Order Code RL34108

CRS Report for Congress

U.S.-Peru Economic Relations and the U.S.-Peru Trade Promotion Agreement

July 27, 2007

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

Prepared for Members and Committees of Congress

Congressional Research Service

U.S.-Peru Economic Relations and the U.S.-Peru Trade Promotion Agreement

Summary

On December 7, 2005, the United States and Peru concluded negotiations on the U.S.-Peru Trade Promotion Agreement (PTPA). President Bush notified the Congress of the United States' intention to enter into the PTPA on January 6, 2006, and the agreement was signed on April 12, 2006 by U.S. Trade Representative Rob Portman and Peruvian Minister of Foreign Trade and Tourism Alfredo Ferrero Diez. The PTPA is a comprehensive trade agreement that, if approved by Congress, would eliminate tariffs and other barriers in goods and services trade between the United States and Peru. The approval and implementation of a PTPA is a high priority for the Peruvian government. Peruvian President Alan García has met with President Bush and Members of Congress on several occasions in the United States to stress the importance of the agreement for Peru.

The pending PTPA would likely have a small net economic effect on the United States because U.S. trade with Peru accounts for a small percent of total U.S. trade. For Peru, the impact would be more significant because the United States is Peru's leading trade 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. In that same year, Peru accounted for 0.5% of total U.S. trade. Peru ranks 43rd among U.S. export markets and 42nd as a source of U.S. imports. The dominant U.S. import item from Peru is gold (24% in 2006) and the leading U.S. export items to Peru are petroleum oils and related products (9% in 2006).

Upon implementation, a PTPA 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. A PTPA would make the preferential duty treatment for selected U.S. imports from Peru permanent. The United States currently extends duty-free treatment to imports from Peru under the Andean Trade Preference Act (ATPA; Title II of P.L. 102-182), enacted on December 4, 1991 and reauthorized under the Andean Trade Promotion and Drug Eradication Act (ATPDEA; Title XXXI of P.L. 107-210). The preference program is scheduled to expire on February 29, 2008.

Implementing legislation for a PTPA may be considered by the U.S. Congress under Title XXI (Bipartisan Trade Promotion Authority Act of 2002) of the Trade Act of 2002 (P.L. 107-210), which requires an expedited process with limited debate and an up or down vote. Implementing legislation has not been introduced. On June 28, 2006, the Peruvian Congress voted 79 to 14 to approve the PTPA. On May 10, 2007, Congress and the Administration reached an agreement on a new bipartisan trade framework that calls for the inclusion of core labor and environmental standards in the text of pending and future trade agreements. On June 25, 2007, the United States reached an agreement with Peru on legally-binding amendments to the PTPA on labor, the environment, and other matters to reflect the bipartisan agreement of May 10. On June 27, 2007, Peru's Congress voted 70 to 38 in favor of the amendments to the PTPA. This report will be updated as events warrant.

Contents

List of Figures

List of Tables

U.S.-Peru Economic Relations and the U.S.-Peru Trade Promotion Agreement

Introduction

The United States and Peru concluded the U.S.-Peru Trade Promotion Agreement (PTPA) on December 7, 2005 and, on April 12, 2006, U.S. Trade Representative Rob Portman and Peruvian Minister of Foreign Trade and Tourism Alfredo Ferrero Diez Canseco signed the agreement. The proposed PTPA is a comprehensive trade agreement that, if approved by Congress, would eliminate tariffs and other barriers in goods and services trade between the United States and Peru. A free trade agreement with Peru is one of several bilateral free trade agreements (FTAs) negotiated or being considered by the United States with Latin American countries in its effort to advance free trade throughout the region. Peru's President Alan García views the pending agreement as fundamental to reforms Peru has taken for economic growth and social redistribution.

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 continued negotiations alone with the United States and 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 also continued negotiations with the United States in January 2006, and this agreement was concluded on February 27 and signed on November 22, 2006.

Implementing legislation for a PTPA must be approved yet by Congress for the agreement to take effect. Legislation has not been introduced during the 110th Congress. An implementing bill may be considered by the U.S. Congress under Title XXI (Bipartisan Trade Promotion Authority Act of 2002) of the Trade Act of 2002 (P.L. 107-210), which requires an expedited process with limited debate and an up or down vote. Trade Promotion Authority (TPA) procedures require the President to submit formally the agreement and implementing legislation to Congress after entering into an agreement, but there is no time limit for the Administration to do this. On June 28, 2006, the Peruvian Congress voted 79 to 14 to approve the agreement.

In early 2007, a number of Members of Congress indicated that some of the agreement's provisions would have to be strengthened to gain their approval,

---

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

particularly relating to core labor standards. After several months of negotiation, Congress and the Administration reached an agreement on May 10, 2007 on a new bipartisan trade framework that calls for the inclusion of core labor and environmental standards in the text of pending and future trade agreements. On June 25, 2007, U.S. Trade Representative Susan Schwab announced that the United States reached an agreement with Peru on a number of legally-binding amendments to the PTPA on labor, the environment, and other matters to reflect the bipartisan agreement of May 10. On June 27, 2007, Peru's unicameral Congress voted 70 to 38 in favor of the amendments to the PTPA.

