capital goods exports to Peru will be duty-free immediately upon entry into force of the U.S. – Peru TPA. Peruvian industries need U.S. manufactured goods to transform their raw materials. Food processing and packaging equipment is one of the best prospects for export to Peru. Peru is the world's leading fishmeal and asparagus exporter. These growing industries need specialized equipment to process and package their products. In 2006, Peru imported approximately $84 million worth of food processing and packing equipment. Although the United States held the largest market share, it still supplied only $21 million worth of imports in this category. With the exception of one product, tariffs on food processing and packing equipment immediately will fall to zero upon entry into force of the Agreement (with the remaining tariff phased out over ten years), giving U.S. exporters and investors an advantage over heavy European competition.

Tariffs Are Big Money on Big Equipment

Caterpillar reports that a 12 percent tariff on an off-highway truck manufactured in Decatur, IL adds more than $100,000 to the price – greatly damaging the company's competitiveness in Peru's booming mining industry. *

*Caterpillar's testimony to the ITC March 2006

Overall, U.S. exports of machinery reached $917 million in 2006, accounting for over thirty percent of total U.S. exports to the country. With the immediate elimination of most industrial machinery tariffs, and phase-out of all remaining tariffs, U.S. exports will be much more competitive compared to goods from other countries.

Chemicals

Chemicals accounted for twenty-two percent of U.S. industrial exports to Peru in 2006, totaling $488 million. Current tariffs of up to twelve percent will fall to zero on seventy-six percent of U.S. chemical exports immediately upon implementation of the Agreement. The remaining tariffs will be phased out over ten years. Best prospects in this sector include polyethylene, lubricating oil additives and acrylic polymers. Tariffs on ninety-six percent of fertilizer and agrochemical exports will fall to zero immediately upon entry into force of the Agreement.

Remanufactured Equipment

For the first time, U.S. exporters will be able to sell high-quality remanufactured equipment in Peru. Remanufacturing is a labor-intensive activity that transforms used goods into “like-new” goods. The U.S. remanufacturing industry employs tens of thousands of U.S. workers. Currently, Peru considers remanufactured goods to be used goods and subjects them to an import ban on used equipment. Upon implementation of the Agreement, U.S. remanufacturers of many industrial products, such as engines, transmissions and other auto parts, heavy machinery, and advanced medical imaging devices such as MRIs and CT scans, will be able to export their products to Peru without non-tariff barriers. Under the U.S. – Peru TPA, tariffs on most remanufactured products will be eliminated immediately and tariffs on a small number of products will be phased out over ten years. This is an excellent opportunity for U.S. exporters of remanufactured equipment.

Medical Equipment

Ninety-eight percent of U.S. medical equipment exports to Peru will receive duty-free access immediately upon entry into force of the Agreement, with the remaining duties phased out over five years. In 2006, the United States exported over $30 million worth of goods to Peru, including instrument parts, electro-diagnostic apparatus and ultrasound.

Electrical Power Generation and Distribution Equipment

Tariffs on sixty-eight percent of U.S. electrical power generation and distribution equipment exports to Peru will be eliminated immediately upon entry into force of the Agreement, with the remaining tariffs phased out over ten years. The government of Peru is promoting legislative and regulatory reforms to encourage electric power producers to convert from oil and diesel fuels to natural gas. These developments will lead to a greater need for power generation equipment in Peru.

TEXTILES

Under the ATPA, Peru has developed as an important export market for U.S. yarn and fabric manufacturers. The U.S. – Peru TPA represents the Administration’s continued efforts to promote economic growth and expand trade with Peru, and to create opportunities for U.S. yarn and fabric exports.

