



SENATE REPUBLICAN

POLICY COMMITTEE

Legislative Notice

No. 40

December 3, 2007

H.R. 3688 – The United States-Peru Trade Promotion Agreement Implementation Act

Calendar No. 480

H.R. 3688 was read twice and placed on the calendar on November 13, 2007.

Noteworthy

- Today the Senate began consideration of H.R. 3688, the United States-Peru Trade Promotion Agreement Implementation Act (the Agreement), which implements the agreement signed by Ambassador Rob Portman and Peruvian Minister of Foreign Trade and Tourism Alfredo Ferrero Diez Canseco on April 12, 2006. A vote has been scheduled for 2:15 p.m. Tuesday, December 4.
- When implemented, the Agreement will eliminate tariff and non-tariff barriers to trade of goods and services between the United States and Peru. Upon entry into force of the Agreement, approximately 90 percent of U.S. farm and ranch exports will enter Peru free of duty. About 80 percent of U.S. consumer and industrial products to Peru will be free of duty immediately. U.S. textiles and apparel meeting the origin requirements will be duty free as well. Because Peru is included in the countries covered under trade preference programs, almost all Peruvian products currently enter the United States free of duty.
- The Agreement will also implement language as contained in the May 10 bipartisan trade agreement between the Administration and Congress. Per that agreement, the text of the Peru agreement was amended to include language requiring the United States and Peru to adopt and maintain in their laws and practice the five basic internationally-recognized labor principles, as stated in the ILO Declaration on Fundamental Principles and Rights at Work; incorporate a specific list of multilateral environmental agreements (MEAs), to which the United States is already a party, into the agreement; and some other modifications, including provisions regarding the treatment of generic medicines. There was no need to reflect any aspect of the bipartisan agreement in the implementing bill, however, because none of the provisions in the bipartisan agreement require changes to U.S. law.

- On October 4, 2007, the Senate Finance Committee approved S. 2113, a Senate companion to H.R. 3688 with identical legislative language. The Committee reported the bill on November 6. The House passed H.R. 3688 on November 8, by a vote of 285-132.
- The Administration's Statement of Administration Policy (SAP) strongly supports passage of H.R. 3688, noting that the legislation will make trade with Peru a "two-way street," will benefit small- and medium-sized businesses, and will reduce barriers to services and investment.
- CBO estimates that H.R. 3688 would increase revenues by \$292 million over the 2008-2012 period, and reduce revenues by \$423 million over the 2008-2017 period. CBO estimates that enacting H.R. 3688 also would increase direct spending by \$27 million over the 2008-2012 period and reduce direct spending by \$443 million over the 2008-2017 period.

Highlights

The United States and Peru concluded negotiations on the Agreement in December 2005, and both countries signed the Agreement in April 2006. The Peru FTA is comprehensive in scope; under WTO rules, FTAs like the Peru TPA must cover substantially all bilateral trade between the countries concerned.

Legislative History: Because the Peru FTA was concluded before the Trade Act of 2002 expired on June 30, 2007, floor consideration takes place under the rules provided in that Act. Consistent with obligations under the Act, the United States Trade Representative (USTR) notified Congress of its intention to enter into a free trade agreement with Peru on January 6, 2006. The Agreement was signed by both parties on April 12, 2006. On June 9, 2006, USTR submitted to Congress a list of changes to current law that the Agreement would require. On September 27, 2007, the President transmitted the text of a legislative proposal to implement the Agreement, as renegotiated to reflect the changes made pursuant to the May 10 agreement, together with supporting documents. H.R. 3699 and its Senate companion, S. 2113 were introduced the same day. The Senate Finance Committee approved the bill on October 4 and favorably reported S. 2113 on November 6. S. 2113 was placed on the calendar. Having conducted its informal mark-up on September 25, the House Ways and Means Committee formally approved H.R. 3688 and reported it by a vote of 39-0 on November 5. The House passed H.R. 3688 on November 8, by a vote of 285-132.

The May 10 Agreement: On May 10, 2007, the Administration and congressional leaders announced that a bipartisan agreement had been reached that would provide for the consideration of pending trade agreements, including the Peru agreement.

Under the bipartisan agreement, the Administration agreed to incorporate into the pending free trade agreements, including the Peru FTA, certain changes in key policy areas.