Several House Democratic leaders issued a press release on June 29, 2007, stating that the proposed PTPA has potential to improve the standards of living in the United States and Peru, and that it reflects "...long-standing Democratic priorities with the inclusion of enforceable, internationally recognized labor rights and environmental standards."[2] The press release, however, also states that House Democratic leaders expect the Peruvian government to change their laws "...so these agreements can come into effect promptly thereafter", and that House Ways and Means Committee Chairman Charles Rangel will lead a bipartisan delegation of Members of Congress to Peru and Panama in August to consult with the two countries' legislatures and executive branches.[3]

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 (see **Table 1**). Peru's gross domestic product (GDP) in 2006 was $93 billion, about 0.7% of U.S. GDP ($13.2 trillion in 2005). Peru's economy has shown strong growth over the past four years, much of it fueled by export growth in minerals, textiles, and agricultural products. GDP is estimated to have grown by 8.0% in 2006 and 6.3% in 2005. It is expected to grow by 6.8% in 2007 and 5.4% in 2008.[4] Peru's exports accounted for 27% of GDP in 2006, while imports accounted for 19%. The United States purchases 23% of Peru's exports, thus any change in U.S. demand for Peruvian products could have a noticeable effect on Peru's economy.

---

[2] House Speaker Nancy Pelosi News Room, "Pelosi, Hoyer, Rangel, and Levin Statement on Trade," Press Release, June 29, 2007.

[3] Ibid.

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

Table 1. Key Economic Indicators for Peru and the United States

	Peru		United States	
	1996	2006*	1996	2006*
Population (millions)	24	28	270	299
Nominal GDP ($US billions)**	56	93	7,817	13,245
GDP, PPP*** Basis ($US billions)	104	191	7,817	13,245
Per Capita GDP ($US)	2,303	3,290	28,987	44,237
Per Capita GDP in $PPPs	4,300	6,730	28,987	44,237
Total Merchandise Exports (US$ billions)	7.3	25.5	869	1,466
Exports as % of GDP****	13%	27%	11%	11%
Total Merchandise Imports (US$billions)	10.1	17.9	965	229
Imports as % of GDP****	18%	19%	12%	17%

Source: Compiled by CRS based on data from the Economist Intelligence Unit (EIU) on-line database..

*Figures for 2006 are estimates.
**Nominal GDP is calculated by EIU based on figures from World Bank and World Development Indicators.
*** PPP refers to purchasing power parity, which reflects the purchasing power of foreign currencies in U.S. dollars.
****Exports and Imports as % of GDP are derived by the EIU and include trade in both goods and services.

U.S.-Peru Merchandise Trade

The United States is Peru's leading trade 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. The U.S. share of total Peruvian trade fell somewhat in 2006. The share of exports to the United States declined by seven percentage points in 2006 (from 30% to 23%), while the share of imports from the United States decreased by almost two percentage points (from 18% to 16%). China is Peru's second most significant trade partner, accounting for 10% of Peru's exports and 10% of Peru's imports. Other major trade partners for Peru are Brazil, Chile, Ecuador, and Colombia.

Peru accounts for 0.5% of total U.S. trade. Peru ranks 43rd among U.S. export markets ($2.9 billion in 2006) and 42nd as a source of U.S. imports ($5.9 billion in 2006). As shown in **Table 2**, the dominant U.S. import item from Peru is gold (24% of U.S. imports from Peru in 2006), followed by refined copper (17% of total), and petroleum oils and oil products (13% of total). The leading U.S. export items are petroleum oils and oil products (9% of U.S. exports to Peru in 2006), machinery parts for trucks, bulldozers, snowplows, etc. (6% of total), and transmission apparatus (5% of total).

Table 2. U.S. Trade with Peru, 2006

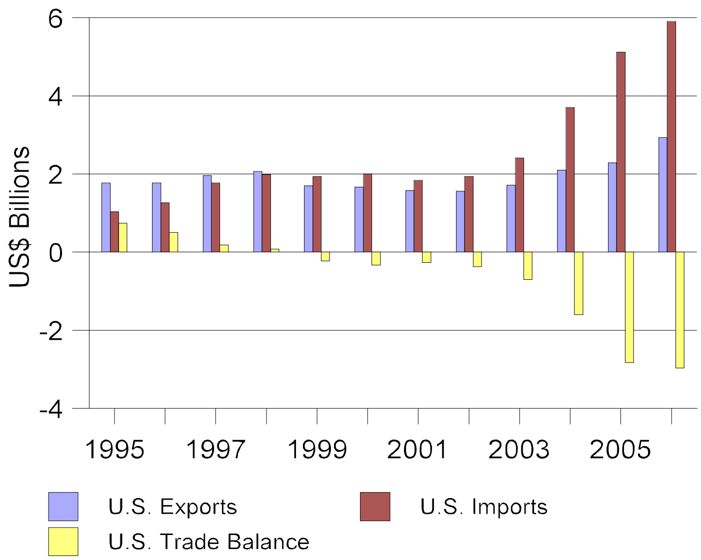
U.S. Exports			U.S. Imports		
Leading Items (HTS 4 Digit Level)	**$ Mill.**	**Share**	**Leading Items (HTS 4 Digit level)**	**$ Mill.**	**Share**
Petroleum Oils, and Other Oils and Products	272.7	9%	Gold	1,408.5	24%
Machinery Parts for Trucks, Bulldozers, Snowplows, etc.	176.7	6%	Copper	994.6	17%
Transmission Apparatus	157.9	5%	Petroleum Oils, and Other Oils and Products	795.7	13%
Automatic Data Processing Machines & Unites	127.0	4%	Sweaters and similar knitted articles	316.6	5%
Machinery Parts & Accessories	120.2	4%	Silver	226.7	4%
All Other	2,070.7	71%	All Other	2,154.8	37%
Total Exports	**2,927.2**	**--**	**Total Imports**	**5,896.9**	**--**

Source: Compiled by CRS using USITC Interactive Tariff and Trade DataWeb at [http://dataweb.usitc.gov]: HTS 4-digit level.

