IMPLEMENTATION OF THE UNITED STATES–PERU TRADE PROMOTION AGREEMENT

HEARING

BEFORE THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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IMPLEMENTATION OF THE UNITED STATES–PERU TRADE PROMOTION AGREEMENT

WEDNESDAY, JULY 12, 2006

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC.

The Committee met, pursuant to notice, at 10:38 a.m., in room 1100, Longworth House Office Building, Hon. Bill Thomas (Chairman of the Committee) presiding.

[The advisory and revised advisory announcing the hearing follow:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

FOR IMMEDIATE RELEASE
June 27, 2006
FC–24

CONTACT: (202) 225–1721

Thomas Announces Hearing on Implementation of the United States–Peru Trade Promotion Agreement

Congressman Bill Thomas (R–CA), Chairman of the Committee on Ways and Means, today announced that the Committee will hold a hearing on the implementation of the U.S.–Peru Trade Promotion Agreement. **The hearing will take place on Wednesday, July 12, 2006, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:30 a.m.**

Oral testimony at this hearing will be from both invited and public witnesses. Invited witnesses will include Everett Eissenstat, Assistant U.S. Trade Representative for the Americas. Any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

The Administration announced plans to negotiate an Andean free trade agreement with Colombia, Peru, Ecuador, and Bolivia in November 2003. Negotiations began in May 2004 with Colombia, Peru, and Ecuador. Negotiations with Peru concluded on December 7, 2005, and on April 12, 2006, then-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). Peruvian President Alejandro Toledo witnessed the signing. Peru held democratic elections on April 9 and June 4, and former President Alan Garcia won the election based on a platform of economic engagement and market reform.

Upon implementation of the PTPA, eighty percent of consumer and industrial products and more than two-thirds of current U.S. farm exports to Peru will become duty-free immediately. Over the coming years, Peru will continue to provide substantial market access to U.S. goods, services, and agricultural products by gradually eliminating all tariffs on U.S. exports to Peru. As a result of this agreement, the United States will have greater access to the Peruvian market for products such as machinery, mineral fuel, electrical machinery, and plastics, along with meats and poultry, grains, oilseeds, dairy products, horticulture, processed products, and other agricultural products. The agreement will also provide a secure, predictable legal framework for U.S. investors operating in Peru, provide for enforcement of quality labor and environmental standards, protect intellectual property rights, and install an effective dispute settlement process.

In 2005, U.S. goods exports to Peru totaled nearly $2.3 billion. Two way trade between the United States and Peru during 2005 amounted to $7.4 billion. Many products from Peru already enter the U.S. market duty-free under the Andean Trade Promotion and Drug Eradication Act (ATPDEA) P.L. 107–210, which expires in December 2006.

In announcing the hearing, Chairman Thomas stated, "The trade promotion agreement with Peru builds on our past efforts of granting trade benefits to alleviate poverty and eradicate drugs in the region. The agreement will now make our bilateral trading relationship a permanent two way street to benefit producers, service suppliers, workers, and consumers in both countries. Together with other free trade agreements in the region, the PTPA will help to establish an integrated free

trading system with our neighbors in the hemisphere. Peru's President-elect Garcia is standing up to Cuban President Castro and Venezuelan President Chavez in supporting the agreement, and we owe it to the people of Peru to pass this agreement quickly with a strong bipartisan vote."

FOCUS OF THE HEARING:

The hearing will examine the U.S.–Peru Trade Promotion Agreement and the benefits that the agreement will bring to American businesses, farmers, workers, consumers, and the U.S. economy, as well as to U.S. trade relations with our neighbors in the hemisphere.

DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD:

Requests to be heard at the hearing must be made by telephone to Matt Turkstra or Cooper Smith at (202) 225–1721 no later than 12:00 p.m. ***on Wednesday, July 5, 2006***. The telephone request should be followed by a formal written request faxed to Allison Giles, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515, at (202) 225–2610. The staff of the Committee will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Committee staff at (202) 225–1721.

In view of the limited time available to hear witnesses, the Committee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing in lieu of a personal appearance. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are required to summarize briefly their written statements in no more than five minutes. **THE FIVE-MINUTE RULE WILL BE STRICTLY ENFORCED. The full written statement of each witness will be included in the printed record, in accordance with House Rules.**

In order to assure the most productive use of the limited amount of time available to question witnesses, all witnesses scheduled to appear before the Committee are required to submit 300 copies, along with an *IBM compatible 3.5-inch diskette in WordPerfect or MS Word format,* of their prepared statement for review by Members prior to the hearing. **Testimony should arrive at the full Committee office, 1102 Longworth House Office Building, no later than noon on Monday, July 10, 2006.** The 300 copies can be delivered to the Committee staff in one of two ways: (1) Government agency employees can deliver their copies to 1102 Longworth House Office Building in an open and searchable box, but must carry with them their respective government issued identification to show the U.S. Capitol Police, or (2) for non-government officials, the copies must be sent to the new Congressional Courier Acceptance Site at the location of 2nd and D Streets, N.E., **at least 48 hours prior to the hearing date. Please ensure that you have the address of the Committee, 1102 Longworth House Office Building, on your package, and contact the staff of the Committee at (202) 225–1721 of its impending arrival.** *Due to new House mailing procedures, please avoid using mail couriers such as the U.S. Postal Service, UPS, and FedEx.* When a couriered item arrives at this facility, it will be opened, screened, and then delivered to the Committee office, within one of the following two time frames: (1) expected or confirmed deliveries will be delivered in approximately 2 to 3 hours, and (2) unexpected items, or items not approved by the Committee office, will be delivered the morning of the next business day. The U.S. Capitol Police will refuse all non-governmental courier deliveries to all House Office Buildings.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, *http://waysandmeans.house.gov*, select "*109th Congress*" from the menu entitled,

"*Hearing Archives*" (*http://waysandmeans.house.gov/Hearings.asp?congress=17*). Select the hearing for which you would like to submit, and click on the link entitled, "*Click here to provide a submission for the record*." Once you have followed the online instructions, completing all informational forms and clicking "submit" on the final page, an email will be sent to the address which you supply confirming your interest in providing a submission for the record. You ***MUST REPLY*** to the email and ***ATTACH*** your submission as a Word or WordPerfect document, in compliance with the formatting requirements listed below, by close of business Wednesday, July 26, 2006. **Finally,** please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. Those filing written statements who wish to have their statements distributed to the press and interested public at the hearing can follow the same procedure listed above for those who are testifying and making an oral presentation. For questions, or if you encounter technical problems, please call (202) 225–1721.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be provided in Word or WordPerfect format and MUST NOT exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. All submissions must include a list of all clients, persons, and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone and fax numbers of each witness.

