



Peru TPA Facts

Office of the United States Trade Representative
U.S. PERU TRADE PROMOTION AGREEMENT Policy Brief –December 2005

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Free Trade with Peru: Summary of the U.S.-Peru Trade Promotion Agreement

The United States and Peru concluded negotiations on a bilateral free trade agreement on December 7, 2005. The comprehensive trade agreement will eliminate tariffs and other barriers to goods and services, promote economic growth, and expand trade between the two countries. The United States will continue to negotiate with Colombia and Ecuador.

New Market Access for U.S. Consumer and Industrial Products

- 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, and an additional seven percent will be duty free within five years. All remaining tariffs will be eliminated within ten years.
- Key U.S. exports, such as agriculture and construction equipment, auto parts, information technology equipment, medical and scientific equipment, and forest products will gain immediate duty-free access to Peru.
- Peru will join the WTO's Information Technology Agreement (ITA), which removes tariff and non-tariff barriers to information technology products.
- Peru has agreed to allow trade in remanufactured goods under the agreement. This will provide significant export and investment opportunities for U.S. firms involved in remanufactured products such as computers, cellular telephones, and other devices.
- Under the Andean Trade Preference Act (ATPA), many products from Peru already enter the United States duty-free. The agreement will make duty-free treatment permanent, providing certainty for businesses and investors, and will allow nearly all non-textile consumer and industrial products made in Peru to enter the U.S. duty free immediately upon implementation of the agreement.
- Peru is a growing market for U.S. products. U.S. goods exports increased 24 percent from 2003 to 2004. Current U.S. goods exports are more than \$2 billion per year.

Expanded Markets for U.S. Farmers and Ranchers

- More than two-thirds of current U.S. farm exports to Peru will become duty-free immediately. Items that will receive immediate duty-free treatment include high quality beef, cotton, wheat, soybeans, soybean meal and crude soybean oil; key fruits and vegetables including apples, pears, peaches, and cherries; almonds; and many processed food products including frozen french fries, cookies, and snack foods.
- Tariffs on most remaining U.S. farm products will be phased out within 15 years, with all tariffs eliminated in 18 years. U.S. farm products that will benefit from improved market access include pork, beef, corn, poultry, rice, fruits and vegetables, processed products and dairy products.
- The United States and Peru have worked to resolve sanitary and phytosanitary barriers to agricultural trade, especially problems in food inspection procedures for beef, poultry, and pork.

Textiles and Apparel

- Textiles and apparel will be duty-free and quota-free immediately if the products meet the agreement's rule of origin, promoting new opportunities for U.S. and Peruvian fiber, yarn, fabric and apparel manufacturing.
- Special state-of-the-art customs cooperation commitments between the U.S. and Peru will allow for verification of claims of origin or preferential treatment, and denial of preferential treatment or entry if claims cannot be verified.
- Rules of origin are generally based on the yarn forward standard, thus encouraging production and economic integration between the United States and Peru. Exceptions to the rules of origin will be handled through an expedited "short supply" determination process after entry into force, or through a similar process under the Andean Trade Preferences Act, before entry into force. The Parties agreed on 20 "short supply" items as part of the agreement. The agreement does not make use of tariff preference levels (TPLs).
- A "de minimis" provision will allow limited amounts of specified third-country content to go into U.S. and Peruvian apparel, giving producers in both countries needed flexibility.
- A special textile safeguard will provide for temporary tariff relief, if imports under the Agreement prove to be damaging to domestic producers.

Open Services Markets

- Peru will accord substantial market access across its entire services regime, subject to very few exceptions, using the so-called "negative list" approach.
- Peru has agreed to exceed its commitments made in the WTO, and to dismantle significant services and investment barriers, such as measures that require U.S. firms to hire nationals rather than U.S. professionals and measures requiring the purchase of local goods. These commitments and improvements in Peru's services and investment regimes will allow U.S. firms to take full advantage of the benefits of the agreement across all sectors, including but not limited to:
 - Telecommunications services
 - Financial services, including banking, insurance and securities
 - Distribution services, such as wholesaling, retailing and franchising
 - Express delivery services
 - Computer and related services
 - Audiovisual and entertainment services
 - Energy services
 - Transport services
 - Construction and engineering services
 - Tourism
 - Advertising services