In the Peru FTA's labor chapter, the parties agreed to incorporate an obligation to adopt and maintain in their laws and practice, and effectively enforce, the five basic internationally-recognized labor principles, as stated in the ILO Declaration on Fundamental Principles and Rights at Work. The agreement does not change the current definition of labor laws in U.S. FTAs, and thus the new obligation applies only to federal labor laws. Moreover, in order to show a violation of the obligation, a party must show that the non-enforcement of the relevant obligation occurred through a sustained or recurring course of action or inaction in a way that affects trade or investment between the parties.

In the Peru agreement's environment chapter, the parties agreed to incorporate a specific list of multilateral environmental agreements (MEAs), including the Convention on International Trade in Endangered Species (CITES), the Montreal Protocol on Ozone Depleting Substances, the Convention on Marine Pollution, the Inter-American Tropical Tuna Convention (IATTC), the Ramsar Convention on Wetlands, the International Whaling Convention (IWC), and the Convention on Conservation of Antarctic Marine Living Resources (CCAMLR). The United States is already a signatory to each of these MEAs. The parties agreed that the obligations in the MEAs will be enforced on the same basis as the commercial provisions of the agreement – including the same remedies, procedures, and sanctions. As with the labor provisions, a party wishing to establish a violation of the environmental provisions must demonstrate that the other party has failed to meet the relevant obligation in a manner affecting trade or investment between the parties.

The May 10 agreement also revised certain protections for pharmaceutical products provided in earlier trade agreements. The agreement provides data exclusivity for test data related to pharmaceuticals for a "reasonable period of time," which "shall normally mean five years...." If the trading partner met certain conditions, the period of data exclusivity in the Peru agreement would run concurrently with the period of data exclusivity in the United States. In addition, the agreement specified that the provisions "do not and should not prevent a Party from taking measures to protect public health by promoting access to medicines for all, in particular concerning cases such as HIV/AIDS, tuberculosis, malaria, and other epidemics as well as circumstances of extreme urgency or national emergency." This provision should be interpreted in a way that is "supportive of each Party's right to protect public health and, in particular, to promote access to medicines for all."

On June 27, 2006, the Peruvian Congress voted 70-38 to approve the amendments to the agreement, and on June 28, 2007, voted 79-14 to approve the entire agreement.

Economic Considerations: Under the Andean Trade Preferences Act (ATPA) and the Andean Trade Preference and Drug Eradication Act (ATPADEA), the United

States extends duty-free treatment to many Peruvian goods. In 2006, for example, 98 percent of Peruvian exports to the United States entered duty-free.¹

By contrast, U.S. exports to Peru currently face tariffs of between 4 percent and 20 percent. For example, tariff rates are 5.8 percent for information technology equipment, 7.1 percent for chemicals, 8.8 percent for metals and ores, 5.9 percent for infrastructure and machinery, 5.5 percent for transportation equipment, 7.4 percent for autos and auto parts, 7.9 percent for building products, 9.7 percent for paper and paper products, and 11.1 percent for consumer goods.

The Agreement is meant to remove the barriers U.S. exporters face under the current arrangement. When implemented, nearly 90 percent of current exports by U.S. farmers and ranchers will receive immediate duty-free treatment. In addition, 80 percent of U.S. exports of consumer and industrial products to Peru will be duty-free immediately. About 7 percent of U.S. exports would receive duty-free treatment within five years, and remaining duties would be eliminated within 10 years.

In 2006, the United States exported \$2.9 billion in merchandise to Peru, compared with about \$5.8 billion in imports. The United States International Trade Commission (USITC) estimates that implementation of the Agreement will decrease the merchandise trade deficit. Upon full implementation, U.S. exports to Peru are projected to increase by more than the total that Peruvian exports to the United States are projected to increase: according to the USITC, exports to Peru will increase by \$1.1 billion, while imports from Peru will increase by \$439 million. The study also estimates that U.S. GDP will expand by \$2.1 billion.

Foreign Policy Considerations: Many observers have noted that in the 21st century, commercial policy, development policy, and national security policy will continue to become increasingly connected. This principle is central to trade policy generally, and in particular to agreements like the Agreement that promise to deliver economic benefits both to the United States and to Peru. The economic growth that trade liberalization delivers contributes to regional and to global economic and political stability. Helping to bring Peru more firmly into the global architecture will help strengthen its political and security institutions and expand its capacity to defend itself from modern threats that prey on weak states.