U.S. imports from Peru have been increasing significantly since 1996, from $1.26 billion in 1996 to $5.90 billion in 2006, a 368% increase. Between 1995 and 2006, the U.S. trade balance with Peru went from a surplus of $0.74 billion to a deficit of almost $3 billion in 2006 (see **Figure 1**). 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 4% to 20% range to virtually all imports from the United States though the government has consistently lowered tariff rates since the early 1990s. Peru's average applied rate is approximately 10%. The government also maintains a five percent "temporary" tariff surcharge on agricultural goods to protect the domestic industry. It has eliminated almost all non-tariff barriers, including subsidies, import licensing requirements, import prohibitions and quantitative restrictions. However, the government bans the imports of some products, including used clothing, used shoes, used tires, remanufactured goods, cars over five years old, and heavy trucks over eight years old. U.S. industry is concerned about enforcement of Peru's intellectual property rights (IPR) laws, particularly with respect to the relatively weak penalties imposed on IPR violators. Peruvian law restricts foreign investment in the following way: majority ownership of broadcast media to Peruvian citizens; ownership of land or investment in natural resources within 50 kilometers of a border; and operation of national air and water transportation. Peru's laws also place limits of up to 30% on a local company's employment of foreign workers.[5]

Figure 1. U.S. Merchandise Trade with Peru



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

Andean Trade Preference Act

The United States currently extends duty-free treatment to imports from Peru under the Andean Trade Preference Act (ATPA), a regional trade preference program.[6] The trade preferences program began under the Andean Trade Preference Act (ATPA; Title II of P.L. 102-182), enacted on December 4, 1991. ATPA authorized the President to grant duty-free treatment to certain products from the four Andean countries that met domestic content and other requirements. It was intended to promote economic growth in the Andean region and to encourage a shift away

---

[5] United States Trade Representative (USTR), *2006 National Trade Estimate Report on Foreign Trade Barriers*, pp. 512-517.

[6] For more information see CRS Report RS22548, *ATPA Renewal: Background and Issues*, by M. Angeles Villarreal.

from dependence on illegal drugs by supporting legitimate economic activities. ATPA was originally authorized for 10 years and lapsed on December 4, 2001.

Some months after ATPA had lapsed, the Andean Trade Promotion and Drug Eradication Act (ATPDEA; Title XXXI of P.L. 107-210), was enacted on August 6, 2002. ATPDEA reauthorized the ATPA preference program and expanded trade preferences to include additional products that were excluded under ATPA, including petroleum and petroleum products, certain footwear, tuna in flexible containers, and certain watches and leather products. ATPDEA also authorized the President to grant duty-free treatment to U.S. imports of certain apparel articles, if the articles met domestic content rules. Andean trade preferences were scheduled to end on December 31, 2006. Legislation was enacted late in the 109th Congress (P.L. 109-432) to extend Andean trade preferences until June 30, 2007, and for an additional six months if a country enters into a free trade agreement with the United States before then. In the 110th Congress, legislation was enacted to extend the ATPA for all four countries until February 29, 2008 (P.L. 110-42).

In 2006, 54% of all U.S. imports from Peru received preferential duty treatment under ATPA. Of those, the leading imports were refined copper and petroleum oils. The trade preference program contributed to a rapid increase in U.S. imports from Peru. Between 1991, when the ATPA was signed into law, and 2005, U.S. total imports from Peru increased at a compound annual growth rate of 13%. Between 2001 and 2006, U.S. total imports from Peru increased by 226%, while imports under ATPA increased by 367%. In 2003, ATPDEA imports increased 235% and continued to rise from 2004 to 2006 (see **Table 3**). The rapid increase in import value was partially due to an increase in the volume of imports caused by the trade preferences act, but rising prices of mineral and energy-related imports were also a major factor.

Table 3. U.S. Imports from Peru under ATPA

($ in millions)

	2001	2002	2003	2004	2005	2006
ATPA Import Value*	686.3	381.8	1,279.3	1,602.7	2,282.7	3,201.9
% Change	-20%	-44%	235%	25%	42%	40%
Total Imports ($ millions)	1,805.5	1,952.9	2,415.8	3,684.8	5,122.6	5,896.9
% Change	-8%	8%	24%	53%	39%	15%

Source: Compiled by CRS using USITC data.
* Includes imports under ATPA and ATPDEA.

A USITC report on the Impact of the Andean Trade Preference Act states that, the overall impact on the United States is small and would likely have minimal future effects on the U.S. economy because the share of imports from Peru is so small. The USITC report states that, according to the U.S. Embassy in Peru, the ATPA and

ATPDEA have provided significant economic benefits to Peru, especially in the textiles, apparel and agricultural industries.[7] The study reports that Peru's textile and apparel sector directly employed about 150,000 workers and indirectly employed 350,000 workers in 2004. Exports in these industries increased by 25% in 2004. Economic analysts in Peru attribute the growth in textile and apparel exports to the United States to the trade preferences granted by the ATPDEA.[8] The USITC report states the Peru's agricultural sector has benefitted under the ATPDEA. Peru has become the world's largest exporter of asparagus and paprika. According to the Peruvian agricultural industry, investment representing the purchase of imported machinery and equipment for the agricultural sector rose 79% in 2004, after a decade of fluctuating investment levels.[9]