- Professional services (architects, engineers, accountants, etc.)
- Environmental services
- U.S. financial service suppliers have full rights to establish subsidiaries, joint ventures or branches for banks and insurance companies.
- Portfolio managers in the U.S. will be able to provide portfolio management services to both mutual funds and pension funds in Peru, including to funds that manage Peru's privatized social security accounts.
- Peru agreed to eliminate a measure affecting any sector in which a government concession is needed, such as transportation, energy and mining, that requires U.S. enterprises to buy locally. In the future, U.S. companies will be free to purchase on the basis of price and quality, not origin of goods in these sectors.
- Peru also lifted a ban on trucking licenses.
- Peru will allow U.S.-based firms to supply insurance on a cross-border basis, including reinsurance; reinsurance brokerage; marine, aviation and transport (MAT) insurance; and other insurance services.
- Peru will allow U.S.-based firms to offer services cross-border to Peruvians in areas such as financial information and data processing.
- The commitments in services cover both cross-border supply of services (such as services supplied through electronic means, or through the travel of nationals) as well as the right to invest and establish a local services presence.
- Market access to services is supplemented by requirements for regulatory transparency. Regulatory authorities must use open and transparent administrative procedures, consult with interested parties before issuing regulations, provide advance notice and comment periods for proposed rules, and publish all regulations.
- The financial services chapter includes core obligations of non-discrimination, most favored nation treatment, and additional market access obligations. It also includes additional provisions on transparency of domestic regulatory regimes.

An Open and Competitive Telecommunications Market

- Users of a telecommunications network are guaranteed reasonable and non-discriminatory access to the network. This prevents local firms from having preferential or "first right" of access to telecommunications networks.
- U.S. phone companies obtain the right to interconnect with Peruvian dominant suppliers' networks at nondiscriminatory and cost-based rates.
- U.S. firms will be able to lease elements of Peruvian telecom networks on non-discriminatory terms and to re-sell telecom services of Peruvian suppliers to build a customer base.

E-Commerce: Free Trade in the Digital Age

- Peru and the United States agreed to provisions on e-commerce that reflect the issue's importance in global trade and the importance of supplying services by electronic means as a key part of a vibrant e-commerce environment.

- The Parties have committed to non-discriminatory treatment of digital products; agreed not to impose customs duties on such products; and agreed to cooperate in numerous policy areas related to e-commerce.

Important New Protections for U.S. Investors

- The agreement will establish a secure, predictable legal framework for U.S. investors operating in Peru.
- All forms of investment are protected under the Agreement, including enterprises, debt, concessions and similar contracts, and intellectual property.
- U.S. investors will enjoy in almost all circumstances the right to establish, acquire and operate investments in Peru on an equal footing with local investors and with investors of other countries.
- Pursuant to U.S. Trade Promotion Authority (TPA), the agreement draws from U.S. legal principles and practices to provide U.S. investors in Peru a basic set of substantive and procedural protections that Peruvian investors currently enjoy under the U.S. legal system. These include due process protections and the right to receive a fair market value for property in the event of an expropriation.
- The investor protections in the chapter are backed by a transparent, binding international arbitration mechanism. Submissions to arbitral tribunals will be publicly available and hearings will generally be open to the public. Tribunals will also be authorized to accept amicus submissions from non-disputing parties. In addition, these procedures will be available for claims by investors of breaches of investment agreements – certain contracts between investors and governments relating to natural resources, infrastructure, and public services – concluded before or after the TPA's entry into force.

Greater Protection for Intellectual Property Rights

- In all categories of intellectual property rights (IPR), U.S. companies will be treated at least as well as Peruvian companies, and the agreement makes a number of important improvements to IPR protections.

State-of-the-Art Protection for U.S. Trademarks

- Requires a system to resolve disputes about trademarks used in Internet domain names, which is important to prevent "cyber-squatting" with respect to high-value domain names.
- Applies principle of "first-in-time, first-in-right" to trademarks and geographical indications, so that the first person who acquires a right to a trademark or geographical indication is the person who has the right to use it.
- Requires the development of an on-line system for the registration and maintenance of trademarks, as well as a searchable database.
- Requires transparent procedures for the registration of trademarks, including geographical indications.