Adoption of the Agreement will also strengthen the connection between political freedom and economic freedom. Without hope for future growth and economic prosperity, the citizens of U.S. allies abroad are more likely to support political regimes who reject economic and political freedoms, developments unmistakably in opposition to U.S. interests. The prosperity that free trade agreements support is one of the most effective weapons against regional instability.

¹ United State Trade Representative, The Case for the U.S.-Peru Trade Promotion Agreement (PTPA), July 2007.

The United States has a prevailing interest that its allies abroad remain strong and stable. The Agreement directly serves this critical goal.

Bill Provisions

TITLE I: APPROVAL AND GENERAL PROVISIONS

Section 101 states that Congress approves the Peru FTA and the Statement of Administrative Action. The Peru FTA enters into force when the President determines that Peru is in compliance with all provisions that take effect on the date of entry into force of the Agreement and exchanges notes with the Government of Peru providing for entry into force on or after January 1, 2008.

Section 102(a) provides that U.S. law prevails in the case of a conflict with the Peru FTA.

Section 103(a) provides that, after the date of enactment, the President may proclaim such actions, and other U.S. government officers may issue such regulations, as are necessary to ensure the appropriate implementation of any provision of the legislation that is to take effect on the date of entry into force of the Agreement.

Section 103(b) establishes that regulations necessary or appropriate to carry out actions under the Act and Statement of Administrative Action must, to the maximum extent feasible, be issued within one year of entry into force of the Peru FTA or within one year of the effective date of the provision.

Section 104 establishes requirements for proclamation of actions that are subject to consultation and layover provisions under the Act.

Section 105 authorizes the President to establish an office within the Department of Commerce responsible for providing administrative assistance to dispute settlement panels that are established under the Peru FTA.

Section 106 authorizes the United States to resolve certain claims covered by the Investor-State Dispute Settlement Procedures set forth in the Peru FTA.

Section 107 provides that, with the exception of Sections 1-3 and Title I, which take effect on the date of enactment of the Act, the effective date of the Act is the date the Peru FTA enters into force with respect to the United States.

TITLE II: CUSTOMS PROVISIONS

Section 201(a) provides the President with the authority to proclaim tariff modifications necessary or appropriate to carry out the Agreement and requires the President to

terminate Peru's designation as a beneficiary developing country for the purpose of the Generalized System of Preferences program as of the date the Agreement enters into force.

Section 201(b) gives the President the authority to proclaim further tariff modifications necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Peru as provided for by the Agreement.

Section 201(c) allows the President to substitute for the base rate an ad valorem rate to carry out the tariff modifications in subsections (a) and (b).

Section 201(d) directs the President – in implementing the tariff rate quotas set forth in the Agreement – to ensure that imports of agricultural goods do not disrupt the orderly marketing of commodities in the United States.

Section 202 implements the agricultural safeguard provisions of Article 2.18 and Annex 2.18 of the Peru FTA. Section 202(b) directs the Secretary of the Treasury (“Secretary”) to assess an additional duty in any year when the volume of imports of a “safeguard good” exceeds 130 percent of the in-quota quantity allocated to Peru for the good in that calendar year as set forth in Annex 2.3 of the Agreement.

Section 203 codifies the rules of origin set out in Chapter 4 of the Peru FTA. Section 203(b) establishes three basic ways for a Peruvian good to qualify as an “originating good.” A good is an originating good if: (1) it is “wholly obtained or produced entirely in the territory of Peru, the United States, or both”; (2) it is produced entirely in the United States, Peru, or both and any materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their tariff classification to change or the good otherwise meets regional content and other requirements, as specified in Annex 3-A or Annex 4.1 of the Peru FTA; or (3) it is produced entirely in the territory of Peru, the United States, or both exclusively from originating materials.

Section 203(o)(2) provides authority for the President to carry out the provision of the Agreement through which the United States may, after consultations with Peru, add materials to the list that it has determined are unavailable in commercial quantities in a timely manner in the United States under its regional trade preference programs before the Agreement enters into force.

The remainder of Section 203 sets forth more detailed rules for determining whether a good meets the FTA's requirements under the second method of qualifying as an originating good, and addresses valuation of materials, determination of the originating or non-originating status of fungible goods and materials, and treatment of accessories, spare parts and tools, packaging materials, indirect materials, and goods put up in sets.

Section 204 of the bill implements the U.S. commitments under Article 2.10.4 of the Peru FTA to eliminate the Merchandise Processing Fee (MPF) on originating goods.

