



## CRS Report for Congress

# U.S.-Peru Trade Promotion Agreement

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### Summary

On April 12, 2006, 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). On January 6, 2006, President Bush notified the Congress of the United States' intention to enter into the PTPA. Implementing legislation may be introduced in the 110<sup>th</sup> Congress. The Peruvian Congress voted 79-14 to approve the agreement with the United States in June 2006. 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 are among the more controversial of the agreement. See also CRS Report RS22521, *Peru Trade Promotion Agreement: Labor Issues*, by M. Angeles Villarreal and Mary Jane Bolle. This report will be updated as events warrant.

### Introduction

On April 12, 2006, 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). On January 6, 2006, President Bush notified the Congress of the United States' intention to enter into the PTPA. The Peruvian Congress voted 79-14 to approve the PTPA on June 28, 2006. 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 U.S. Congress on an expedited basis that is limited in debate and with no amendments. The Trade Promotion Authority procedures require the President to submit formally the draft agreement and implementing legislation to Congress after entering into the agreement, but with no time limit to do so. Implementing legislation may be introduced during the 110<sup>th</sup> Congress. Trade Promotion Authority is set to expire on July 1, 2007.

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). When negotiators failed to reach agreement for an Andean FTA after 13 rounds of talks, Peru and the United States continued negotiations and concluded a bilateral agreement. Colombia and the United States also completed a bilateral trade agreement. This agreement was signed on November 22, 2006.

## U.S.-Peru Economic Relations

With a population of 28 million people, Peru is the fifth most populous country in Latin America. Peru's economy is small compared to the U.S. economy. In 2006, Peru's gross domestic product (GDP) was an estimated \$90 billion, about 0.7% of U.S. GDP (estimated \$13.2 trillion in 2006). Peru's economy has shown strong growth over the past four years. GDP grew 6.5% in 2005, and is estimated to have reached 6.9% in 2006. Growth is expected to continue in 2007 at a rate of 5.5%.<sup>1</sup>

The United States is Peru's leading trading partner. In 2006, 23% of Peru's exports went to the United States, and 16% of Peru's imports were supplied by the United States. Other leading export markets for Peruvian products are China (9.7% of total exports from Peru), Switzerland (7.2% of total), and Canada (6.8% of total). Leading sources of imports are Brazil (10.5% of total), China (10.4% of total), and Ecuador (7.1% of total).

Peru accounts for 0.5% of total U.S. trade. Peru ranks 43<sup>rd</sup> among U.S. export markets (\$2.9 billion in 2006) and 42<sup>nd</sup> as a source of U.S. imports (\$5.9 billion in 2006). The dominant U.S. import item from Peru is gold (24% of U.S. imports from Peru in 2006), followed by refined copper (19% of total), and petroleum oils and oil products (11% of total). The leading U.S. export items are petroleum oils and oil products (12% of U.S. exports to Peru in 2006), self-propelled bulldozers (3% of total), and medium and heavy trucks (3% of total). The U.S. trade deficit with Peru was \$3.0 billion in 2006.

**Table 1. U.S. Merchandise Trade with Peru, 1996-2006**  
(\$ Billions)

	1996	1998	2000	2002	2004	2006
U.S. Exports	\$1.77	\$2.06	\$1.66	\$1.56	\$2.10	\$2.90
U.S. Imports	\$1.26	\$1.98	\$2.00	\$1.93	\$3.70	\$5.90
U.S. Trade Balance	\$0.51	\$0.08	\$-0.34	\$-0.37	\$-1.60	\$-3.00

**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 Preferences Act (ATPA), a regional trade preference program that expires on June 30, 2007.<sup>2</sup> In 2006, 54% of all U.S. imports from Peru received preferential duty treatment under ATPA. Of those, the leading imports were refined copper, petroleum oils and products, and knit or crocheted sweaters. U.S. imports from Peru have been increasing significantly since 1996, from \$1.26 billion in 1996 to \$5.90 billion in 2006, a 370% increase. Peru's export growth with the United States has helped economic growth and has also helped strengthen the Peruvian currency.

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

<sup>1</sup> The Economist Intelligence Unit, *Country Outlook: Peru*, February 2006.

<sup>2</sup> See CRS Report RS22548, *ATPA Renewal Background and Issues*, by M. Angeles Villarreal.

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.<sup>3</sup>

U.S. foreign direct investment (FDI) in Peru on a historical-cost basis totaled \$3.9 billion in 2005. The largest amount of U.S. FDI in Peru is in mining, which accounted for 53%, or \$2.08 billion, of total U.S. FDI in Peru in 2005. The second largest amount, \$216 million (5.5% of total), is in manufacturing.<sup>4</sup> 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. U.S. companies have complained 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.<sup>5</sup>

## 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.<sup>6</sup>

**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 U.S. farm exports to Peru. Products would include high quality beef, cotton, wheat, soybeans, soybean meal and crude soybean oil, certain fruits and

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<sup>3</sup> United States Trade Representative (USTR), *2005 National Trade Estimate Report on Foreign Trade Barriers*, p. 480-485.