Note: All Committee advisories and news releases are available on the World Wide Web at *http://waysandmeans.house.gov*.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202–225–1721 or 202–226–3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

*** * * CHANGE IN RECORD CLOSING DATE * * ***

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

FOR IMMEDIATE RELEASE
July 10, 2006
FC–24 Revised

CONTACT: (202) 225–1721

Change in Record Closing Date for Hearing on Implementation of the United States–Peru Trade Promotion Agreement

Congressman Bill Thomas (R–CA), Chairman of the Committee on Ways and Means, today announced that the deadline for receiving written statements in lieu of personal appearance for the Committee hearing on Implementation of the United States–Peru Trade Promotion Agreement, previously scheduled for the close of business, Wednesday, July 26, 2006, has been changed to **close of business, Tuesday, July 18, 2006.**

All other details for the hearing remain the same. (See Full Committee Advisory No. FC–24, dated June 27, 2006).

Chairman THOMAS. Thank you for finding your seats. Good morning. Our hearing this morning will exam the United States–Peru Trade Promotion Agreement, which would liberalize trade barriers and mutually benefit Americans, improving businesses, farmers, workers and consumers. This is a significant step forward in promoting democracy and stability in the Andean region. It will cement our relationship. As you know, we have had an agreement with the Andean countries, but it is due to expire.

Working with President Toledo who has been a champion for this FTA, he is hoping a timely implementation can be moved, significantly smooth the process so that he could offer this as a gesture, or, if you will, a parting gift to his people.

Because after all, no one in Peru, better than President Toledo, knows first hand how much hope and opportunity can change a person's life for the better. He is no stranger to the devastating effects of poverty. His story is one that, frankly, does and should inspire us all; born into a family of 16 children, and, typical in that kind of a poverty family structure, seven died in infancy. When he was 6 years old he worked as a shoe shine boy. One of the difficulties in terms of the economic unit of the family in that environment, is that virtually everyone has to be a contributor to that family.

Through opportunities, in part, in terms of people that he met shining shoes, opportunities created by the Peace Corps, and, frankly, hard work, President Toledo was able to attend college in the United States—envious colleges in terms of Stanford, Harvard—he got his Ph.D. from Stanford. He then went back and served his people in a leadership position.

Most importantly, being an indigenous person elevating to the presidency, the first and only in the history, not only of Peru, but in South America, he continues to work regardless of the "political consequences" to do what he firmly believes is right for the people of Peru.

His education and his life experience has helped him understand that trade and free markets, coupled with education, can be a very significant help in eliminating the scourge of poverty.

As I said we already have trade agreements with Peru, but, frankly, the trade preferences expire. This is an opportunity to lock into place a mutually beneficial FTA. We have another agreement with Chile. Based upon the pressure by other countries in South America on the democratically elected process in other countries—Peru recently went through an election with those pressures applied to them. Yet in the Chair's opinion, it was an absolutely outstanding job in signaling to the rest of the world that Peru stands with us and what democracy and free markets mean.

They have also stood with us in the world arena, most recently, over the question of North Korea.

The Peruvian Congress has moved forward, the President-elect has made strong statements. They have approved this agreement 79–14.

This agreement deserves broad bipartisan support, and my hope is that it gets the kind of support it deserves.

With that, the Chair will recognize the gentleman from New York for any statement he would make. The Chair then intends to recognize the Chairman of the Subcommittee on Trade, and then the Ranking Member of the Subcommittee on Trade.

Mr. RANGEL. Thank you, Mr. Chairman. I am almost lost for words because I heard you mention bipartisanship, and that is so shocking. I really thought that it would be your preference that Democrats didn't participate in this at all since, to my knowledge, this is the first meeting we have had as Democrats and Republicans in which this subject has come up.

As a matter of fact, now that we have the United States Trade Representative (USTR) before us, maybe before we get started in questioning, he should be prepared to answer whether or not you think your job is to deal with Republicans or to deal with Democrats, or to deal with the Congress; whether you think it is proper for Members of Congress, whether they are Democrats or Republicans, to be negotiating with trade representatives, with foreigners, whether or not foreigners should hear you have to talk with the Democrats as though we are two different countries.

It would seem to me that if we had differences among us as Members of Congress on this Committee, that we take those differences to you and not to foreigners, since, when the flag is up, we are we all are supposed to salute it.

I don't like the idea that foreign ministers and Presidents have been told that the Democrats are holding up this bill.

It doesn't bother me, because, that is the hand that is dealt, but this Committee has never met as Republicans and Democrats to study anything that would imply that we want a Democratic bill.

Oh, from time to time we might talk with one or two Democrats, most of whom lack seniority, and pick up a vote or two, but having

one or two Democratic votes hardly seems to be bipartisan unless that concept has been a partisan political decision.

I would like to know, when it is time to question, that if a government, through its foreign minister, especially in this case, through the President, says that he would want to include all of the minimum International Labor Organization (ILO) standards into an agreement, whether or not the majority party can say, I don't want it in there, or whether or not the USTR decides what is in there.

If you represent the United States of America, is the USTR supposed to recognize the majority party or supposed to recognize the Congress? I don't ever recall you or anyone else saying, I would like to get together with the leadership of the Republicans and Democrats and see what I can do.

Whether we are talking about Oman, whether we are talking about Peru, whether we are talking about Vietnam, I really think that the one area that we ought to try our darnedest, whether we win or lose, to get partisanship out of the debate, is when you are dealing with foreigners and when you are dealing with trade.

No foreigner wants a Democratic bill or a Republican bill, they want a bill with the United States.

When you are appointed and they called you USTR, that means to me, the United States' Trade Representative.

Not the Republican trade representative.

So, Mr. Chairman, it is so good to discuss this issue of Peru with you at this point in time. It makes me feel good as an old man to hear you talk in terms of an appeal for bipartisanship. I hope the stenographer would make certain that it is recorded so that I can make certain to have a statement of this. That is going to be very helpful as a matter of history that we have discussed the subject and I thank you for your kind generosity and time.