The share of Peru's overall exports going to the United States has grown from 24% of total exports in 2001 to 30% of total exports in 2006. The USITC study reports that Peru's Ministry of Economy and Finance claimed that Peru's strong GDP growth rate in 2004 was largely due to increased access to the U.S. market. The study reports that U.S. foreign direct investment (FDI) in ATPA or ATPDEA-related investments were significant, but that companies reported that they had limited their investments because of the trade preferences expiration expected at the end of 2006. It states that business leaders are concerned about whether a free trade agreement with Peru will be in place before ATPA benefits expire, and that any large investments will be postponed until either ATPA has been extended or a free trade agreement has been ratified.[10]

U.S.-Peru Bilateral Foreign Direct Investment

U.S. foreign direct investment in Peru on a historical-cost basis totaled $4.98 billion in 2006 (see **Table 4**). The largest amount is in mining, which accounted for 62%, or $3.09 billion, of total U.S. FDI in Peru in 2006. The second largest amount, $380 million (8% of total), is in manufacturing, followed by $103 million in finance (not including depository institutions).[11]

U.S. investors in Peru had a number of disputes with the Peruvian government in the past, which have mostly been resolved. Some of these involved alleged 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, and several U.S. companies chose to pursue claims through arbitration. They complained that executive branch ministries, regulatory agencies, the tax agency and the judiciary lack the resources, expertise and impartiality necessary to carry out their

---

[7] United States International Trade Commission (USITC), *The Impact of the Andean Trade Preference Act: Eleventh Report 2004*, USITC Publication 3803, September 2005, p. 3-29.

[8] Ibid, pp. 3-32 through 3-33.

[9] Ibid, p. 3-31.

[10] Ibid, p. 3-30.

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

respective mandates. Through FTA negotiations, the U.S. government sought 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.[12]

Table 4. U.S. Direct Investment Position in Peru (Historical-Cost Basis: 2006)

Industry	Amount (U.S.$ Millions)	% of Total
Mining	3,085	61.96%
Manufacturing	380	7.63%
Finance (except depository institutions)	103	2.07%
Total	4,979	100.00%

Source: Bureau of Economic Analysis, International Economic Accounts.

Economic/Political Situation in Peru

Peru's President Alan García was elected to his second term on June 4, 2006. President Garcia took office for a five-year term at the end of July 2006, replacing outgoing president, Alejandro Toledo. In spite of the recent economic growth, over half of Peruvians live in poverty and a large portion of the population is underemployed. Unemployment and underemployment levels total 64.5% nationwide.[13] The economic sector in Peru with the highest employment is wholesale/retail trade and repair services, followed by manufacturing.

Since taking office, President García has taken steps to assure the international financial community that he is running Peru as a moderate rather than as the leftist he had been in his early career. García's first presidency (1985-1990) was marked by hyper-inflation, increased poverty, and a crumbling infrastructure, which were largely caused by his unorthodox economic policies. By 1990, the last year of García's term, the rate of inflation exceeded 7,500%.[14] During the 1980s, a violent guerrilla insurgency took place in the country. In the mid 1980s, the army was given

[12] USTR, p. 484.

[13] U.S. Department of State, Bureau of Western Hemisphere Affairs, *Background Note: Peru*, June 2006, p. 5.

[14] The Economist Intelligence Unit Limited, *Peru: Country Profile*, 2007.

responsibility for counter-insurgency operations, and widespread violations of human rights ensued.[15]

During the regime of former President Alberto Fujimori (1990-2000), the government led a major crackdown on terrorism, and implemented a radical economic reform program to control hyperinflation and bring economic stability to the country. President Fujimori's administration implemented measures to eliminate price controls and state subsidies, liberalize markets, and implement structural reforms. The program also included a wide-ranging privatization plan and a relaxation of foreign investment restrictions to help increase foreign investment. Existing labor laws were relaxed significantly during this time. Since 2001, however, Peru has made much progress in strengthening labor protections by implementing labor law reform and protecting workers' rights.

President Alejandro Toledo (2001-2006) presided over a period in which Peru was one of the fastest growing economies in Latin America, largely due to growth in the mining and export sectors. President Toledo's administration could be characterized as one marked by public protests and a number of government scandals, but it was also responsible for having a broadly orthodox economic policy which helped control public spending and promote economic growth.[16] Peru's GDP rate of growth increased from 0.2% in 2001 to 8.0% in 2006.

President García has continued the pro-market economic policies of his predecessor, President Alejandro Toledo. Since initiating his political comeback in 2001, García has softened his populist rhetoric, and apologized for his earlier errors. He says he is now governing not as a leftist but as a moderate. Hoping to regain credibility with Peru's business sector and international financial institutions, he has pledged to maintain orthodox macro-economic policies.[17] García has appointed a fiscal conservative as finance minister and cut the pay of government workers. He also has sought to reassure poor Peruvian citizens that he is addressing their needs by pledging austerity measures such as halving the Government Palace's annual spending and redirecting the funds to a rural irrigation project.[18]

García has embraced the PTPA in his efforts to strengthen the bilateral relationship with the United States and to fight poverty and inequality in Peru. Recognizing that a free trade agreement would not be sufficient to eliminate inequality, President García announced in October 2006 a number of internal reforms that would help spread benefits of free trade to the poorer regions of the country and reduce the level of poverty. Over half of Peru's population lives below the poverty line. Poverty is concentrated in rural and jungle areas, and among the indigenous population.

---

[15] Ibid., p. 5.

[16] Ibid., p. 24.

[17] "Peru's García Gets Chance at Redemption," *Associated Press*, July 27, 2006.

[18] Economist Intelligence Unit, "Country Report - Peru," April 2007.

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

The comprehensive free trade agreement would eliminate tariffs and other barriers to goods and services. This section summarizes several key provisions in the original agreement text as provided by the United States Trade Representative (USTR), and the legally-binding amendments agreed upon by the United States and Peru in June 2007. The amendments reflect the bipartisan trade framework that was agreed upon by Congress and the Bush Administration on May 10, 2007.