Textile and apparel trade with Peru has increased since the renewal and expansion of the ATPA in 2002. The foundation of the apparel trade involves U.S. manufacturers supplying yarns and fabrics to Peru for the assembly of apparel. The apparel assembled in Peru of U.S. yarns and fabrics then enters the United States duty-free. With the increased apparel manufacturing in Peru, U.S. exports of yarn and fabric to Peru jumped from $9.8 million in 2002 to $19.7 million in 2006. Under the U.S. – Peru TPA, Peruvian tariffs on qualifying U.S. yarns and fabrics will be eliminated, further improving market access for U.S. exporters. Similarly, due to the favorable conditions created by the Agreement, investment in the apparel sector in Peru is expected to grow, promoting sales of U.S. yarns and fabrics to Peru's market.

Key benefits to U.S. yarn and textile manufacturers include:

- ***Yarn forward rule of origin*** – The U.S. – Peru TPA adheres to a yarn-forward rule of origin, meaning that in order to qualify for duty-free treatment, textile and apparel products must be made using U.S. and Peruvian yarns and fabrics. Goods that meet the rule of origin qualify for immediate duty-free market access upon entry into force.

- ***Regional Elastomeric Requirement*** **–** Consistent with other U.S. free trade agreements, elastomeric yarns must be sourced from the United States or Peru for textile and apparel products to qualify for duty-free entry.

- ***Improved Customs Procedures*** **–** Specific textile customs cooperation language will help prevent transshipment and circumvention of the Agreement's rules of origin.

- ***Streamlined Processes to Address Short Supply*** - A streamlined commercial availability (short supply) determination process will allow yarns or fabrics that are deemed not commercially available in the United States or Peru to be used in the production of apparel that still qualifies for duty-free treatment.

- ***Improved Safeguards*** **-** A special textile safeguard mechanism will provide for temporary application of NTR tariffs, if a surge in imports under the U.S. – Peru TPA is shown to be causing or threatening to cause serious damage to domestic industry.

AGRICULTURE

Between 2003 and 2005, with tariffs and other barriers in place, the United States exported over $250 million worth of farm products to Peru each year. Peru's average WTO bound tariff (i.e. the level to which it may raise the tariffs it currently applies) on agricultural products is over 31 percent. With domestic consumption for many agricultural products leveling off in the United States, increased access to export markets such as Peru remains critical for the expansion and profitability of U.S. farmers, ranchers, and processors. By value, almost 90 percent of current U.S. farm exports to Peru will become duty-free upon entry into force of the Agreement. Moreover, because the U.S. market is already largely open to agricultural imports from Peru, the U.S. – Peru TPA will result in only limited increases in imports.

Beef, Pork, and Poultry

U.S. poultry and livestock producers stand to benefit immediately from the U.S.- Peru TPA, since they are among the most efficient in the world, producing high quality product at competitive prices.

Peru's applied tariffs on beef are as high as 25 percent, with a WTO bound tariff of up to 30 percent. From 2001 through 2003, U.S. suppliers shipped on average $1.5 million worth of beef annually to Peru. Under the Agreement, Peru will immediately eliminate duties on the products most important to the U.S. beef industry – prime and choice beef cuts. Peru will also establish a 10,000-ton Tariff Rate Quota (TRQ) with zero duty for beef offals (2001-2003 exports averaged 1,300 tons annually) and an 800-ton TRQ with zero duty for standard quality beef. The tariffs on standard beef and beef offals will be totally eliminated in 12 years and 10 years, respectively. Duties currently applied to other beef products will be eliminated within 15 years, many within 5 to 10 years.

Peru's applied tariffs on pork are as high as 25 percent, with a WTO bound tariff of up to 30 percent. From 2003 through 2005, U.S. suppliers shipped on average just a little over $30,000 worth of pork annually to Peru. Peru will immediately eliminate tariffs on bacon and will eliminate tariffs on fresh and frozen pork and pork offals within 5 years. It will eliminate tariffs on processed pork products within 10 years, with many other tariffs eliminated in 7 years.