Chairman THOMAS. Thank the gentleman, especially for his comments. The Chair would note that under the Trade Promotion Authority, we have a congressional structure in which Ways and Means is a permanent member. Peru has been discussed six times at the COG between 2004 and 2006, between that same period, 2004 to 2006, there have been 28 staff briefings. The gentleman from New York is correct, the elected officials from Peru have taken an interest in this and they have come; they have talked to the Committee on Ways and Means jointly in a bipartisan way, several times, and they have talked to individuals in an attempt to discover why this excellent piece of legislation isn't moving any more rapidly than it is.

The Chair now recognizes the Chairman of the Subcommittee on Trade, the gentleman from Florida, Mr. Shaw.

Mr. SHAW. Thank you, Mr. Chairman and I thank you for holding this hearing and welcoming this first step toward the approval of the Peru trade promotion agreement. Today, I believe we have a tremendous opportunity to demonstrate to Peru and other Latin American countries that the United States stands ready to offer a positive economic partnership as an alternative to that of Venezuela's President Hugo Chavez.

Economically, this is a good deal for both countries. With this agreement, Peru is able to expand and make permanent the bene-

fits provided under the Andean Trade Promotion and Drug Eradication Act, currently set to expire in December.

First, our point of view, American companies will gain immediate duty-free access for much of our exports and the agreement will lead to an eventual elimination of all tariffs on U.S. exports to Peru. While the economics of this agreement alone will justify our approval, there is much more at stake.

Every Member of this Committee should be well aware of Chavez's action. He actively seeks to restrict free markets, bring more economic activity under government control, and spread his anti-American ideology throughout the region.

Recent actions in Bolivia and Ecuador show the damaging effect that Chavez can have on his neighboring countries.

Peru's policies stand in stark contrast. Under President Toledo, Peru has pursued market-oriented policies, making it one of the fastest growing economics in the region.

Peru's voters rejected Chavez's recent attempt to tamper with their Presidential elections opting last month to elect moderate Alan Garcia. Just a few weeks later, the Peruvian Congress overwhelmingly approved the agreement by a vote of 79–14 with the full support of Garcia's political party.

Today, it is our turn. We have an agreement before us that is beneficial to both nations and will buildupon relationships started under the performance of our preference program. The agreement is supported by American companies, investors, and farmers eager to begin and continue to expand their businesses in both the United States and Peru. This agreement is supported by both the incoming and outgoing governments of Peru.

Most importantly, the agreement is a symbol of what other Latin American countries can achieve if they reject the demagogic policies of Mr. Chavez.

I hope that one day, this agreement will be expanded to other Andean countries, such as Colombia and Ecuador.

What message would we send to those countries if after all positive actions taken by Peru, Members pull the rug out from beneath them by rejecting this agreement?

There is a fork in the road for many Latin American nations. They can choose a road that leads to government seizure of business, State-run enterprises, and stifled investment, or they can choose a path of free and open markets, one that allows its citizens to work and achieve the rewards that accompany their labors.

Mr. Chairman, the Committee is also at an important fork in the road. Members can choose to send mixed signals to those in Peru who have worked hard to extend their hand in economic cooperation or we can choose to recognize what this agreement will mean not only to the U.S. business and workers but also to the people of Peru and potentially those citizens of our neighboring nations.

Mr. Chairman, I would like to add here, this is more than just about trade. This is about the politics of our own hemisphere. This is about forging friendships and forging partnerships with those to the south of us.

The United States has, for so many years, turned its back on Latin America.

With the Central America Free Trade Agreement (CAFTA) (P.L. 109–53) agreement, we have opened this up, with Chile, we have opened this up. Now we have a chance to do this with Peru.

What better country could we possibly try to build on this partnership than with Peru and the wonderful leadership that it has had under President Toledo?

To vote otherwise, and I would say to Mr. Rangel, this is an American issue. There is no question about this.

This isn't a Republican issue. It is not a Democrat issue. It is an American issue. It is how we are going to stand up in our own hemisphere. How we are going to lead in our own hemisphere and what is the future of American politics in this hemisphere.

It would be tragic for us to turn our backs on Peru. I would hope that all the Members will continue to work hard on both sides of the aisle and not be puppets for anybody, but to move forward in doing the best we possibly can to bring a FTA between the United States and Peru. I yield back.

Chairman THOMAS. Thank the gentleman. The Chair would now recognize the Ranking Member on the Subcommittee on Trade, the gentleman from Maryland, Mr. Cardin.

Mr. CARDIN. Mr. Chairman, thank you very much, and let me just join in the observation that there are many good reasons why we should move forward with the FTA between the United States and Peru.

Peru is a good friend of the United States a trusted ally.

During the past 5 years, President Toledo has demonstrated his commitment to improve the lives of the people of Peru by reform within his own country.

So, I am hopeful that at the end of the day we will be able to have an agreement that can receive strong bipartisan support and strong support in both the House and the Senate.

As the Ranking Member of the Subcommittee on Trade, let me make it clear that the Democratic party is very much in support of opening up markets so that American manufacturers, producers and farmers can export more product.

So, we do want to remove trade barriers. We also want to expand trade benefits to other countries. We all benefit from expanded trade.

We want to enforce our trade rules. I mention that particularly today, Mr. Chairman, as you know, the May report on the trade imbalance is very disturbing: $63.8 billion trade imbalance for May of this year, which puts us on pace to exceed last year's record trade deficit of $716 billion. So, it is important that we enforce our trade rules.

It is also important that the United States advance basic worker rights and labor in our trade agreements. We have the best opportunity to do that in bilateral Free Trade Agreements (FTAs). I must tell you, I was very optimistic last year when President Toledo was here, and before the FTA was finally negotiated, where President Toledo offered to put in the core agreement, compliance with international labor standards in the agreement with the United States.

To me, that was a signal that we could advance in a free trade agreement, with a significant trading partner, core labor standards,

which would make it easier for us to advance worker rights internationally in other agreements.

Rather than seizing on that opportunity, the negotiated agreement moved backward and used the standard of enforcing your own laws, which in Peru's case, is not acceptable.