Key PTPA Provisions[19]

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

---

[19] The text of the PTPA is available online at the Office of the United States Trade Representative (USTR) website: [http://www.ustr.gov].

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.

Peru agreed to exceed its commitments made in the World Trade Organization (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 are included in the core text of the agreement. The agreement would require parties to effectively enforce their own domestic labor laws. In the original text of the agreement, this was the only labor obligation that would be enforceable through the agreement's dispute settlement procedures, which have an enforcement mechanism that would include monetary penalties to enforce labor obligations.[20] Failure to pay a monetary assessment could result in the suspension of trade benefits. The agreement states that emphasis would be placed on promoting compliance through consultation and trade-enhancing remedies. The agreement also includes procedural guarantees that would ensure that workers and employers would have fair, equitable, and transparent access to labor tribunals.

Environmental Provisions. The environmental obligations are included in the core text of the agreement. The agreement would require the United States and Peru to effectively enforce their own domestic environmental laws. This provision would be enforceable through the PTPA's dispute settlement procedures. The PTPA includes an environmental cooperation agreement that would provide a framework for undertaking environmental capacity building in Peru and establish an Environmental Cooperation Commission. The PTPA would require both countries to commit to establish high levels of environmental protection, and to not weaken or reduce environmental laws to attract trade or investment. The PTPA also includes provisions for recognizing the importance of protecting biodiversity and procedural guarantees to ensure environmental protection. These guarantees would ensure fair, equitable, and transparent proceedings for the administration and enforcement of environmental laws, while promoting voluntary market-based mechanisms to protect the environment. The PTPA's environmental chapter includes provisions for creating a public participation process, benchmarking environmental cooperation activities by international organizations, and enhancing mutual supportiveness of multilateral environmental agreements.

Summary of Amendments to PTPA Reflecting Bipartisan Trade Framework

On June 25, 2007, the U.S. Ambassador to Peru J. Curtis Struble and Peruvian Foreign Commerce and Tourism Minister Mercedes Araoz signed amendments to the pending PTPA. The amendments are based on the agreement reached between the Bush Administration and Congress on May 10, 2007. The Administration stated that, because the new commitments would have to be "legally binding," they could not have been incorporated into the agreement as side letters. Some of the key amendments incorporated into the agreement include obligations related to five basic ILO labor rights, multilateral environmental agreements (MEAs), and pharmaceutical intellectual property rights (IPR). These provisions would be fully enforceable through the agreement's dispute settlement mechanism.

Provisions on Basic Labor Standards.[21] The United States and Peru would be required to "adopt, maintain and enforce in their own laws and in practice" the five basic internationally-recognized labor standards, as stated in the 1998 ILO Declaration. These include 1) freedom of association; 2) the effective recognition of

---

[20] The domestic labor law enforcement provision is subject to the dispute settlement provisions of the agreement, which include provisions for openness and transparency by requiring at least one open public hearing and public release of legal submissions.

[21] For more details, see CRS Report RS22521, *Peru Trade Promotion Agreement: Labor Issues,* by Mary Jane Bolle and M. Angeles Villarreal.

the right to collective bargaining; 3) the elimination of all forms of forced or compulsory labor; 4) the effective abolition of child labor and a prohibition on the worst forms of child labor; and 5) the elimination of discrimination in respect of employment and occupation. These obligations would refer only to the 1998 ILO *Declaration on the Fundamental Principles and Rights at Work.* Another change relates to labor law enforcement. Any decision made by a signatory on the distribution of enforcement resources would not be a reason for not complying with the labor provisions. Parties would not be allowed to derogate from labor obligations in a manner affecting trade or investment. Labor obligations would be subject to the same dispute settlement, same enforcement mechanisms, and same criteria for selection of enforcement mechanisms as all other obligations in the agreement.

Provisions on Environment and Global Warming. Amendments to the proposed PTPA would commit both parties to effectively enforce their own domestic environmental laws, and to adopt, maintain, and implement laws and all other measures to fulfill obligations under the seven covered multilateral environmental agreements (MEAs). All obligations in the environment chapter would be subject to the same dispute settlement procedures and enforcement mechanisms as all other obligations in the agreement. The environment chapter includes an Annex on Forest Sector Governance that addresses environmental and economic consequences of trade associated with illegal logging and illegal trade in wildlife. The Annex would require concrete steps for the two countries to enhance forest sector governance and promote legal trade in timber products.

Other Provisions. Additional amendments to the PTPA include provisions on generic medicines and government procurement, among others. Regarding the provisions on generic medicines, the trading partners would provide five years of data exclusivity for test data related to pharmaceuticals. If Peru relies on U.S. Federal Drug Administration (FDA) approval of a given drug, and meets certain conditions for expeditious approval of that drug in Peru, the data exclusivity period would expire at the same time that the exclusivity expired in the United States. These provisions would reportedly allow generic medicines to enter more quickly into the market in Peru.[22] In government procurement, the amended provisions would allow U.S. state and federal governments to condition government contracts on the adherence to the give basis ILO labor standards.[23]

Issues for Congress

Economic Impact

If and when fully implemented, the PTPA would likely have a have a small, but positive, net economic effect on the United States because of the relatively small size of Peru's economy in relation to the U.S. economy. In 2006, Peru had a nominal

---

[22] *International Trade Daily,* "Democratic, GOP Lawmakers Reach Agreement With Administration on FTAs," by Rosella Brevetti, May 11, 2007.

[23] Ibid.

