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U.S.-Peru Trade Promotion Agreement

M. Angeles Villarreal
Analyst in International Trade and Finance
Foreign Affairs, Defense, and Trade Division

Summary

On April 12, U.S. Trade Representative Rob Portman and Peruvian Minister of Foreign Trade and Tourism Alfredo Ferrero Diez Canseco signed the U.S.-Peru Trade Promotion Agreement (PTPA). The agreement was concluded on December 7, 2005. On January 6, 2006, President Bush notified the Congress of the United States' intention to enter into the PTPA. A free trade agreement with Peru was originally intended to be part of a broader U.S.-Andean free trade agreement (FTA), but after negotiators failed to reach agreement, Peru and the United States decided to move forward on a bilateral basis. The PTPA is a comprehensive trade agreement that, if ratified, would eliminate tariffs and other barriers in goods and services trade between the two countries. The labor provisions may be among the more controversial of the agreement. On June 4, 2006, presidential candidate, Alan García, won the run-off elections in Peru. He has stated he will honor the trade agreement with the United States. See also CRS Report RS22430, *Peru: 2006 Elections and Issues for Congress,* by Maureen Taft-Morales. This report will be updated as events warrant.

Introduction

On April 12, U.S. Trade Representative Rob Portman and Peruvian Minister of Foreign Trade and Tourism Alfredo Ferrero Diez Canseco signed the U.S.-Peru Trade Promotion Agreement (PTPA). The United States and Peru concluded the agreement on December 7, 2005. It is a comprehensive trade agreement that, if ratified, would eliminate tariffs and other barriers in goods and services trade between the United States and Peru. The United States views the agreement as a building block in its strategy to advance free trade throughout the Americas.

The PTPA negotiations began in May 2004, when the United States, Colombia, Peru, and Ecuador participated in the first round of negotiations for a U.S.-Andean free trade agreement (FTA).[1] After thirteen rounds of talks, however, negotiators failed to reach an agreement. Peru decided to continue negotiating alone with the United States and

[1] See CRS Report RL32770, *Andean-U.S. Free-Trade Agreement Negotiations,* by M. Angeles Villarreal.

concluded a bilateral agreement in December 2005. On January 6, 2006, President Bush notified the Congress of his intention to enter into a free trade agreement with Peru. Colombia continued negotiations with the United States in January 2006 and this agreement was successfully concluded on February 27. Negotiations with Ecuador are ongoing. A senior U.S. trade official recently stated that the trade agreements are likely to be treated as separate agreements by the Congress.[2]

U.S.-Peru Economic Relations

With a population of 28 million people, Peru is the fifth most populous country in Latin America, after Brazil, Mexico, Colombia, and Argentina. Peru's economy is relatively small compared to the U.S. economy. Peru's gross domestic product (GDP) in 2005 was $78 billion, about 0.6% of U.S. GDP ($12.5 trillion in 2005). Peru's economy has shown strong growth over the past four years. GDP is estimated to have grown by 6.3% in 2005, and is expected to reach 5% in 2006 and 4.9% in 2007.[3]

The United States is Peru's leading trading partner. In 2004, 30% of Peru's exports went to the United States, and 30% of Peru's imports were supplied by the United States. The second most important trading partner for Peru is the European Union, accounting for 24% of Peru's exports and 22% of Peru's imports. Other important trading partners for Peru are China, Chile, Brazil, and Japan.

Peru accounts for less than 1% of total U.S. trade. Peru is the 43rd largest U.S. export market ($2.3 billion in 2005) and the 44th largest source of U.S. imports ($5.1 billion in 2005). The dominant U.S. import item from Peru is gold (31% of U.S. imports from Peru in 2005), followed by refined copper (11% of total), and kerosene and other oils (9% of total). The leading U.S. export items are gasoline (7% of U.S. exports to Peru in 2005), engineering machinery parts (6% of total), and office and data processing machinery parts (4% of total). The U.S. trade deficit with Peru was $2.82 billion in 2005.

Table 1. U.S. Merchandise Trade with Peru, 1996-2005
($ Billions)

	1996	1998	2000	2002	2004	2005
U.S. Exports	$1.77	$2.06	$1.66	$1.56	$2.10	$2.30
U.S. Imports	$1.26	$1.98	$2.00	$1.93	$3.70	$5.12
U.S. Trade Balance	$0.51	$0.08	$-0.34	$-0.37	$-1.60	$-2.82

Source: USITC Interactive Tariff and Trade DataWeb at [http://dataweb.usitc.gov].

The United States currently extends duty-free treatment to imports from Peru under the Andean Trade Promotion and Drug Eradication Act (ATPDEA), a regional trade preference program that expires in December 2006. In 2005, 44% of all U.S. imports from Peru received preferential duty treatment. Of those, the leading imports were refined copper and knit or crocheted sweaters. U.S. imports from Peru have been increasing

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[2] Trade Reports International Group, *Washington Trade Daily*, "U.S. Colombia Reach FTA," February 28, 2006.