Peru's applied tariffs on poultry are as high as 25 percent, with a WTO bound tariff of up to 30 percent. From 2003 through 2005, U.S. poultry meat suppliers shipped on average $173,000 worth of poultry annually to Peru. Under the Agreement, Peru will provide immediate duty-free access on chicken leg quarters through a TRQ that expands annually as tariffs are eliminated over 17 years. Specifically, the initial duty-free TRQ is 12,000 tons (current exports average 43 tons) that will expand 8 percent compounded annually. In addition, duties on other poultry products will be eliminated within 2 years (e.g., wings; breast meat; and mechanically de-boned poultry meat, not leg quarters), 5 years (e.g., frozen turkeys and turkey parts), and 10 years (whole chickens). Regarding sanitary issues, Peru agreed to allow poultry imports from all U.S. states with negotiated export certificate language that will be accepted by Peruvian authorities.

Dairy Products

U.S. dairy producers are very competitive with Peru's producers and will benefit from opportunities to access a growing market. U.S. exports to Peru currently face variable-rate price bands that can range from zero to 68 percent. Peru agreed to eliminate its price band tariff system on these and all other imports of U.S. agricultural products. From 2003 through 2005, U.S. suppliers shipped on average almost $5.8 million of dairy products annually to Peru. The U.S. share of the import market was just under 6 percent. The U.S. – Peru TPA will allow immediate access for 10,000 tons of U.S. dairy products (current exports average just over 1,100 tons) through TRQs that expand annually as dairy tariffs are phased out. All tariffs on dairy products will be eliminated within 17 years, some sooner. For example, Peru will eliminate its tariffs on whey immediately.

Grains

U.S. grain exporters will also benefit from the elimination of the price band system. U.S. suppliers of grains (wheat, corn, and rice) currently face applied tariffs as high as 68 percent. U.S. farmers and processors of grains are well positioned to compete in Peru, and the U.S.- Peru TPA will open an already large and growing market to increased U.S. exports. As populations increase and diets adapt to reflect higher levels of economic development, demand for these products in the region could expand.

From 2003 through 2005, U.S. wheat suppliers shipped on average almost 700,000 tons of wheat annually, valued at $110 million, to Peru. During the same period, U.S. suppliers shipped on average $17 million worth of corn and $7 million worth of rice. U.S. grain suppliers will benefit from zero tariffs immediately on wheat, barley, and barley malt, as well as on some processed grain products. Peru will provide immediate duty-free access to 500,000 tons of yellow corn (current exports average about 160,000 tons) through a TRQ that will grow annually until the tariff is phased out in 12 years. Peru will also provide immediate duty-free access to 74,000 tons of U.S. rice (current exports average 24,000 tons) through a TRQ. Peru will phase out rice tariffs completely over 17 years.

Soybeans and Soybean Products

From 2003 through 2005, U.S. suppliers shipped on average 17,000 tons of soybean meal annually, and 22,000 tons of soybean oil, valued at $4 million and $12 million, respectively; no soybeans were exported. Current import duties on these products range from 4 to 12 percent, but under WTO rules Peru could impose duties up to 30 percent. Under the U.S.- Peru TPA, Peru will provide immediate duty-free access on soybeans, soybean meal, and crude soybean oil. It will provide immediate duty-free access for 7,000 tons of U.S. refined soybean oil (current exports of refined soybean oil average 236 tons) through a TRQ that will expand annually with the tariff phased out over 10 years.

Fruits, Vegetables, and Tree Nuts

U.S. fruit, vegetable, and tree nuts currently face import tariffs ranging from 12 to 25 percent in Peru, while WTO bindings are 30 percent. From 2003 through 2005, U.S. suppliers shipped on average $450,000 of fruit and fruit preparations, $1.2 million of vegetables and vegetable preparations, and about $110,000 of tree nuts annually to Peru. Nearly 97 percent of current U.S. fruit, vegetable, and nut exports, including apples, grapes, pears, cherries, raisins, peaches, almonds, walnuts, and pistachios, are eligible for immediate duty-free access under the U.S. – Peru TPA. Almost 92 percent of current processed horticultural products, such as frozen french fries, canned peaches and pears, mixed canned fruit, many juices, and some wines will also receive duty-free treatment immediately. All other tariffs on horticultural and processed horticultural products will be phased out between 3 and 10 years.