GDP of $93 billion, approximately 0.7% the size of the U.S. GDP of $13.2 trillion. Another reason the net effect would be expected to be small is that the value of U.S. trade with Peru is small when compared to overall U.S. trade. U.S. trade (imports plus exports) with Peru accounts for about 0.3% of total U.S. trade. U.S. imports from Peru account for 0.3% of total U.S. imports, and U.S. exports to Peru account for 0.3% of total U.S. exports. Most of the economy-wide trade effects of trade liberalization from the PTPA would be due to Peru's removal of tariff barriers and other trade restrictions. U.S. exporters have substantially larger tariff barriers on their exports to Peru than do Peruvian exporters on their exports to the United States.

The USITC study on the potential effects of a PTPA, estimates that U.S. imports from Peru would increase by $439 million and U.S. exports to Peru would increase by $1.1 billion. The study also estimates that U.S. GDP would increase by over $2.1 billion (0.02%) as a result of the agreement. In terms of losses, the report estimates that three U.S. sectors, metals (mainly gold, copper, and aluminum), crops (such as cut flowers, live plants, and seeds), and paddy rice, would experience reductions in output, revenue, or employment of more than 0.10%.[24]

The proposed PTPA is unlikely to affect the aggregate employment level in the United States, but it could impact jobs in specific industries. According to the USITC study, the largest U.S. employment gain (1%) is estimated to be in wheat production. Declines are estimated in metals (gold, copper, and aluminum), rice production, and miscellaneous crops (cut flowers, live plants and seeds) which could lose up to 0.2% of their employment, displaced by imports. Some labor groups argue that U.S. exports of basic grains could adversely affect the livelihoods of subsistence farmers in Peru, where agriculture is the main source of jobs.

Another factor for consideration is the extent to which the proposed PTPA would provide trade creation over trade diversion.[25] One of the drawbacks to a bilateral free trade agreement is that it may result in trade diversion because it is not fully inclusive of all regional trading partners. Trade diversion results when a country enters into an FTA and then shifts the purchase of goods or services (imports) from a country that is not an FTA partner to a country that is an FTA partner but still a higher cost producer. In the case of the United States and Peru, for example, goods from the United States may replace Peru's lower-priced imports from other countries in Latin America. If this were to happen, the United States would now be the producer of that item, not because it produces the good more efficiently, but because it is receiving preferential access to the Peruvian market.

---

[24] USITC PTPA Report, p. xv.

[25] When a trade agreement lowers trade barriers on a good, production may shift from domestic producers to lower cost foreign producers and result in substituting an imported good for the domestic good. This process is called trade creation. Trade creation provides economic benefits as consumers have a wider choice of goods and services available at lower costs. Trade creation also results in adjustment costs, however, usually in the form of domestic job losses as production shifts to another country.

Labor Issues[26]

The labor provisions have been among the more controversial in the negotiation of the agreement. Supporters of the agreement have argued that Peru has ratified all eight International Labor Organization (ILO) core labor standards; that a PTPA would reinforce Peru's labor reform measures of recent years[27]; and that PTPA provisions would go beyond labor protections in U.S. laws under the ATPA and the Generalized System of Preferences (GSP). Critics argue that, with enforceable ILO core labor standards in the language of the agreement, the main issues at this point are Peru's adoption of new labor laws and enforcement of labor law.

A number of Members of Congress indicated early in 2007 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 in the agreement. In March 2007, the Democratic leadership of the House Ways and Means Committee announced a set of trade principles (Democratic Trade Principles)[28] that can "pave the way to re-establishing a bipartisan consensus on trade."[29] These principles included a commitment that free trade agreement (FTA) signatory countries adopt basic ILO labor standards and agree to enforcement provisions for those standards in agreements.[30]

On May 10, 2007, after much negotiation, Congress and the Administration announced an agreement for a "New Trade Policy for America," which incorporated key Democratic priorities relating to labor and other issues. Key concepts in the new trade-labor policy include fully enforceable provisions that 1) incorporate ILO core labor standards as stated in the 1998 ILO *Declaration on Fundamental Principles and Rights at Work* (henceforth referred to as the *ILO Declaration*);[31] and 2) prohibit

---

[26] For more details, see CRS Report RS22521, *Peru Trade Promotion Agreement: Labor Issues,* by M. Angeles Villarreal and Mary Jane Bolle.

[27] During the regime of former Peruvian President Alberto Fujimori (1990 to 2000), labor laws in Peru were relaxed significantly as the government implemented a radical economic reform program to bring economic stability to the country. Since 2002, however, Peru has made significant progress in strengthening labor protections by implementing labor law reforms and protecting workers' rights.

[28] House Ways and Means Committee, *A New Trade Policy for America*, see [http://waysandmeans.house.gov].

[29] Brevetti, Rosella, "Democrats Rangel and Levin Unveil Wide-Ranging Trade Proposal for FTAs," *International Trade Reporter,* March 29, 2007.

[30] These principles were publicly released in a one-page description of the plan which did not discuss details of the trade policy proposal nor how these principles would be incorporated into trade agreements.

[31] These are: "(a) the freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labor; (c) the effective abolition of child labor; and (d) the elimination of discrimination in respect of employment and occupation." The *ILO Declaration* does not include in (c) the "worst forms of child labor," but the new text of the PTPA adds them to this list "for purposes of this

(continued...)

partner countries from weakening laws relating to ILO core labor standards in order to attract trade or investment.