So, yes, we want to move quickly on an agreement. The best way to do it is to take Mr. Toledo's offer and put it in the agreement, and then we could move forward quickly.

I point out, as the Chairman has, that we do have the Andean Trade Preference Act, and we have generalized systems of preferences today with Peru.

As a condition to receiving those unilateral benefits on their imported products, they have to acknowledge a commitment to move toward international labor standards.

We give that up by the negotiated agreement if we don't include a reference to ILO standards.

So, where are the problems? We are now back to enforce their own rules, and we look at Peru and its trading practices, and we find in many cases, Peru does not today meet international labor standards. They allow employers the use of subcontractors and temporary workers to undermine the rights of workers. They fail to effectively sanction employers who interfere in union activities. They impose burdensome costs of arbitration on workers. They fail to effectively sanction employer interference in union activities. They permit employers to change unilaterally collective bargaining agreements.

I mention just these five examples, and there are others that we will point out during the discussion on these issues, because I understand the Ambassador of Peru has sent us a letter, Mr. Chairman, indicating that, for at least the last two of those issues, the government is prepared to take action on interpretation.

Now, I mention that because one of the problems we have had with other FTAs, are the exchange of letters, because we are enforcing our own law standard, rather than moving forward to a direct reference to ILO standards.

I will admit, it is difficult in interpretation to know what is going on, on the ground. So, yes, it is important that we move forward with Peru, and we can do it quickly on the issue of labor standards if we just accept President Toledo's offer. Then we don't have to deal with interpretation of letters or other procedures which are not as acceptable as a direct reference in the trade agreement itself.

Mr. Chairman, I do look forward to working with you. I do point out that, as the mechanism in Congress to deal with this, our Committee has not taken up the Peru labor issue, and maybe it would be a good forum for us to meet in an effort to try to resolve that difference. I thank you very much for this hearing.

Chairman THOMAS. The Chair thanks the gentleman. Prior to introducing the assistant U.S. trade representative for the Americas, Edward Eissenstat as per prior agreement, the Chair would recognize the gentleman from Michigan for more than the ordinary time. I would say to the assistant trade representative, the questions that so far have come from the dais have not been rhetorical, and that at an appropriate time, the gentleman can and should re-

spond and perhaps some of it, given its detail, could be done in writing, but all Members of the Committee would be interested in seeing the responses if that were the case. The Chair recognizes the gentleman from Michigan.

Mr. LEVIN. Thank you Mr. Chairman. I ask that a statement of mine be placed in the record.

Chairman THOMAS. Without objection.

[The prepared statement of Mr. Levin follows.]

Globalization is under siege in many places. Expanded international trade is hitting more and more roadblocks, both in multilateral trade and bilateral negotiations.

There are many reasons this is happening.

One reason is that we no longer in this Congress and with this Administration have the broad bi-partisan cooperation around international trade necessary to tackle difficult issues. The Republican Majority has rejected a broadly bi-partisan approach in favor of very narrow victories on small trade agreements. This either reflects the Majority's partisanship, or blind devotion to a belief that more trade is always better no matter its terms, its contents or it consequences. Whichever it is, this course is a mistake for international trade policy.

Another key reason is that the benefits of expanded trade are not being widely shared. Too many people in too many places feel they are being left out or left behind.

It is within this broad context and in hopes that we might seize the opportunity presented by the Peru FTA to restore a balanced and bi-partisan approach to U.S. trade policy that I would like to describe my experience on the ground in Peru regarding the rights of workers, the accessibility of citizens to medicines basic for good health, and the impact of trade agreements on agriculture.

The reason for the increasing attention to the basic international rights of workers is that large numbers of workers feel that they are on the outside when they do not share the benefits of expanded trade. Large numbers of workers become opposed to expansion of international trade when they feel they are competing with nations that try to gain economic advantage from the suppression of their own workers. This is not a provincial matter or simply a clash of domestic interest groups.

It takes on added meaning when the U.S. negotiates free trade agreements with nations with immense poverty and vast differences in distribution of income. In Peru, there has been substantial economic growth, with some reduction in poverty. At the same time, about 50 percent of the population of 28million live in poverty under that nation's own poverty standard of $58 a month, and about 20 percent are living in extreme poverty under $32 a month. In Peru the wealthiest 10 percent receive 37 percent of the income, while the bottom 10 percent receives only 0.7 percent.

During the years of the Fujimori regime, both in law and practice, workers were deprived of their basic international rights, especially the basic right to associate together and bargain regarding wages and conditions in the workplace. New laws stimulated a structure of relationships whereby workers began laboring under individual contracts or through subcontracts instead of a direct employment relationship. So employment was subject to arbitrary change or termination by the company. Large proportions of workers in the formal sector no longer belonged to labor organizations representing workers but they were left on their own at the mercy of their company, in both industrial and service sectors.

President Toledo succeeded the Fujimori regime with the promise of addressing poverty, including the rights of workers. He has passionately emphasized his commitment to battle poverty in his meetings here in D.C. and in our cordial personal discussions that he generously accommodated when I was in Peru in January.

Some changes were made in the labor law reforms of 2002.

However, they have not reversed the denial of basic international standards of worker rights rampant under the Fujimori regime. Basic structures instituted under Fujimori remain to this day.

This is evidenced in the 2005 State Department Report on Human Rights on Peru. It was detailed when I was in Peru in January in the 25 meetings I had with a broad range of government officials and private sector groups.

Problem areas in Peru's laws, as identified in reports by the ILO and State Department, include a failure to provide for a neutral arbiter to determine strike legality and inadequate judicial procedures for handling cases of anti-union discrimina-

tion and other labor law violations. Recently, we received a letter from the Embassy of Peru responding to these as well as other concerns that Ways and Means Democrats raised over 6 months ago. Some of the violations may be being addressed, but others, including these, are not. The letter addresses the concern about the failure of Peruvian law to provide sanctions against interference by employers in the ability of workers to associate by reference to a law now under consideration in the Peruvian Congress; it addresses the concern that Peruvian law has allowed unilateral changes in a collective bargaining agreement by the employer with a reference to a "Supreme Decree" issued just last week.

While these deficiencies are problems in and of themselves, what has most eroded the ability of workers to exercise their basic rights, including to associate and bargain, persists from the Fujimori years. It is the replacement of regular permanent direct-hire employment with short-term individual contracts and subcontracting.