Pulses

U.S. exports of peas, lentils, and dried beans to Peru currently face tariffs of 25 percent, with WTO bound tariffs of 30 percent. From 2003 through 2005, U.S suppliers shipped on average over $3 million worth of pulses annually to Peru. Over 92 percent of current exports of pulses, including dried peas, lentils, and dried kidney beans, will receive duty-free treatment upon entry into force of the Agreement. All other tariffs on pulses will be phased out within 5 years.

Cotton

From 2003 through 2005, U.S. suppliers annually shipped on average $43 million worth of cotton to Peru, both to meet domestic demand and as inputs to further processing. The U.S. share of the Peruvian import market averaged 77 percent, although competition from Brazil has increased. Peru will eliminate all cotton tariffs for U.S. exporters immediately. In addition, the Agreement's rules of origin on textiles and apparel may provide additional benefits to U.S. cotton.

Processed Products

Demand in Peru for imported processed products has been expanding substantially in recent years, despite tariffs that can range as high as 25 percent. U.S. food manufacturers, benefiting from dependable commodity suppliers in the United States and production and marketing efficiencies, already compete well in Peru. From 2003 through 2005, U.S. suppliers annually shipped on average $12 million worth of candies, distilled spirits, breakfast cereals, soups, pet food, cookies, and other prepared foods to Peru. Peru will immediately eliminate tariffs on 95 percent of these exports, including most candy, cookies, soups, and distilled spirits. Peru will phase out most of the other processed product tariffs within 5 years and all tariffs within 10 years.

SERVICES

With the implementation of the U.S. – Peru TPA, U.S. service providers will gain improved access to the Peruvian market. 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 – and the most job growth – in the United States. Private services industries in the United States added almost 17 million new jobs to U.S. payrolls between 1993 and 2003, when they accounted for almost 86.5

million U.S. jobs, or eighty percent of private non-farm employment. U.S. services exports are a vital part of this picture and they continue to grow. In 2004, commercial services exports of $328 billion accounted for forty percent of total 2004 U.S. exports, generating a 2004 commercial services trade surplus of $65 billion which helped to offset nearly ten percent of the U.S. merchandise trade deficit.

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 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 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.

U.S. – Peru TPA Allows Service Providers to Choose Whether to Set Up an Office in Peru or Use Other Means to Provide Services– 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, a U.S. company will not be required to incorporate or to make any form of local investment in order to supply services in Peru. This is a benefit to all U.S. service providers, especially SMEs, who may not have the resources to maintain a subsidiary or office in Peru or to conduct enough business in Peru to warrant that kind of presence.

The freedom for service providers to choose how to supply a service 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 information technology, 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, Peru accepted a unilateral commitment to eliminate a requirement that prevented U.S.-owned companies in Peru from hiring the managers, professionals, and specialists of their choice for their operations in Peru. Additionally, upon implementation of the Agreement, U.S. companies providing a service under concession from the Peruvian government will be free to purchase goods on the basis of price and quality, not on the basis of nationality of the goods. 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, 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 of the Agreement, and marine, aviation and transport (MAT) insurance and brokerage two years thereafter. 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. That is, Peru agreed to treat U.S. providers the same way it treats its own providers (i.e. national treatment) or providers from another country (i.e. Most-Favored-Nation treatment), and not to impose market access restrictions on them. This is an improvement over the GATS, where Peru only made a partial commitment in advertising.

Construction and Engineering Services

As with advertising, Peru made full commitments for construction services. In addition, improved regulatory regimes and a strong investment environment 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 receiving 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 secure 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 Cross-Border Trade in 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

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. The Agreement's extensive obligations on regulatory transparency and investment will help U.S. energy services firms take advantage of such opportunities. In the GATS, Peru made no commitments in energy services.