Before the new PTPA language was released, some observers noted that the United States has ratified only two ILO conventions, while Peru has ratified all eight. In addition, the U.S. has some laws that may not totally conform with language of ILO conventions. A possible example is some state laws which permit employment-without-pay for prisoners. Consequently, they express concern that including enforceable ILO core labor standards into trade agreements could subject the entire U.S. labor code to challenges by trading partners. This issue is addressed by language in the PTPA that (a) restricts the application of the PTPA provisions to trade-related matters; and (b) incorporates only the *principles* of the four basic ILO rights listed in the *ILO Declaration* and quoted on p. 4, footnote 2, rather than the detailed language of the specific eight conventions.

Patent Protection and Access to Medicines

Another of the controversial issues surrounding the proposed PTPA is that of patent protection and access to medicines. Some organizations are concerned that the agreement's stronger protection of intellectual property rights (IPR), patents, and trade secrets could jeopardize access to medicines by poorer segments of the population. They believe that the agreement's provisions could delay the entry of generic drugs into the market in Peru and cause the price of medicines to rise.

The primary issue related to patent protection and access to medicines involves the data exclusivity term. To bring a patented drug to market, a drug company must demonstrate through clinical trials that the drug is both safe and effective. Under U.S. law, the data used to establish these claims are protected from use by generic manufacturers to certify their own products for a period of five years from the time the patented drug is approved for use in a country's market. This protection refers the so-called data exclusivity term. The amendments to the text of the PTPA on data exclusivity would grant Peru the period of data protection to be concurrent with the term of protection provided in the United States, which could shorten the time line for allowing generic medicines into the Peruvian market. The original text of the agreement would have delayed the availability of generic pharmaceuticals in the Peruvian market for at least five years, even if the patent had already expired.

In April 2005, Peru's Health Ministry released an evaluation of potential effects of a free trade agreement on access to medicines in Peru. The study stated that an agreement would affect generic brands of medicine in that many of these medicines would no longer be eligible to be branded as generic.[32] A number of non-government organizations based in the United States and Latin America are also concerned that

---

[31] (...continued)
agreement."

[32] Valladares Alcalde, Raúl Cruzado Ubillús, Juan Seclén Palacín Zósimo, and Juan Pichihua Serna, *Evaluation of Potential Effects of the Free Trade Agreement Being Negotiated with the United States on Access to Medicines* (Official Translation), Health Ministry of Peru, Lima, Peru, April 2005.

a PTPA would reduce access to essential medicines by the poor populations of Peru. They believe that the agreement's provisions far exceed international standards established by the WTO.[33]

The pharmaceutical industry has denied claims that patents may prevent access to essential medicines in developing countries. According to industry representatives, very few medicines on the World Health Organization's list of essential medicines are patented. The International Federation of Pharmaceutical Manufacturers (IFPMA) and Associations report that 95% of essential medicines, including antiretrovirals for treating HIV/AIDS, are off-patent and can therefore be legally copied by generic manufacturers anywhere in the world. However, according to IFPMA, generic copies of these products are still not reaching the poorest populations of the world.[34] The pharmaceutical industry believes that without patent protection, many of the innovative medicines that are saving lives would not be available.

Illegal Logging

A major environmental issue surrounding a possible PTPA is related to U.S. imports of bigleaf mahogany and reports of illegal logging in Peru. Environmental groups are concerned that an agreement could lead to an increase in exports of illegal logged mahogany to the United States from Peru. The United States is the world's largest wood products consumer and one of the top importers of tropical hardwoods. Some environmentalists believe that U.S. demand for tropical timber from countries in Latin America may be a driving force for illegal logging. PTPA environmental provisions require each country to enforce domestic environmental laws and establish a policy mechanism to address public complaints that a party is not enforcing its environmental laws, whether or not the failure is trade-related.

In early 2007, a number of Members of Congress emphasized that environmental provisions of the agreement needed to be strengthened. The May 10 Bipartisan Democratic Trade Principles[35] stated that Peru should be required to adopt and enforce laws on logging Mahogany and that the United States should promote sustainable development and combat global warming by requiring countries to implement and enforce common Multilateral Environmental Agreements. These principles were incorporated into the agreement in the June 2007 amendments. Annex 18.3.4 of the amendment to Chapter 18, the environmental chapter, of the proposed PTPA is devoted to forest sector governance and subject to the dispute settlement provisions of the agreement. The annex specifically mentions protection measures for mahogany within the norms established by the Convention on

---

[33] ACT Up Philadelphia, African Services Committee, AIDS Foundation of Chicago, and other organizations (37 in total), *Open Letter on Access to Medicines and the U.S.-Peru Free Trade Agreement*, see [http://www.citizen.org].

[34] International Federation of Pharmaceutical Manufacturers and Associations (IFPMA), Position Paper, 2005-2006, see [http://www.ifpma.org].

[35] House Ways and Means Committee Staff, *A New Trade Policy for America*, March 27, 2007.

International Trade in Endangered Species of Wild Fauna and Flora (CITES). The annex includes a section on enforcement measures on forest sector governance, and provisions related to the harvest of and trade in timber products.