The rights violations that workers in Peru face on a daily basis are facilitated by that country's complex and inadequate labor law regime. Unlike most countries with civil law systems, Peru does not have a central labor code. Instead, workers' rights protections are set out in myriad, individual labor laws. The result is a confusing web of regulations that impedes workers from understanding their rights.

In this ad-hoc approach, there are separate laws for specific sectors and specific forms of labor contracts. There are also exemptions that carve out from coverage key segments of the Peruvian workforce. One such segment is the subcontracted sector.

In 2002, Peru passed law number 27626, a labor law regulating and limiting the use of subcontractors. The law was touted as a step toward protecting subcontracted workers' rights. Instead, by Supreme Decree number 003–2002–TR, Peru severely limited the scope of this new law, leaving virtually unregulated the most common form of subcontracting B hiring subcontracted workers to perform normal, everyday company operations.

These subcontracted workers are exempted from the controls established for other forms of subcontracting by the 2002 law. Instead, they are covered by law number 728, rules for individual contracts. Therefore, if these workers' rights are violated, each individual worker must bring a separate legal case to try to seek justice, leaving these vulnerable workers with little to no possibility of enforcing their rights. In the wake of the 2002 reforms, subcontracting core company operations has exploded, and a large marginalized workforce has been created.

Likewise, employers are increasingly using the nine permissible forms of temporary contracts permitted by Peru's labor law number 728 to further destabilize their workforces. Employers characterize permanent, everyday activities as temporary in order to enjoy this flexibility.

If subcontracted workers or temporary directly employed workers try to unionize or complain about substandard working conditions, their contracts can simply not be renewed or they are asked never to return.

In addition, if employers do not wish to wait until the contracts expire to expel them from their workplaces, employers may fire persons without cause. Employers do so knowing that the fired workers only have a right to reinstatement if they can overcome the often insurmountable obstacles to demonstrating in court that they were fired for an impermissible reason, such as union organizing. Workers rarely succeed.

If Peru's labor laws are going to come close to complying with international standards, these serious shortcomings must be addressed to ensure that the rights of all workers.

The effect of this use of the temporary/individual contract/subcontracting process has been a dramatic reduction in workers belonging to labor organizations. When I was in Peru, I heard that the reduction was 62 percent among mining workers, and 75 percent among communication workers since this practice began. These trends are reflected in the 2005 State Department report on Peru, which notes that Approximately 5 percent of the formal sector workforce of 8.5 million belonged to organized labor unions.

One of the engines of Peru's recent economic growth has been in agro-businesses, especially in asparagus and artichokes. The U.S. Peru FTA should enhance these exports. Agro-business has increased employment in areas in Peru needing that increase. The challenge is for that employment to substantially decrease poverty. If workers do not have their basic international rights, it is far less likely that this challenge will be met.

While it is not easy to obtain complete information, the following conditions seem prevalent: agricultural laborers, the majority of which are women, often work 10–14 hour days, 6 days a week, with no vacation, no health benefits and for very low wages (approximately $5.30 a day) that drop if demand for the crop falls. There is

also reported to exist pervasive subcontracting, the use of individual contracts, the firing of union organizers, and the lack of labor inspections.

There are also reports of gender-specific rights violations in this industry, given the high percentage of women workers. Although the FTA requires Peru to effectively enforce its labor laws, anti-discrimination laws are exempted.

A recent article in Peru's La Republica notes that in the Ica and Trujillo regions of Peru, both of which experienced substantial increases in agro-industry exports B asparagus in particular B after the implementation of Andean trade preferences, there exists extreme levels of inequality as to the distribution of benefits from expanded trade. The article notes that between 2000 and 2004 the average wage for executives grew 51 percent in the Ica region and 65 percent in the Trujillo region. This stands in stark contrast to the average wage increase for workers, which was 1 percent and 0.5 percent in the Ica and Trujillo regions, respectively, for the same period.

These circumstances underline the problem with the insistence of the Administration in negotiating a standard for worker rights that it would never dream of using for any other subject of the FTA: i.e. that a nation must simply enforce its own present laws. And the laws can be made worse with impunity consistent with the FTA.

In his meetings in D.C. with Members of both parties of the Ways and Means Committee, President Toledo expressed the view that if globalization was going to work there must be a broader sharing of the benefits of expanded trade. He further stated that workers must be included and for this to happen the basic international labor standards should be incorporated into the agreement.

The Bush Administration failed completely to seize the opportunity to accomplish this result.

For large numbers of impoverished people within Peru and other nations in Latin American and elsewhere, ***the Bush Administration's position places us on the wrong side.***

For large numbers of people in our nation who worry about competing with nations that suppress the rights of their workers as a method of competition, ***it places us on the wrong side.***

At a time when there is increasing understanding of the need to combine policies of growth directly with key elements of equity, it places us on the wrong side.

In a recent report of the World Bank on Latin America entitled "Poverty Reduction and Growth: Virtuous and Vicious Circles," there is this passage reflecting a broadened tenor regarding trade policy: ". . . a sensible development strategy should focus on the quantity of growth (that is, on the achievement of a high growth rate) and the quality of growth (that is, on the benefits from that growth)."

The U.S. Peru FTA has advantageous provisions relating to the quantity of growth. Exports will increase both for Peru and the U.S. History of development in our Nation and others demonstrates vividly that enhancement of the rights and role of workers is an important ingredient in the quality of growth. The approach put forth by the Bush Administration on worker rights (simply requiring the status quo or worse) flunks the quality test.

Agriculture/Subsistence Farming

The FTA will lead to still further growth in both Peruvian and American agricultural exports.

Peruvian agricultural exports have blossomed in recent years. Under Andean trade preference programs, the major growth has occurred in asparagus and artichokes, where there is some competition with the U.S., and also in fruits.

Lower Peruvian tariffs will clearly help Peruvian consumers in areas where there is no major source within Peru.

A study issued 6 months ago by the Carnegie Endowment on U.S. negotiations for a free trade agreement with Andean nations, stated, based on its interview with leaders and analysts, that expanded trade would have an "unambiguous positive impact" on some of the economy and population, and that ". . . [t]he brunt of the adjustment costs are likely to fall on farmers and the rural population in the Andean countries." A more recent Carnegie study reinforced this conclusion.