Information Services, including Computer Related Services

Peru will provide full access to its information services sector to U.S. providers. This 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 information technology 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 sectors such as engineering, accounting, and legal services will offer increased opportunities. While the U.S. – Peru TPA does not remove requirements to have a license to provide certain services, the provisions in the cross-border services chapter include 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.

INVESTMENT

The U.S. – Peru TPA establishes a secure, predictable legal framework for U.S. investors in Peru. Implementation of the Agreement's obligations will improve transparency, reduce barriers to investment, and improve the dispute settlement process, addressing key concerns about the investment climate in Peru.

Foreign direct investment can contribute significantly to the economic development and stability of Peru. Increased foreign direct investment in Peru could greatly improve the development of efficient, reliable systems for power generation, water, sewage, transportation, and telecommunications. Peru is actively seeking foreign investment in nearly all sectors of the economy. During his tenure, President Toledo implemented several pro-investment policies. In April 2002, the government established ProInversion, building on the foundation of COPRI, the privatization agency created in 1991. The new agency seeks to be a "one stop shop" for current and potential investors. These pro-investment policies, coupled with the more secure, predictable legal framework that the U.S. – Peru TPA will establish, should improve the investment climate in Peru. Over the next few years, Peru has plans to expand multiple regional airports, and port terminals, develop and improve infrastructure projects in the areas of sanitation and transportation, and expand mining operations. Peru is also hoping to expand investment in the tourism sector.

Key Investment Provisions

- Requires establishment of a secure, predictable legal framework for U.S. investors operating in Peru.
- Covers all forms of investment, including enterprises, debt, concessions, contracts and intellectual property.
- Gives U.S. investors, with limited exceptions, the right to establish, acquire and operate investments in Peru on an equal footing with local investors, and with investors of other countries.
- Provides U.S. investors in Peru the same substantive protections foreign investors enjoy in the United States.
- Affords U.S. investors due process protections (consistent with those found in U.S. law) and the right to promptly receive fair market value for property in the event of an expropriation
- Backs investor rights with effective, binding and impartial dispute settlement procedures.

The U.S. – Peru TPA includes an impartial and transparent investor-state dispute settlement procedure, which will enable investors to pursue damages claims outside of Peruvian courts, through binding international arbitration. Additionally, the U.S. – Peru TPA will afford U.S. investors protection for investments undertaken pursuant to written agreements with the Peruvian government that cover activities such as the exploration and extraction of natural resources; the supply of power generation services to the public; and infrastructure projects, such as the construction of roads, bridges, canals, dams, or pipelines.

The U.S. – Peru TPA provisions on investment disputes build upon steps that the government of Peru has already taken to improve commercial dispute settlement. In December 2004, with assistance from the U.S. Agency for International Development, the Government of Peru established eight commercial courts and one appeals court to hear investment disputes. These courts officially began functioning in April 2005. Peru established five additional commercial courts in October 2005, and another ten commercial courts, plus an additional appeals court, all in Lima, will begin operations in 2006. The commercial courts have substantially improved the process for handling commercial disputes.

INTELLECTUAL PROPERTY RIGHTS

The U.S. – Peru TPA requires high levels of intellectual property protection, consistent with U.S. standards of protection, and will support the growth of trade in valuable digital and other intellectual property-based products. Although Peru has made great strides modernizing its intellectual property laws, shortcomings remain, and effective enforcement continues to be a challenge. Implementation of the commitments made under the U.S. – Peru TPA will reinforce Peru's national efforts to strengthen intellectual property law enforcement. Like our other free trade agreements, this Agreement takes into account significant legal and technological developments that have taken place since WTO, TRIPS and NAFTA were negotiated. The Industry Trade Advisory Committee on Intellectual Property Rights' report to the U.S. Trade Representative on the U.S. – Peru TPA notes, "…the fact that Peru found it in its own interest to significantly increase its levels of IPR protection beyond that required by TRIPS is a testament to the principle that high levels of protection benefit all innovators, including indigenous creators, in the same manner as they do in developed countries."