Protection for Copyrighted Works in a Digital Economy

- Copyright owners maintain rights over temporary copies of their works on computers, which is important in protecting music, videos, software and text from widespread unauthorized sharing via the Internet.
- Establishes that only authors, composers and other copyright owners have the right to make their work available on-line.
- Ensures extended terms of protection for copyrighted works, including phonograms, consistent with emerging international trends.

- Establishes strong anti-circumvention provisions to prohibit tampering with technologies (like embedded codes on discs) that are designed to prevent piracy and unauthorized distribution over the Internet.
- Ensures that governments use only legitimate computer software, thus setting a positive example for private users.
- Requires rules to prohibit the unauthorized receipt or distribution of encrypted satellite signals, thus preventing piracy of satellite television programming.
- Provides rules for the liability of Internet Service Providers (ISPs) for copyright infringement, reflecting the balance struck in the U.S. Millennium Copyright Act between legitimate ISP activity and the infringement of copyrights.

Patents & Trade Secrets: Stronger Protections

- Provides for the restoration of patent terms to compensate for delays in granting the original patent, consistent with U.S. practice.
- Limits the grounds for revoking a patent, thus protecting against arbitrary revocation.
- Clarifies that test data and trade secrets submitted to a government for the purpose of product approval will be protected against unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals.
- Requires a system to prevent the marketing of pharmaceutical products that infringe patents.
- Provides protection for newly developed plant varieties.
- We clarified, as we have in past agreements, that the intellectual property chapter does not affect Peru's ability to take necessary measures to protect public health by promoting access to medicines for all, particularly in circumstances of extreme urgency or national emergency.

Tough Penalties for Piracy and Counterfeiting

- Criminalizes end-user piracy, providing strong deterrence against piracy and counterfeiting.
- Requires the Parties to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. Also provides for enforcement against goods-in-transit, to deter violators from using ports or free trade zones to traffic in pirated products. Ex officio action may be taken in border and criminal cases, thus providing more effective enforcement.
- Mandates both statutory and actual damages for copyright infringement and trademark piracy. This serves as a deterrent against piracy, and ensures that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation.

New Access to Government Procurement Contracts

- U.S. suppliers are granted non-discriminatory rights to bid on contracts from Peruvian government ministries, agencies and departments. Low-value contracts are excluded.
- Covers the purchases of most Peruvian central government entities, including key ministries and state-owned enterprises, including Peru's oil company and its public health insurance agency (a major purchaser of pharmaceuticals), as well as all of its first-tier sub-central entities (comparable to U.S. states).

- Requires fair and transparent procurement procedures, such as advance notice of purchases and timely and effective bid review procedures.

Groundbreaking Customs Procedures and Rules of Origin

- Comprehensive rules of origin will ensure that only U.S. and Peruvian goods benefit from the Agreement. The rules of origin are designed to provide clarity, predictability and certainty to the private sector and customs administrations.

The agreement requires transparency and efficiency in administering customs procedures, including the agreement's rules of origin. Peru commits to publish laws and regulations on the Internet, and will ensure procedural certainty and fairness.

- The Parties agree to share information to combat illegal trans-shipment of goods. In addition, the Agreement contains specific commitments to expedite the release of goods, special procedures for the release of express delivery shipments, and the ability of importers to obtain binding advance rulings governing eligibility for preferential tariff treatment, tariff classification, eligibility for duty drawback, country of origin marking and the application of quotas.

U.S. Firms Protected Against Anti-Competitive Behavior

- Commits Peru to maintain competition laws that prohibit anti-competitive business conduct, and competition agencies to enforce the laws.
- The Agreement also requires that Peru 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 that discriminate against or harm the interests of U.S. companies.

Protection and Promotion of Worker Rights

- The agreement fully meets the labor objectives set out by Congress in TPA. Labor obligations are part of the core text of the trade agreement.
- Both parties reaffirm their obligations as members of the International Labor Organization (ILO), and shall strive to ensure that their domestic laws provide for labor standards consistent with internationally recognized labor principles. Agreement makes clear that it is inappropriate to weaken or reduce domestic labor protections to encourage trade or investment.
- Agreement requires that parties shall effectively enforce their own domestic labor laws, and this obligation is enforceable through the agreement's dispute settlement procedures.
- Procedural guarantees in the agreement will ensure that workers and employers will have fair, equitable and transparent access to labor tribunals/courts.
- The agreement includes a cooperative mechanism to promote respect for the principles embodied in the ILO Declaration on Fundamental Principles and Rights at Work, and compliance with ILO Convention 182 on the Worst Forms of Child Labor. Cooperative activities may include:
 - Law and practice related to the principles and rights of the ILO Declaration on Fundamental Principles and Rights at Work;
 - Compliance with ILO Convention 182 on the Worst Forms of Child Labor;
 - Methods to improve labor administration and enforcement of labor laws;

- Social Dialogue and Alternative Dispute Resolution;
- Occupational Safety and Health compliance; and
- Mechanisms and best practices to protect and promote the rights of migrant workers.

