

**The U.S.-Peru Free Trade Agreement (FTA)**

**Report of the  
Industry Trade Advisory Committee on Customs Matters and  
Facilitation (ITAC 14)**

**February 1, 2006**

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**ITAC 14 Advisory Committee Report to the President, the Congress and the United States Trade Representative on the U.S. – Peru Free Trade Agreement**

**I. Purpose of the Committee Report**

Section 2104 (e) of the Trade Act of 2002 requires that advisory committees provide the President, the U.S. Trade Representative, and Congress with reports required under Section 135 (e)(1) of the Trade Act of 1974, as amended, not later than 30 days after the President notifies Congress of his intent to enter into an agreement.

Under Section 135 (e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee must include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives set forth in the Trade Act of 2002.

The report of the appropriate trade committee must also include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sectoral or functional area.

Pursuant to these requirements, ITAC 14 hereby submits the following report.

**II. Executive Summary of Committee Report**

The Committee reviewed that part of the agreement that covers customs procedures or is otherwise required to be administered by the customs administrations of the parties. The Committee has not reviewed or commented on the other provisions in the agreement such as investment, procurement, intellectual property or the agriculture and non-agriculture market access provisions. The Committee found this agreement to be fair and balanced. It provides many benefits to U.S. traders. As a result of these positive provisions, the Committee believes the agreement does provide equity and reciprocity in the customs functional area.

**III. Brief Description of the Mandate of ITAC 14**

The Industry Trade Advisory Committee (ITAC 14) on Customs Matters and Facilitation is concerned with all aspects of importing and exporting goods through customs services, both domestic and foreign, and, with facilitation of the movement of such goods into and out of customs jurisdictions.

Industry representatives serving on the Customs ITAC provide advice on trade policy matters. Recently, members of the Customs ITAC have provided advice on a range of issues that included: Trade Facilitation negotiations, the Agreement on Rules of Origin, the Rules of Origin Agreement, as well as provided input to the Harmonized System Committee in the World Customs Organization (WCO). The committee also provided advice and recommendations on the operations and implementation of the Customs Valuation Agreement.

Members of ITAC 14 also worked extensively on the WTO trade facilitation efforts and initiatives for the Doha round of trade negotiations leading up to the Hong Kong Ministerial Conference, international trade data systems, and customs import security issues including the development of the Framework for Security and Trade Facilitation in the World Customs Organization.

Industry representatives serving on the Industry Trade Advisory Committee on Customs Matters and Facilitation have a voice in U.S. trade policy formulation through the Industry Consultations Program (ICP), which emerged from the 1974 Trade Act; to ensure that trade negotiators were coordinating with the private sector during trade negotiations. Based on the program's success, the ICP was renewed and expanded by the Trade Agreements Act of 1979 and the Trade and Competitiveness Act of 1988. The Department of Commerce, the Office of the United States Trade Representative (USTR), and other agencies work side-by-side with business leaders who serve as advisors to the U.S. Government. The Department of Commerce and USTR have joint responsibility for operating the Advisory Committees of the ICP.

#### **IV. Negotiating Objectives and Priorities of the Committee**

While a number of areas were negotiated as part of the U.S. – Peru Free Trade agreement that could have customs implications, there were several principal objectives of the Committee. The functions of the import process and how it is administered can make the agreement more successful for the benefit of traders or it can maintain non-tariff barriers to that trade. Another objective was to ensure that the rules and regulations are transparent and understandable to all traders including small and medium sized enterprises. We also wished to ensure that the agreement included a mechanism to keep those practices for import and export current with business “best practices.”

To provide advice on these objectives the Committee commented on the following issues:

##### **A. Adherence by Peru to existing customs conventions including:**

- Harmonized Commodity Coding System (HS)
- WTO Agreement on Customs Valuation
- ATA Carnet
- Rules of Origin Agreement
- Drawback
- Pre-shipment Inspection Agreement
- Trade Facilitation

- B. Publishing import rules to make the transparent to traders.
- C. Use of electronic import processing including use of electronic certification of origin.
- D. Use of risk assessment tools to facilitate compliant imports.
- E. Advance rulings on compliance with import regulation requirements.
- F. Reducing import clearance times.
- G. Providing expeditious handling and reducing import time for express shipments.
- H. Adoption of clear and transparent rules of origin for determining eligibility of products for trade preference programs with an appeal process. The rules of origin should be consistent across the various FTAs with a preference for tariff shift based rules rather than a GSP value added type rules.
- I. Mechanisms to keep customs rules updated and current with best practices.
- J. Providing an appeal process from customs decisions.
- K. Providing both civil and administrative penalty provisions for traders.

#### V. Advisory Committee Opinion on Agreement

With experience from several previous Agreements and the work underway in the Doha Round, the provisions related to customs and trade facilitation in the Peru agreement substantially meet the Committee objectives. The U.S. negotiators met regularly with the Committee and solicited advice. Those negotiators were responsive to the unsolicited advice from the Committee as well. From the results included in the Agreement, it is apparent that the negotiators accepted the Committee's advice and sought to achieve all of the objectives of the Committee. On balance, the agreement provides equity and reciprocity in the customs and trade facilitation areas.