Key Intellectual Property Facts

Protection for copyrighted works

- Copyright-based industries are among the fastest growing and most productive of any sector of the U.S. economy. They employ new workers in higher-paying jobs at over three times the rate of the rest of the economy; create new revenue at over two times that rate; and contribute close to $90 billion to the U.S. economy each year through foreign sales and exports. The industries' principal barrier to trade is the lack of effective protection and enforcement of intellectual property rights.

Stronger protections for patents & trade secrets

- Innovation has historically been a driving force in U.S. industry. Competitive advantage based on innovation needs to be protected and defended. U.S. companies need access to legal tools in all markets across the globe.

Tough penalties for piracy and counterfeiting

- The high level of enforcement required by the U.S. – Peru TPA will benefit industry and set a precedent throughout the region.

Trademarks

U.S. trademark holders will see much stronger protections in Peru. The U.S. – Peru TPA expands the definition of trademark to include protection for non-visually perceptible marks such as sounds and scents. It also recognizes the principles of priority and exclusivity in the relationship between trademarks and geographical indications.

Peru committed to streamline its registration procedures, to implement an electronic application system and to develop a public on-line database of trademark applications and registrations. This will save U.S. companies time and money and make it easier for them to take the necessary steps to protect their trademarks. Improved transparency provisions will give interested parties the opportunity to oppose and cancel registrations and to know the reason for decisions with respect to registration.

Copyright

The International Intellectual Property Alliance estimates that U.S. companies lost approximately $98.6 million in Peru in 2005 due to piracy of motion pictures, records and music, business application software, videogames, and books. The U.S. – Peru TPA includes many important provisions for stemming these losses and otherwise benefiting U.S. copyright industries. One of the most important provisions is the prohibition on the circumvention of technological protection measures (TPMs) that authors, performers, and producers of phonograms use in the exercise of their rights to prohibit or restrict unauthorized acts (e.g., unauthorized access to a work or illegal copying). Defined and limited exceptions to the circumvention of TPMs will provide further certainty by bolstering its effective implementation. This prohibition on circumvention of TPMs is an important tool for addressing the challenges presented in the digital environment.

The protection of encrypted program-carrying satellite signals was included as a direct response to the concerns of U.S. broadcasters and content providers. Peru has also committed to mandating that government agencies use computer software only as authorized by the right holder and to actively regulate the acquisition and management of the software, a high priority for the U.S. software industry. In addition to the needs addressed by the industry-specific challenges, a 20-year increase in the term of protection for copyrighted works (a forty percent increase) will allow a broad range of right holders to continue to benefit from their intellectual property.

Patents and Data Protection

Peru committed to limiting the grounds on which patents may be revoked and to extending patent protection to new plant varieties. Peru has also agreed to restore patent rights for the term of protection lost due to unreasonable delays in issuing patents with respect to most products, ensuring that patent rights are not diminished by bureaucratic delays. While this patent term restoration obligation is more flexible with respect to pharmaceutical products, Peru commits to making best efforts to expeditiously processing patent and marketing approval applications for drugs. Recognizing the significant investments made by pharmaceutical and agro-chemical companies in compiling test data submitted in connection with marketing approval, Peru has agreed to protect such data from use by third parties. Agricultural chemical test data will be protected for a period of 10 years; for pharmaceuticals, the period of protection will normally be five years, though this period may be shorter if Peru relies on the U.S. Food and Drug Administration's approval of a given drug and certain other conditions are met.

Additionally, Peru has committed to putting in place procedures and remedies intended to prevent the marketing of patent-infringing pharmaceuticals.