Before passing the FTA on June 27, the Peruvian legislature approved a "compensation fund" in relation to the impact of the FTA on small subsistence farmers in Peru.

When in Peru, I received very different estimates of the likely impact of the FTA on the millions of small Peruvian farmers. Some said it would be minimal. Representatives of an organization of small farmers called Conveagro argued that it would be dramatic. They now urge that the amount of the compensation fund covers

only three crops B wheat, corn and cotton B and is grossly inadequate for the 5 year period.

Clearly, the people of Peru have most at stake from the impact of this issue. There is also an American interest. For globalization to work, for the middle class to blossom, the benefits need to be broadly shared. Further, there is an interest particular to the Andean region, i.e. to be certain that the displacement of subsistence crops does not lead to their replacement with the growing of coca already representing a major issue for our Nation, including our security interests.

It would be wise for us to spend enough time to understand this aspect of the FTA.

Intellectual Property and Medicines

The issue of availability of basic medicines in negotiation of an FTA came up when there was consideration of the U.S.–Morocco FTA. During the hearing on this FTA, I asked whether the language in the section on intellectual property was consistent with the agreement worked out in the WTO at Doha assuring access to generic medicines to meet basic health needs in developing nations including Morocco. The long and short was that a side letter was negotiated in an effort to address this issue.

I discussed this issue in relation to the language in the U.S.–Peru FTA when I was in Peru with both Health NGOs, the Health Minister and at a meeting of representatives of major pharmaceutical companies.

Access to affordable medicines is extremely important for public health in Peru, where over half of the population lives in poverty and around 20 percent lack access to health care. Only half of all Peruvians have health insurance; people living in poverty are for the most part not insured and must either pay out of pocket or receive no treatment at all. Medicines account for one quarter of public health expenditure and 44 percent of household spending on health.

This issue has been covered by side letters between the two governments. It is important to understand whether its contents are subject to dispute settlement and therefore legally binding.

An additional side letter that is included in the Peru FTA, which states that the references to the intellectual property chapter in the Understanding include Article 10 on measures related to certain regulated products, may not provide additional assurances in this regard. It is stated in the report by the Industry Trade Advisory Committee on Intellectual Property, "ITAC–15 believes that the letter serves only to clarify the Understanding and does not impose any additional obligations beyond those already found in the Understanding."

Peru should be held to global standards of intellectual property rights and should enforce those rights. However, we need to analyze specific provisions for pharmaceuticals that exceed those general standards and assess whether the provisions would cause hardship on Peruvians, particularly the large number of people living in poverty.

Conclusion

The U.S. Peru FTA is an important agreement. It involves our two nations with some historically close and significant relationships. There is significant goodwill between our Nations, which has been increased in the years of the Toledo presidency.

The FTA is also a test case of whether and how to shape the elements of globalization and international trade. Those who give blind support to expanded trade give ammunition to those who adopt blind opposition.

We can do better. Indeed, we must. The terms for expanding trade between the U.S. and Peru provided us an opportunity to do so. It is indeed late, but still not too late to accomplish it.

Mr. LEVIN. I have prepared—at first I asked that I might testify before this Committee. I did so, because I think that it is essential that there be more dialog. I was hopeful that, really for the first time on this issue, that we might have some meaningful back and forth, especially as it relates to Peru.

The bipartisanship is so critical, especially with globalization in real trouble—expanded trade is now meeting a number of roadblocks, both in the multilateral sector, as well as in bilateral agreements.

So, it is really important that we try to recreate a bipartisan foundation for trade in the United States.

Secondly, I think it is important to ask why globalization is in such trouble.

Why is expanded trade meeting so many roadblocks? There are a number of reasons for it.

One of them, and it has been raised here by Mr. Shaw and others, is that so many people in so many countries are not benefiting from the expansion of trade.

They are being left out. To mention Mr. Chavez, I think you need to look why he is there. It is in part, because, as Venezuela grew in prosperity, the vast majority of people did not benefit.

So, our failure to try to shape our agreements, so that there is a wider sharing of benefits, our failure needs to be rectified so that there doesn't arise leadership that I think is agnostic to basic principles of expanded trade and globalization that will really work.

That is the context, Mr. Shaw. It is a discussion about globalization, the failure for its spread to have the benefits spread, and the consequences of it.

It isn't because anybody is a puppet. A number of us, most of us have been working hard for expanded trade. We want it in terms that will work.

So, let's talk about Peru. When President Toledo came here, he talked about worker rights. He said to all of us, who were sitting there, Republicans and Democrats, in order for globalization to work, workers have to participate. In order for workers to participate, the basic international core standards should be in the agreement and enforceable. That is what he said.

That has been the position of Democrats not for any narrow reasons, but because of its importance for the unfolding of globalization.

Everybody has to understand that. We have taken some tough decisions, Democrats on this side, not always popular on our side, because we believe with expanded trade, it has to be shaped so that benefits are shared, to say it very simply and clearly.

President Toledo inherited from Fujimori a structure that undid the rights of workers in Peru; undid them.

It set up a structure of subcontracting and private contracts; short-term contracts. The result was that labor organizations were decimated. When I was in Peru, that was told to me in the mining industries; dramatic reduction in the ability of workers to be in organized structures.

The same was true in communications. Also in the Fujimori years, there were failures to give workers the right to associate, even when they had direct contracts. There was discrimination rampant against any effort for them to organize and to have collective bargaining.

In 1982, some of those aspects were changed. The reforms made some progress, but the basic structures today remain from the Fujimori regime.

You can see the impact of that in the agribusinesses that are now blossoming on the west coast of Peru.

There is more work, but there isn't the ability of workers to gain a wage that——

Chairman THOMAS. Gentleman yield briefly. If the timer would renew the time, please, for the gentleman.

Mr. LEVIN. I appreciate that. So, look, this is what the issue is here today. We would like to support an agreement with Peru. It is our strong preference. We admire the President of Peru, President Toledo. There is no question about his desire to come into office and to try to address issues of poverty.

If those issues are going to be addressed and assisted through a U.S.–Peru Trade Promotion Agreement (TPA), there has to be put into place, as he himself suggested, in the agreement, with enforceability, the basic ILO standards, not American standards, but ILO standards.