The following is a more detailed description of some of the customs provisions that the Committee believes our negotiators were successful in being able to include that reach the objectives of the Committee.

##### ▪ **General Provisions**

The Committee reviewed the customs related provisions of the agreement and is pleased that so many of the current best practices have been included in those provisions. From the 48-hour release of goods standard to the need to make the rules and procedures available to the public, the coverage of agreed to practices implements many international customs guidelines. The recommendation to use risk assessment principles and the requirement to provide a review and appeal process from customs determinations are significant provisions for the benefit of traders. With the need for the exchange of information between parties and the increase in the collection of data from the trade, the provisions on confidentiality become critical. The key for the members of the Committee is the capacity of both parties to implement those requirements. The Agreement provides for such capacity building. The general provision in the Agreement to create a Committee to administer the obligations, including customs issues such as updating the rules of origin, raised the confidence of our members that the objectives will be met.

##### ▪ **Definitions**

The definitions section provides clear and beneficial descriptions for the terms, Temporary Admission; Waste and scrap; Used goods; Recovered goods; and especially Remanufactured products.

▪ **Rules of Origin**

The Committee reviewed this section for process, not application of the rules. Determination of whether the application of the rules meets the objectives of specific sectors is left to each sector. For process, the origin sections provide for clear rules, and the section on Customs Administration provide the ability to request advance rulings on the origin rules, and an avenue for appeal of those rulings. These provide for more efficient administration of the rules.

The Committee also reviewed the specific structure of the rules, which are based both on value content and for specific products, a tariff shift to determine substantial transformation.

▪ **Certification of Origin**

The negotiators were able to obtain excellent provisions for the handling of origin certification. The "deemed to certify" language is a great step forward in obtaining efficiency in the release of goods. A certificate need only be available upon request. There is no stipulated format but only required data elements. This allows traders to use commercial documents.

▪ **Customs Commodity Classification**

We recommended to the negotiators that parties to the agreement adhere to and use the latest version of the World Customs Organization's (WCO) Harmonized Commodity Coding and Classification System (HS). Peru has accepted the HS so no special provision was necessary. They agreed to use the 2007 version that will facilitate predictability for U.S. traders that use the 2007 version in the U.S.

▪ **Valuation**

The Committee also believes that all parties should be obligated to and using the World Trade Organization (WTO) customs valuation system (Agreement on Implementation of Article VII of GATT 1994). That use should be transparent in application, include a binding ruling process. Those requirements were included in the agreement. The Committee calls attention to the importance that Peru apply Article 1 paragraph 2 of the Agreement in an objective and balanced manner. This Article taken together with the Notes to Article 1 prescribe the options for verifying the price between related parties. The Agreement emphasizes that the fact that the buyer and seller are related should not preclude the acceptance of the transaction value.

▪ **Dispute Resolution**

The Dispute Resolution procedure in the Agreement is well thought out and appears to be workable.

▪ **Trade Facilitation and Capacity Building**

The Committee is pleased that the agreement includes trade facilitation and capacity building provisions. Trade facilitation is mainly directed to procedures and associated with conformance to standards and information flows that control the international movement of goods and means

of payment. With the assistance of improved information technologies, market forces have effected improvements in commercial procedures in recent years. However, obstacles continue to prevent and delay the efficient movement of goods and means of payment across borders, especially in the area of Customs' applications. With the implementation of the provisions of this Agreement, many of those obstacles will be removed.

The Committee believes that trade facilitation is an absolutely essential ingredient of trade negotiations, and even more so in the light of the recent dramatic downturn in the global economy. Trade facilitation provisions should be focused on the simplification and harmonization of Customs procedures and practices. The process should be transparent and predictable. They should also require Parties to maintain appropriate measures to ensure efficient and fair Customs facilitation of goods that are imported and/or exported by express delivery services suppliers. The agreement's provisions do that.

The Committee also took note of the creation of a Capacity Building Committee that will coordinate the projects and efforts to develop improved processes for Peru. Without that capacity it is doubtful that Peru can fully implement the full intention of the Agreement's provisions.

▪ **Other Provisions**

Other provisions related to Customs have met the objectives of the Committee. The Committee was pleased to see the provisions on e-commerce and the treatment of digital goods for customs purposes on carrier media only and not on the digital content.

**VI. Membership of Committee**

The Committee is fortunate to have both customs experts and representatives from the industry sector committees. The members of ITAC 14 are:

Ms. Marietta E. Bernot  
Mr. James B. Clawson  
Mr. Donald A. Deline  
Ms. Margaret Gatti, Esquire  
Mr. Robert J. Leo, Esquire  
Ms. Kimberly A. Marsho  
Ms. Julia M. McCalmon  
Mr. John P. McGovern

Mr. Otto Meyers, III, Esquire  
Ms. Susan M. Presti  
Ms. Darcy D. Price  
Mr. Lauren D. Rachlin, Esquire  
Mr. Gilbert Lee Sandler, Esquire  
Ms. Evelyn M. Suarez, Esquire  
Mr. Max Turnipseed, Esquire  
Mr. Charles D. Uthus