Improved Transparency and Reduced Corruption

As in other recent free trade agreements, the U.S. – Peru TPA contains an obligation to publicize information on efforts to provide effective enforcement of intellectual property rights. Final judicial decisions or administrative rulings of general applicability pertaining to the enforcement of intellectual property rights must be in writing and must state any relevant findings of fact and the reasoning or the legal basis on which the decisions or rulings are based.

Enforcement

The U.S. – Peru TPA includes measures that should facilitate enforcement of these enhanced intellectual property protections, improving the enforcement environment in Peru. The agreement establishes a framework for determining damages and establishes a system of statutory or "pre-established" damages, offering the right-holder to elect between statutory damages and the often-difficult task of proving actual damages. The Agreement also mandates that courts must have the authority to order the infringer and third parties to identify accomplices, suppliers and others involved in the infringement at the risk of sanctions for failure to do so.

GOVERNMENT PROCUREMENT

The government procurement provisions of the U.S. – Peru TPA guarantee non-discriminatory access to the procurements of the largest purchasing entities in Peru. These procurements include areas where U.S. goods and services companies are very competitive, such as aerospace, energy, health care (including pharmaceuticals), construction, environmental technology, and information communication technology.

The Agreement covers purchases by most Peruvian central government entities, including all key ministries and significant state-owned enterprises. Peru also agreed to include all of its regional governments. Governments are typically the single largest purchasing entity in any market. Government procurement is generally ten percent to fifteen percent of a country's GDP. Peru's total GDP in 2005 was over $78 billion, thus total procurement is estimated to be between $7 billion and $12 billion. U.S. companies will immediately benefit as the Peruvian government brings its laws and practices into compliance with the procurement obligations set forth in the U.S. – Peru TPA. Peru will eliminate a twenty percent price preference that has disadvantaged U.S. firms. Even in those public procurements for which U.S. firms are already granted national treatment, some still complain of mismanagement and lack of transparency in the bid process. The U.S. – Peru TPA requires the use of fair and transparent procurement procedures, and the availability of timely and effective domestic review procedures to address complaints about the award of tenders.

U.S. exporters have complained that the state-owned health and social services provider ESSALUD (one of Peru's largest procurers of pharmaceuticals) favored local suppliers to the detriment of U.S. firms. Immediately upon entry into force of this Agreement, ESSALUD's procurements above the Agreement's thresholds, including pharmaceutical purchases, will be open on a non-discriminatory basis to U.S. suppliers.

As a result of the U.S. – Peru TPA, Peru will fully utilize an electronic procurement system to make tendering opportunities available to all potential suppliers. This will help U.S. exporters who had previously noted difficulties in obtaining information about government tenders.

The U.S. – Peru TPA also covers important state-owned enterprises such as PETROPERU (national oil company), ELECTROPERU (state-owned electricity company), and SEDAPAL (state-owned water company). All of these are major procurers that will be bound by the procurement obligations of the Agreement, including transparency and national treatment, enabling U.S. companies to compete on a level playing field.

Key Procurement Provisions

- Peru's central and regional governments and certain state-owned enterprises cannot apply "buy local" provisions that discriminate against U.S. suppliers.
- Low-value contracts are excluded and set-asides on behalf of U.S. small and minority-owned businesses are not affected by the Agreement.
- The U.S. – Peru TPA provides for strong disciplines on government procurement procedures, such as requiring advance public notice of purchases and provision of information to all interested suppliers regarding covered procurement opportunities, as well as timely and effective domestic review procedures.
- The Agreement contains strong provisions to ensure integrity in government procurement. The Peruvian government must maintain a debarment system to declare ineligible suppliers that engage in fraudulent or illegal actions related to procurement.

The U.S. – Peru TPA clarifies that build-operate-transfer contracts (BOTs) are within the scope of the government procurement obligations in the Agreement. BOTs act as financing vehicles for large-scale construction projects and the building or rehabilitation of public work facilities. The U.S.-Chile Free Trade Agreement was the first free trade agreement to include this clarification and it is significant that the U.S. – Peru TPA also contains the guarantee that U.S. suppliers will receive non-discriminatory and transparent treatment when competing for BOT contracts.