Mr. Eissenstat, you are not making the decisions, but the question we have always asked is, if the President of Peru said yes, why did we say no?

Why we tabled a proposition that did not meet what he was willing to incorporate? There was some reference to what is in the TPA, it doesn't prohibit us for 1 minute to take the step, to put the core labor standards in, so that workers can be part of the mix of progress.

In my statement, I also cover other issues—and I hope we will here—about medicines, and also about the impact on subsistence farmers.

Mr. Chairman, and Mr. Shaw and our colleagues on the Republican side, I hope there is still time for us to do this right. Our failure to do so is, I think, inexcusable.

I worry about what is happening in Latin America and the rest of the world. I worry about the path of globalization. Mr. Chairman, if globalization is going to work, we have to take steps in our agreements that there be broad participation. We simply say to a country, enforce its own laws with regard to its workers. It is a step backward.

Mr. Eissenstat, in your testimony I would like you to indicate whether that standard is used in any other arena, except as to worker rights and the environment and why this Administration refuses to move in the direction of incorporating basic worker rights within the body of an agreement, so that as this agreement unfolds—and there will be benefits, there will be more expanded trade—there will be provisions therein that will help ensure that the benefits of expanded trade reach the vast majority of the people of Peru.

Thank you, Mr. Chairman.

Chairman THOMAS. The Chair thanks the gentleman, and for those of you who might not be familiar with the fact, gentleman from Michigan went to Peru, and spent some time in Peru familiarizing himself with those activities that occurred.

The Chair would now recognize gentleman from Illinois who has spent considerable time in Latin and South America, also familiarizing himself with conditions in Peru. Gentleman from Illinois, Mr. Weller, and if the gentleman would yield briefly.

Mr. WELLER. Happy to yield, Mr. Chairman.

Chairman THOMAS. Thank the gentleman. I will tell gentleman from Michigan that in the number of meetings that we attended in a bipartisan way, and the gentleman represented a portion of what

President Toledo said, but I think it is also important to note that the President also made a rather impassioned plea not to be locked into a straightjacket in terms of the labor structure that was being forcibly offered to him; citing his own history and the continued poverty in which, in organized labor relationships, there has been progress, and was supportive of that, but that needed to recognize the conditions in which boot strapping from poverty may involve more of the extended family in a positive economic model.

It is always best to try to take what someone says in the full context of what they say, rather than accepting portions and assuming then if you didn't hear him, that that was the plea that he made.

He made a far broader, more complex plea on the question of labor. In this mutually negotiated agreement, the President is solidly 100 percent in support. I thank the gentleman.

Mr. WELLER. Thank you, Mr. Chairman for giving me the opportunity to express my strong support for the Peru trade promotion agreement. Mr. Chairman, this is a good agreement for both Peru and the United States. Here at home, we will see vibrant new export opportunities to help our manufacturers and farmers to compete with Asia and Europe and Peru or neighbors and friends will see increasing economic opportunity and continued poverty reduction. These are tangible, achievable goals, and we can attain them by choosing to say yes to the agreement.

From the United States, on day one of this agreement going into effect, 80 percent of our U.S. exports in consumer and industrial products to Peru will become duty free immediately. This means real export opportunities for American manufacturers. I am proud to represent thousands of Caterpillar workers who will see tremendous benefits in this agreement, Mr. Chairman; a million dollar off-highway truck used in mining, like the one I have here in front of me today, suffers today at a 12 percent tariff when imported to Peru. That amounts to a tax representing $120,000 added to the price of this million-dollar truck, immediately making it less competitive with their Asian competition. On day one of this agreement, that 12 percent tax on this million dollar piece of equipment goes away.

This agreement is good for farmers. Again, on day one of this agreement, 2/3 of current U.S. farm exports become duty free immediately. Pork tariffs are as high as 25 percent going into Peru, but Chilean pork is currently duty free going into Peru. Pork taxes are reduced immediately and gone in 10 years, helping us to compete. Soybeans, soybean meal and crude soy bean oil become duty free immediately. For corn, Argentina accounts for 2/3 of Peru's corn imports, and is priced approximately 9 to 10 percent less than U.S. corn.

Argentine corn currently only has a 3.4 percent tariff, but U.S. corn is dutiable at 17 percent.

Again, this agreement creates benefits for U.S. farmers by reducing and eliminating all tariffs on corn. United States agriculture stands to see over $700 million increased annually when fully implemented, only if we choose today to implement this agreement.

Let's not forget under current law, most imports from Peru enter in this country with no duty. Ninety-eight percent of all imports from Peru enter duty free, and the average U.S. duty on imports

from Peru is less than 1/10 of 1 percent, but the average applied duty on U.S. exports to Peru is 8 percent. It is a good deal for Peru, but not for U.S. workers or farmers. This agreement makes our partnership equal, and means the benefits that Peru has received unilaterally for nearly 15 years will now be shared equally. The International Trade Commission (ITC) estimates an additional $2.1 billion in economic growth from this agreement alone for the United States, and increasing U.S. exports to 1.1 billion.

This agreement is not only important for our U.S. exporters, but also for continued economic growth in Peru and stability in their own hemisphere. I have traveled twice to Peru and spent significant time learning about the conditions there.

Let me begin by saluting President Toledo for his leadership which allowed this agreement to be negotiated, and for his and the people of Peru's unwavering friendship with the United States.

We cannot forget where President Toledo brought the Republic of Peru from and the path he has put Peru on. Following the difficult Fujimori years, President Toledo restored democratic institutions, built the economy on exports and reduced poverty all the while working side by side with the United States to fight narcotrafficking and supporting the global war on terror.

I have traveled to export facilities, met and spoke with workers and seen the hope and opportunity exports give to workers in Peru.

President Toledo has argued passionately as one who knows poverty firsthand in favor of this agreement, not only as a solution to poverty, but as a tool.

The Peruvian people have spoken as well, and they spoke loudly in favor of building the Peru–U.S. partnership. Voters silently rejected the message of the chosen candidate of Venezuela, Hugo Chavez, when Ollanta Humala advocated ending Peru's partnership with the United States for a thin veneer of populist sentiment, masking the greater hemispheric ambitions of Chavez, the people of Peru saw through it and they said no. Peru's congress took a definitive stand in favor of the Peru TPA, voting 79–14 to ratify this agreement. Peru is now counting on the United States to complete our work on this agreement.