<sup>4</sup> Based on data from the U.S. Bureau of Economic Analysis, see [<http://www.bea.gov>].

<sup>5</sup> USTR, p. 484.

<sup>6</sup> Office of the United States Trade Representative, "U.S.-Peru Trade Promotion Agreement Policy Brief," December 2005. The draft text of the agreement is available on the USTR website [<http://www.ustr.gov>].

vegetables, and many processed food products. Tariffs on most remaining agricultural products would be phased out in 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. 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. 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.**<sup>7</sup> 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 are not subject to the PTPA enforcement mechanisms.<sup>8</sup> Supporters argue that the PTPA would reinforce Peru's labor reform measures of recent years.

## Prospects

The PTPA would be considered by Congress on an expedited basis under the Bipartisan Trade Promotion Authority Act of 2002 (TPA), which is set to expire on July 1, 2007.<sup>9</sup> Implementing legislation for the PTPA has not been introduced in the U.S. Congress. The Peruvian Congress approved the PTPA in June 2006.

A number of Members of Congress have indicated that PTPA labor requirements would have to be strengthened for the agreement to be approved and would like to see ILO core labor standards included. These would include prohibitions on child labor and rights for workers to bargain collectively and associate freely into unions. However, it is not clear how new language on labor standards would be included without renegotiating the agreement and meeting TPA requirements. One possibility that has been mentioned is to have any new language on labor provisions in a side letter to the PTPA that would contain binding labor requirements.<sup>10</sup> Some observers have noted that requiring compliance with ILO labor standards could require changes to U.S. law and may open the United States to legal challenges under a PTPA.<sup>11</sup>

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<sup>7</sup> See also CRS Report RS22521, *Peru Trade Promotion Agreement: Labor Issues*, by M. Angeles Villarreal and Mary Jane Bolle.

<sup>8</sup> 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>].

<sup>9</sup> See CRS Report RL33743, *Trade Promotion Authority (TPA): Issues, Options, and Prospects for Renewal*, by J.F. Hornbeck and William H. Cooper.

<sup>10</sup> *Congressional Quarterly Today*, "Schwab Signals Conciliatory Approach on Trade," January 4, 2007.

<sup>11</sup> Brevetti, Rosella, "USTR Expected to Offer Labor Proposal to Congress," *International Trade* (continued...)

The effect of the proposed PTPA on the U.S. economy would likely be small because Peru's economy is small relative to the U.S. economy. A study by the U.S. International Trade Commission (USITC)<sup>12</sup> on the potential effects of a PTPA states that, if implemented, the PTPA may spur U.S. trade with Peru in goods and services by eliminating trade barriers. The study estimates that the expected growth would have a positive effect on the U.S. economy, but that the effect would likely be small because Peru's share of total U.S. trade is small and Peru has existing trade preferences to the U.S. market under the ATPA. The PTPA is unlikely to impact the aggregate employment level in the United States, but could impact jobs in specific industries. The USITC report estimates that the largest U.S. employment gain (1%) is projected in wheat production. Declines are projected in metals, rice production, and miscellaneous crops which could lose up to 0.2% of their employment, displaced by imports. For Peru, various estimates of job gains range from 20,000 to 700,000.

In evaluating the agreement, policymakers also may consider Peru's recent commitments to labor reforms and alleviating poverty. Gaining passage of a PTPA is a high priority for the government of Peru. Peruvian President Alan Garcia has met with U.S. lawmakers on several occasions to emphasize the importance for Peru of strengthening trade relations with the United States in its efforts to fight poverty and strengthen equality among the Peruvian people. In October 2006, he announced a number of internal reforms that would help spread benefits of free trade to the poorer regions of the country. A considerable share of Peru's exports to the United States currently receives trade preferences under the ATPA and, without renewal or passage of a PTPA, many of Peru's exports to the United States would face higher duties. ATPA supporters state that the program has had a positive impact in the region by increasing investor confidence, creating thousands of jobs in alternative sectors, and preventing organized crime. Some Peruvian policymakers believe that maintaining confidence in the bilateral trade environment with the United States is key to the long-term stability of the region.

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. A number of other groups, such as the AFL-CIO, Public Citizen, and American Friends Service Committee generally oppose the idea of free trade agreements with Andean countries. 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 in Peru.

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<sup>11</sup> (...continued)

*Reporter*, Bureau of National Affairs (BNA), Inc., March 1, 2007.

<sup>12</sup> U.S. International Trade Commission, *U.S.-Peru Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects*, USITC Publication 3855, June 2006.