Commitments and Cooperation to Protect the Environment

- Agreement fully meets the environmental objectives set out by Congress in TPA. Environmental obligations are part of the core text of the trade agreement.
- Agreement commits parties to effectively enforce their own domestic environmental laws, and this obligation is enforceable through the Agreement's dispute settlement procedures.
- There is also an environmental cooperation agreement that provides a framework for undertaking environmental capacity building in Peru and establishes an Environmental Cooperation Commission. The Parties will now work on developing a work plan for cooperative activities.
- The environmental cooperation agreement identifies a number of priorities:
 - Strengthening the capacity to develop, implement and enforce environmental laws;
 - Promoting incentives to encourage environmental protection;
 - Protection of endangered species;
 - Promotion of clean production technologies; and,
 - Building capacity to promote public participation in the environmental decision-making process.
- Both parties commit to establish high levels of environmental protection, and to not weaken or reduce environmental laws to attract trade and investment.
- Agreement includes provisions recognizing the importance of protecting biodiversity.
- Agreement also promotes a comprehensive approach to environmental protection. Procedural guarantees that ensure fair, equitable and transparent proceedings for the administration and enforcement of environmental laws are complemented by provisions that promote voluntary, market-based mechanisms to protect the environment.
- Agreement's Environment Chapter includes provisions:
 - creating a public submissions process to ensure that views of civil society are appropriately considered;
 - benchmarking environmental cooperation activities and input from international organizations in evaluating progress; and,
 - -enhancing the mutual supportiveness of multilateral environmental agreements and international trade agreements to which we are both parties.

Dispute Settlement: Tools to Enforce the Agreement

- Core obligations of the Agreement, including labor and environment provisions, are subject to the dispute settlement provisions of the agreement.
- Dispute panel procedures set high standards of openness and transparency through:

- Open public hearings;
 - Public release of legal submissions by parties;
 - Special labor or environment expertise for disputes in these areas; and,
 - Opportunities for interested third parties to submit views.
- Emphasis is on promoting compliance through consultation and trade-enhancing remedies.
 - An innovative enforcement mechanism includes monetary penalties to enforce commercial, labor and environmental obligations of the trade agreement.

Impacts on Small and Medium-sized Businesses

- The agreement contains innovative provisions that allow the creation of working groups to evaluate the impacts of the agreement on small and medium-sized businesses.

Trade Capacity-Building: Development and Trade Together

- The agreement will include a Trade Capacity Building Committee, in recognition of the importance of such assistance in promoting economic growth, reducing poverty, and adjusting to liberalized trade. Assistance programs discussed by the Committee include programs for small and medium-sized enterprises and rural farmers, and programs for improvements in the transportation infrastructure and telecommunications, to assist Peru in implementing the obligations of the agreement and more broadly benefiting from the opportunities it creates.
- The Trade Capacity Building Committee will build on work done during the negotiations to enhance partnerships with international institutions (Inter-American Development Bank, World Bank, Organization of American States, the United Nations Economic Commission for Latin America (ECLAC), and the Andean Regional Development Bank (CAF)), non-governmental organizations, and the private sector.
- During the period of the negotiations, the U.S. Government provided a total of approximately \$25 million in trade capacity building (TCB) assistance to Peru for the fiscal years 2004 and 2005 period. Peru also has benefited from U.S. government provided trade capacity building assistance to Andean regional programs, totaling more than \$7 million for the fiscal years 2004 and 2005 period. Over the next five years, trade-related assistance to Peru that is under consideration by the Inter-American Development Bank and the World Bank could total over \$600 million in support of the agreement.

Recognizing the Importance of Biodiversity

- The Parties also reached an understanding that recognizes the importance of traditional knowledge and biodiversity and their potential contribution to cultural, economic and social development.