[3] The Economist Intelligence Unit, *Country Outlook: Peru*, February 2006.

significantly since 1996, from $1.26 billion in 1996 to $5.12 billion in 2005, over a 300% increase. Peru's export growth with the United States has helped economic growth and has also helped strengthen the Peruvian currency. There has been some speculation that the United States will not renew the ATPDEA in the absence of a PTPA.[4]

Peru applies tariffs in the 5-20% range to virtually all imports from the United States. It also applies variable levies ("price bands") to certain agricultural products to assure that import prices do not fall below a minimum price. It bans imports of some products, including used clothing, used shoes, used tires, and cars over five years old. U.S. industry is concerned about enforcement of Peru's intellectual property rights laws and protection of confidential test data. Peruvian law restricts foreign investment in the following: majority ownership of broadcast media to Peruvian citizens, ownership of land or investment in natural resources within 50 kilometers of a border, operation of national air and water transportation, and inter-urban land transportation. Peru's laws also place limits on a local company's employment of foreign workers.[5]

U.S. foreign direct investment (FDI) in Peru on a historical-cost basis totaled $3.9 billion in 2004. The largest amount of U.S. FDI in Peru is in mining, which accounted for 47%, or $1.83 billion, of total U.S. FDI in Peru in 2004. The second largest amount, $250 million (6% of total), is in manufacturing. Chemical product manufacturing accounts for $107 million, followed by $70 million for food manufacturing.[6]

U.S. investors in Peru have had a number of disputes with the Peruvian government in recent years. These have mostly involved apparent mistreatment by Peru's national tax authority. National treatment for foreign investors is guaranteed under Peru's 1993 constitution. Under the constitution, arbitration is available for disputes between foreign investors and the government of Peru. Several U.S. companies have chosen to pursue claims through arbitration with mixed results. U.S. companies complain that executive branch ministries, regulatory agencies, the tax agency and the judiciary lack the resources, expertise and impartiality necessary to carry out their respective mandates. Through FTA negotiations, the U.S. government seeks a range of protections with respect to the treatment of U.S. investors, as well as a guaranteed right for those investors to have recourse to international arbitration in the event of investment disputes.[7]

Key Provisions of the U.S.-Peru Trade Promotion Agreement

The comprehensive free trade agreement would eliminate tariffs and other barriers to goods and services. The following paragraphs are based on a summary of the agreement text as provided by the United States Trade Representative.[8]

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[4] Committee on Ways and Means, U.S. House of Representatives, *Report on Trade Mission to Colombia, Ecuador, and Peru,* WMCP: 109-6, September 2005.

[5] United States Trade Representative (USTR), *2005 National Trade Estimate Report on Foreign Trade Barriers,* p. 480-485.

[6] Based on data from the U.S. Bureau of Economic Analysis, see [http://www.bea.gov].

[7] USTR, p. 484.

[8] Office of the United States Trade Representative, "U.S.-Peru Trade Promotion Agreement

(continued...)

Market Access. Upon implementation, the agreement would eliminate duties on 80% of U.S. exports of consumer and industrial products to Peru. An additional 7% of U.S. exports would receive duty-free treatment within five years of implementation. Remaining tariffs would be eliminated ten years after implementation. The PTPA would make the preferential duty treatment for U.S. imports from Peru under the ATPDEA permanent.

In agricultural products, the agreement would grant duty-free treatment immediately to more than two-thirds of current U.S. farm exports to Peru. These products include high quality beef, cotton, wheat, soybeans, soybean meal and crude soybean oil, certain fruits and vegetables, and many processed food products. Tariffs on most remaining agricultural products would be phased out within 15 years, and all tariffs eliminated in 18 years.

In textiles and apparel, products that meet the agreement's rules of origin requirements would receive duty-free treatment immediately. The rules of origin requirements are generally based on the yarn forward standard to encourage production and economic integration. A "de minimis" provision would allow limited amounts of specified third-country content to go into U.S. and Peruvian apparel to provide producers in both countries flexibility. A special textile safeguard would provide for temporary tariff relief if imports prove to be damaging to domestic producers.

The agreement includes comprehensive rules of origin provisions that would ensure that only U.S. and Peruvian goods could benefit from the agreement. The agreement also includes customs procedures provisions, including requirements for transparency and efficiency, procedural certainty and fairness, information sharing, and special procedures for the release of express delivery shipments.

In government procurement contracts, U.S. companies would be granted non-discriminatory rights to bid on contracts from Peruvian government ministries, agencies, and departments. These provisions would cover the purchases of most Peruvian central government entities and state-owned enterprises, including Peru's oil company and its public health insurance agency (a major purchaser of pharmaceuticals).

Services. In services trade, Peru would grant market access to U.S. firms in most services sectors, with very few exceptions. The affected services sectors would include telecommunications, financial services, distribution services, express delivery services, computer and related services, audiovisual and entertainment services, energy services, transport services, construction and engineering services, tourism, advertising, professional services (architects, engineers, accountants, etc.), and environmental services. In telecommunications services, the agreement would prevent local firms from having preferential access to telecommunications networks. All users of a network would be guaranteed reasonable and nondiscriminatory access to the network.

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[8] (...continued)
Policy Brief," December 2005. The draft text of the agreement is available on the USTR website [http://www.ustr.gov].