The United States currently requires an export permit from Peru validating that mahogany entering the United States was harvested in a sustainable manner that is not detrimental to the species. Some argue, however, that Peruvian mahogany is nonetheless harvested illegally at times and that export permits provided by Peru have been granted without sufficient monitoring and assessment of harvesting practices.[36] The Peruvian non-government organization, Native Federation of Madre de Dios (FENAMAD) recently teamed with the Natural Resource Defense Council to file a suit against the U.S. government and U.S. timber importers to the U.S. Court of International Trade stating that the government was authorizing trade in bigleaf mahogany from Peru without valid export permits. The court, however, rejected these claims and moved to dismiss the complaint stating a lack of jurisdiction.[37] U.S. timber importers announced in a press release after the court's decision that they were pleased with the court decision and that the lawsuit was a "mischaracterization" of international trade regulations.[38]

A PTPA would increase protections for U.S. investors in Peru which could potentially lead to a larger timber industry in Peru and greater harvesting. On the other hand, an agreement may increase awareness of the illegal logging issue and add mechanisms that may be used to increase protection. Critics of the proposed PTPA environmental provisions, in the original text prior to the amendments, claimed that the provisions were weak and that illegal logging should be addressed specifically in the agreement. FENAMAD joined forces with U.S. environmental groups to urge Members of Congress to include specific provisions in the PTPA to prevent imports of illegally logged mahogany.[39]

Prospects

Implementing legislation for a PTPA would be considered by the U.S. Congress under Title XXI (Bipartisan Trade Promotion Authority Act of 2002) of the Trade Act of 2002 (P.L. 107-210) on an expedited basis that is limited in debate and with no amendments.[40] Implementing legislation has not been introduced in the 110th

---

[36] See CRS Report RL33932, *Illegal Logging: Background and Issues,* by Pervaze A. Sheikh.

[37] *International Trade Reporter*, "CIT Denies Plaintiffs' Bid to Enjoin Imports of Bigleaf Mahogany From Peru," by Rosella Brevetti, April 26, 2007.

[38] Bozovich Timber press release, "Court of International Trade Rejects Natural Resource Defense Council's Attack on International Trade in Peruvian Mahogany," April 18, 2007.

[39] Natural Resources Defense Council, "Peruvian Winner of 2007 Goldman Environmental Prize Calls for Congress to Stop Importation of Illegally Logged Mahogany," April 25, 2007.

[40] Bilateral agreements with Panama, Peru, Colombia, and South Korea were signed

(continued...)

Congress. In Peru, the Congress voted 79-14 in June 2006 to approve the PTPA and approved a set of amendments tied to the FTA on June 27, 2007.

Gaining passage of a PTPA is a high priority for the government of Peru. Peruvian President Alan García Perez met with President Bush on October 10, 2006, and again on April 23, 2007, to discuss the free trade agreement. After the April 2007 meeting, President García stated that he was in the United States to promote a free trade agreement with the United States. He said that "It is vital for our country. It is fundamental to continue this path of growth and social redistribution that we have started in my country."[41]

The Bush Administration is a strong supporter of the expansion of free trade with Peru and issued a statement in October 2006 that a PTPA would be mutually beneficial "in strengthening bilateral ties while leveling the trade playing field, spurring job creation, and reducing poverty and inequality".[42] On July 9, 2007, President Bush reaffirmed his support for the agreement and called on Congress to approve the proposed PTPA by the beginning of August. On July 6, USTR Susan Schwab wrote a letter to House Speaker Nancy Pelosi saying that House Democrats should not insist on having possible FTA partners change their laws as a precondition to congressional approval. According to a news report article, USTR Schwab stated in her letter that the Bush Administration was "deeply concerned" that some Members were considering imposing preconditions that would further delay the pending Peru and Panama FTAs, and that "...requiring another sovereign country to change its domestic laws before the U.S. Congress approves a trade agreement would be a fundamental break with U.S. law, policy, and practice."[43] Several House Democratic leaders issued a statement on June 29, 2007 stating that they hoped to consider the Peru and Panama agreements later in 2007, but only if these countries implemented necessary changes to their laws prior to the time the FTAs "can come into effect".[44]

President Alan García has met with Members of Congress 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. 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

---

[40] (...continued)
in time to be considered under the 2002 TPA.

[41] *International Trade Reporter*, "Peru's President García Meets with Bush, Promotes Value of FTA with the United States," April 26, 2007.

[42] The White House, "Joint Statement Between the United States of America and the Republic of Peru," Press Release, October 2006. See [http://www.whitehouse.gov].

[43] *International Trade Reporter*, "President Bush Calls on Congress to Pass Peru Free Trade Agreement by Early August," July 12, 2007.

[44] House Speaker Nancy Pelosi News Room, "Pelosi, Hoyer, Rangel, and Levin Statement on Trade," Press Release, June 29, 2007.

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, a number of groups, such as the AFL-CIO, Public Citizen, and American Friends Service Committee generally are skeptical of free trade agreements. They argue that, among other things, FTAs tend to 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. Public Citizen issued a statement after the May 10 bipartisan agreement, saying that bipartisan agreement between Congress and the Administration did not go far enough in making changes to the PTPA in order to protect the rights of the people and that the FTAs with Peru and Panama would undermine access to essential services in these countries. According to the statement, the provisions on trade in services and foreign investment would place limits on the ability of the government to regulate essential services such as education, health services, and electric power distribution. Such limitations, according to Public Citizen, could potentially prevent the distribution of these services throughout the country.[45]

Much of the business community in the United States supports a U.S.-Peru FTA. The National Association of Manufacturers (NAM), for example, has issued statements in support of the proposed PTPA, and, in a July 9 letter to the Democratic and Republican leadership of the House and Senate, called for a vote in July 2007. NAM stated that it supported the bipartisan agreement on enforceable labor and environmental provisions because it was clear that the pending FTA would not move forward in Congress without these provisions. According to a news report article, NAM President John Engler is concerned that "...additional roadblocks are being placed in front of specific agreements."[46]

---

[45] Public Citizen, *FTA Provisions Not Altered in May 10 "Deal" Undermine Access to Essential Services in Peru and Panama*. See [http://www.citizen.org].

[46] *International Trade Daily,* "NAM Urges July Vote on Peru FTA, Blasts Roadblocks Delaying FTAs, TPA," July 11, 2007.