Section 205 implements Articles 4.18.5 and 4.19.3 of the Peru FTA. Section 205(a) prohibits the imposition of a penalty upon importers who make an invalid claim for preferential tariff treatment under the agreement if the importer acts promptly and voluntarily to correct the error and pays any duties owed on the good in question.

Section 205(b) provides that if an importer, exporter, or producer has engaged in a pattern of conduct in providing false or unsupported representations, U.S. authorities may suspend preferential treatment with respect to identical goods imported by that importer, exporter, or producer.

Section 206 amends the Tariff Act of 1930 to allow an importer to claim preferential tariff treatment for an originating good within one year of importation, even if no such claim was made at the time of the importation.

Section 207 requires any person who completes and issues a certificate of origin under Article 4.15 for a good exported from the United States to maintain, for a period of five years, specified documents demonstrating that the good qualifies as originating.

Section 208 implements the customs cooperation and verification of origin provisions in Article 3.2 of the Peru FTA.

Section 209 directs the Secretary to prescribe regulations necessary to carry out the tariff-related provisions of the Act, including the rules of origin and customs user fee provisions.

TITLE III: RELIEF FROM IMPORTS

SUBTITLE A: RELIEF FROM IMPORTS BENEFITTING FROM THE AGREEMENT

Section 301 defines “Peruvian article” and “Peruvian textile or apparel article.”

Sections 311-316 authorize the President, after an investigation and affirmative determination by the USITC, to impose certain import relief measures when, as a result of the reduction or elimination of a duty under the Agreement, a Peruvian product is being imported into the United States in such increased quantities and under such conditions as to be a substantial cause of serious injury or threat of serious injury to a domestic industry.

SUBTITLE B: TEXTILE AND APPAREL SAFEGUARD MEASURES

Sections 321-328 authorize the President to impose certain import relief measures when he determines that, as a result of the elimination or reduction of a duty provided under the Peru FTA, a Peruvian textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that

article, and under such conditions as to cause serious damage, or actual threat thereof, to the domestic industry.

Section 401 implements Chapter 9 of the Peru FTA and amends the definition of “eligible product” in Section 308(4)(A) of the Trade Agreements Act of 1979. As amended, Section 308(4)(A) will provide that an “eligible product” means a product or service of Peru that is covered under the Agreement for procurement by the United States.

Sections 501-502 implement obligations set out in Annex 18.3.4 to the Peru FTA (Annex on Forest Sector Governance).

Section 501 requires the President to establish an interagency committee within 90 days after the Agreement enters into force to oversee the implementation of Annex 18.3.4. Section 501 also describes requests and determinations that the committee may make relating to audits and verifications pursuant to the Annex, and it authorizes the committee to request verifications and take appropriate enforcement measures, including directing U.S. Customs and Border Protection to apply import measures of the type and in the circumstances contemplated under the Annex.

Section 502 requires the USTR, in consultation with other appropriate agencies, to provide periodic reports to the Senate Committee on Finance and the House Committee on Ways and Means on the steps the United States and Peru have taken to carry out the Annex and on activities related to forest sector governance carried out under the Environmental Cooperation Agreement that the United States and Peru negotiated concurrently with the United States- Peru Trade Promotion Agreement.

Section 601 extends the passenger and conveyance processing fees and the merchandise processing fees authorized under COBRA through December 13, 2014.

In general, corporations are required to make quarterly estimated tax payments of their income tax liability. For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15. Under present law, in the case of a corporation with assets of at least \$1 billion, the payments due in July, August, and September 2012 shall be increased to 115 percent of the payment otherwise due and the next required payment shall be reduced accordingly. Section 602 increases the percentage by 0.75 of a percentage point, from 115 percent to 115.75 percent.

Administration Position

The Administration's November 6, 2007 SAP states that the Administration "strongly supports H.R. 3688."

Cost

The Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) estimate that enacting H.R. 3688 would increase revenues by \$292 million over the 2008-2012 period, and reduce revenues by \$423 million over the 2008-2017 period.

CBO estimates that enacting H.R. 3688 also would increase direct spending by \$27 million over the 2008-2012 period, and reduce direct spending by \$443 million over the 2008-2017 period. Further, CBO estimates that implementing the legislation would result in new discretionary spending of less than \$500,000 per year, assuming the availability of appropriated funds.

Possible Amendments

Under the expedited procedures provided in the Trade Act of 2002, no amendments will be considered during floor debate.