Peru agreed to exceed its commitments made in the WTO, and to dismantle services and investment barriers that would include such measures as requiring U.S. firms to purchase local goods or to hire nationals rather than U.S. professionals. Market access to services would be supplemented by requirements for regulatory transparency. The financial services chapter of the agreement includes core obligations of nondiscrimination, most favored nation treatment, and additional provisions on transparency of domestic regulatory regimes.

Investment. The agreement includes investment provisions intended to establish a secure predictable legal framework for U.S. investors operating in Peru. The agreement would grant investors the right to establish, acquire and operate investments in Peru on an equal footing with local investors and investors of other countries. The agreement draws from U.S. legal principles and practices that include due process protections and the right to receive a fair market value for property in the event of an expropriation. Protections for U.S. investments would be backed by a transparent, binding international arbitration mechanism.

IPR Protection. The agreement would provide intellectual property rights (IPR) protections for U.S. companies. The agreement's IPR protection provisions include protection for U.S. trademarks, copyrighted works in a digital economy, and patents and trade secrets. The agreement also provides for penalties on piracy and counterfeiting.

Dispute Settlement. The core obligations of the agreement, including labor and environmental provisions, are subject to dispute settlement provisions. These provisions include procedures for openness and transparency and emphasis on promoting compliance through consultation and trade-enhancing remedies. An enforcement mechanism includes monetary penalties to enforce commercial, labor, and environmental obligations of the trade agreement.

Labor Provisions. The labor obligations of the agreement are included in the core text. Parties would be required to effectively enforce their own domestic labor laws. This obligation would be enforceable through the agreement's dispute settlement procedures. The agreement includes procedural guarantees that would ensure that workers and employers would have fair, equitable, and transparent access to labor tribunals.

The labor provisions are among the more controversial of the agreement. Some critics say that the agreement does not require Peru's domestic labor laws to comply with the international standards established by the International Labor Organization (ILO). They argue that Peru's commitments only "strive to ensure" compliance with the ILO core labor standards and that this commitment is not subject to the PTPA enforcement mechanisms.[9] They also argue that the United States turned down an offer from Peruvian President Alejandro Toledo to enforce workplace standards set by the ILO that include rules to restrict child and forced labor, and to protect the ability of unions to organize. Others argue that requiring compliance with ILO labor standards would lead to a challenge of U.S. labor laws because the U.S. Congress has not ratified all of the ILO's

[9] Washington Office on Latin America (WOLA), *The Andean Free Trade Agreement and Labor Rights: USTR Obstacle to Progress on Labor Rights in Andean Region.* See [http://www.wola.org].

core standards. They believe that requiring foreign nations to meet standards based on rules that the United States has not fully subscribed to could lead to lawsuits.[10]

Prospects

Under Title XXI (Bipartisan Trade Promotion Authority Act of 2002) of the Trade Act of 2002 (P.L. 107-210), the PTPA would be considered by the Congress on an expedited basis that is limited in debate and with no amendments. Given the notification procedures founded in the Trade Promotion Authority Act, the PTPA could be voted on by the Congress sometime this summer.

When Peruvian President Alejandro Toledo visited Washington in September 2005, he highlighted three reasons for entering into the agreement: (1) to support regional stability; (2) to replace the ATPDEA; and (3) to provide alternatives to narcotics trafficking.[11] He stated at that time that Peru was willing to accept the inclusion of language on core labor rights in the agreement text. On June 4, 2006, Peru held a run-off presidential election, in which left-of-center former president, Alan García, was elected. García has stated that he will honor the PTPA, control the deficit, and cut the salaries of elected officials by 50%.[12] However, there is significant grass-roots opposition to an FTA within Peru. Opponents argue that any economic benefits from increased trade under an FTA will be realized by only a small segment of the economy. They also argue that the agreement would hurt small farms in rural communities. In July 2005, Peruvian farmers held a number of protests during one of the rounds of talks and blocked roads to protest the negotiations. [13]

In the United States, much of the business community supports a U.S.-Peru FTA. The National Association of Manufacturers (NAM), for example, states in its 2006 policy agenda that one of its key objectives is the congressional approval of the free trade agreement with Peru and other FTAs now being negotiated. On the other hand, a number of other groups, such as the AFL-CIO, Public Citizen, and American Friends Service Committee, generally oppose the idea of an U.S.-Andean FTA or a U.S.-Peru FTA. They argue that, among other things, the agreement would protect the rights and profits of multinational corporations, cost the U.S. economy jobs, and erode protection for the environment and workers' rights.

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[10] Bloomberg News, "Portman Seeks to Mend Fences with Democrats Over Trade Accords," January 19, 2006.

[11] Sparshott, Jeffrey, and Tom Carter. "Peru Promotes Free-Trade Pact," *The Washington Times,* September 17, 2005.

[12] Reel, Monte, "García Defeats Nationalist in Peru Vote to Reclaim Presidency," *Washington Post Foreign Service,* June 5, 2006.

[13] Sentinel, Orlando, "Peruvian Farmers Protest Free-Trade Pact with the United States," *Orlando Sentinel,* July 5, 2005.