CUSTOMS ADMINISTRATION AND TRADE FACILITATION

The U.S. – Peru TPA imposes specific and cutting-edge customs obligations that will be critical to maximizing the gains that U.S. and Peruvian exporters will realize once the customs administration and trade facilitation provisions are fully implemented.

Businesses operating in Peru frequently complain that unclear rules, inconsistent interpretation of customs regulations and directives, and arbitrary clearance procedures often result in lengthy delays for the release of goods entering Peru.

The commitments in the Chapter on Customs Administration and Trade Facilitation respond to each of these concerns. The chapter requires that all customs rules and regulations be published, including on the Internet, and that Peru notify the United States of any changes to its customs laws and regulations that affect the operation of the Agreement. Peru must adopt streamlined, expedited and transparent procedures for the release of goods, generally within 48 hours after the goods arrive. In addition, Peru must allow the release of goods pending the final determination of duties, taxes and fees.

Improved Customs Procedures and Strong Rules of Origin

- *Comprehensive Rules of Origin*- Rules of origin will ensure that only U.S. and Peruvian goods receive preferential tariff treatment under the U.S. – Peru TPA. Rules are designed to be as easy as possible to administer.

- *Enhanced Transparency* – The U.S. – Peru TPA requires transparency and efficiency in administering customs procedures, including rules of origin. Peru commits to publish laws and regulations on the Internet, and will be required to take other steps that will promote certainty and fairness in customs administration. This will make it easier for U.S. exporters to understand the Peruvian customs process.

> Each day saved in shipping time is worth an estimated 0.8 percent ad-valorem for manufactured goods.* U.S. – Peru TPA customs and trade facilitation measures will provide significant savings to U.S. exporters in terms of time and money.
>
> *Time as a Trade Barrier* by Hummels, David, July 2001

- *Heightened Predictability* – The Agreement will allow exporters to obtain binding advance rulings on tariff classification, origin of goods and other matters. This important provision will provide exporters predictability and minimize delays at the port of entry. This obligation will address the very real problem of customs officials issuing inconsistent rulings on the same products and will minimize opportunities for abuse of discretion by officials at the border.

- *Greater Accountability* - Under the Agreement, companies will have the right to a review of customs decisions both through an independent determination at the administrative level and through the judiciary.

- *Improved Express Delivery Service* - The demand for express-delivery services is increasing rapidly as a result of the growth of electronic commerce, the internationalization of business, explosive demand for "just-in-time" delivery of goods to reduce warehousing and inventory storage costs, and rising demand by manufacturers for outsourced logistic services. The U.S. – Peru TPA responds to that demand by requiring that, within two years after the date on entry into force of the Agreement, Peru must provide a separate, expedited customs procedure for express shipments. It must also change its regulations to allow the processing of customs information related to the express shipment prior to the arrival of the shipment itself. Most importantly, the Agreement requires Peru under normal circumstances to clear express shipments from the port within six hours of submission of all necessary documents and with no maximum weight or value limitations.

- *Greater Customs Efficiency through Technology* - Responding to U.S. exporters' requests, the Agreement promotes the use of technology, including the electronic submission of information. This will help the release of goods, thereby saving companies time and money.

- *Information Sharing* - Both the United States and Peru agree to share information to combat illegal transshipment of goods.

CONCLUSION

Approving and implementing the United States-Peru Trade Promotion Agreement is in the best interest of United States commerce. This comprehensive Agreement not only slashes tariffs, but also reduces barriers for services, provides for leading edge protection and enforcement of intellectual property, keeps pace with new technologies, ensures regulatory transparency and requires enforcement of domestic labor and environmental laws. Once the U.S. – Peru TPA is in effect, doing business in Peru will be easier, faster, and more transparent.