It is more important than ever that the United States not turn its back on Peru and continue its partnership with this key neighbor.

My colleagues, I hope you will give serious consideration not only to the important work that Peru has done in a short time, but also the positive course Peru has set on particularly in the areas of labor.

Some of my colleagues argue that Peru has not done enough on labor, but let's look at the facts. The Fujimori era dismantled labor rights in Peru. President Toledo had to start from the beginning to build and strengthen labor rights and has made significant strides in 5 short years.

Major labor reform law was passed in 2003. That included reducing the number of workers needed to establish a union, eliminating prohibitions that kept workers from joining unions during their probationary period, and limited the power of the labor authority to cancel union's registration.

In 2004 Peru published regulations to strengthen labor inspections and broadened labor inspector's powers. In all, more than 30 labor reforms have been achieved in the Toledo administration. The Peru trade promotion agreement includes labor obligations as part of its core text and contains even stronger language on labor standards than the U.S.–Chile FTA.

Finally, with regard to ILO issues, Peru has ratified 71 ILO conventions, including all eight of the core conventions. The ILO has noted with satisfaction Peru's work on labor issues having made changes to Peruvian law to address the vast majority of ILO observations. Peru has received ILO praise as a leading example in the Americas of efforts to bring national laws into compliance with international ILO standards.

Four issues of concern related to Peru's labor laws were raised by some Members of this Committee in a letter, and I would just like to note for the record that each of these points have been specifically addressed in a letter from Peruvian Prime Minister Kuczynski. Briefly, he reaffirms that the Peruvian constitution recognizes the right of workers to unionize, to bargain collectively, to strike, and that employers cannot interfere with unions.

Peru's law in collective work relations prohibits employers from interfering with workers' right to form unions. Workers dismissed for union activity have the right to file an amparo, a petition for reinstatement to their jobs, and Peru's Congress just this last week approved a new labor inspection law that defines violation of fundamental labor rights as a severe violation for enforcement purposes.

Finally, let me highlight two supreme decrees just approved: one will amplify current law that employers cannot unilaterally change contents or conditions established in collective bargaining agreements, and another clarified that unions, not government, make the determination of how many workers constitute a strike granting majority.

Several other points were raised in this letter, but two are worth pointing out here. First, there is no provision in Peruvian law that prohibits temporary workers from affiliating with the same union as permanent workers. If an employer fired a temporary employee for trying to exercise his rights to affiliate, he would have a cause of action for reinstatement and specific constitutional protections.

Secondly, with regard to child labor protections, the government has strengthened child labor laws and developed a national plan of action. Peru passed laws in the year 2000, 2001 and 2004 to help fight child labor, and Peru has participated in the ILO international program for elimination of child labor for over a decade.

This is a good place to talk about what growing Peruvian exports will mean for Peruvians. Export jobs pay higher wages and bring people into the formal sector where rights are more easily protected. That is what we are talking about today, more economic opportunities, more job security.

Again, this agreement will not be the sole answer to eliminating poverty, but it is a key tool.

Today we are faced with a choice, Peru's chosen decisively to say yes to opportunity and to strengthening our partnership.

The question remains, if we, too, will make that positive choice. I urge my colleagues to say yes to the U.S.–Peru Trade Promotion Agreement (PTPA). Thank you, Mr. Chairman, and I yield back.

Chairman THOMAS. I thank the gentleman, and now I will recognize for his comments the assistant U.S. Trade Representative, Mr. Eissenstat. Your written testimony will be made a part of the record, and you may address us in any way you see fit.

Prior to recognizing you, the Chair would ask unanimous consent to submit to the USTR a written question by the gentleman from New York, the gist of it is concern about rules of origin, particularly dairy products, and we anticipate a written response and the Chair would indicate that he would like to see the answer as well.

Without objection, Mr. Eissenstat, the microphone is yours.

STATEMENT OF EVERETT EISSENSTAT, ASSISTANT U.S. TRADE REPRESENTATIVE FOR THE AMERICAS, OFFICE OF THE U.S. TRADE REPRESENTATIVE

Mr. EISSENSTAT. Thank you, Mr. Chairman, Ranking Member Rangel, Members of this distinguished Committee, it is really an honor for me to be here today and have an opportunity to discuss our free trade agreement with Peru. We greatly appreciate the guidance of this Committee throughout the negotiating process, and we look forward to continuing to work with you as we move this agreement through the legislative process.

The United States–Peru Trade Promotion Agreement marks the beginning of a new chapter in our trade relations with Peru. This agreement will enable us to turn our unilateral preference program into a two-way commercial partnership. It eliminates unfair trade barriers and provides new opportunities for American manufacturers, farmers and ranchers.

The agreement levels the playingfield for U.S. exports with respect to our competitors, improves market access, and enhances protection for workers and the environment.

Please allow me to put this agreement in context. In 1991, the U.S. Congress voted to authorize trade preferences to Peru through the Andean Trade Preference Act. Bipartisan approval of this preference program helped combat illegal drug cultivation by providing new export opportunities for the Peruvian people. In 2002, two things occurred which helped lay the foundation for our current agreement.

First, U.S. Congress significantly enhanced trade preferences under ATPA through the Andean Trade Promotion and Drug Eradication Act. Second, Alejandro Toledo instituted a series of political and economic reforms which have solidified Peru's democratic institutions and reinvigorated its economy.

The results have been impressive. Since 2003, Peru's real gross domestic product (GDP) has grown at an annual average rate of 5 percent. More than 1.3 million Peruvians have been lifted from extreme poverty. In 2005, imports from Peru to the United States reached $5.1 billion.

The United States has much to gain from this agreement as well. Today, 98 percent of imports from Peru enter the United States duty free. Meanwhile less than 2 percent of U.S. agricultural exports and 4 percent of U.S. industrial exports enter Peru duty fee.

Our free trade agreement will put an end to this disparity. On day one, 80 percent of our industrial products will become duty free into Peru. These items will include technology products, agricultural and construction equipment, auto parts and chemicals.

At the same time, almost 90 percent of our current agricultural trade with Peru will become duty free, including products such as high quality beef, cotton, wheat, soybeans and many fruits and vegetables. Peru also eliminated its price ban system on trade with the United States.

The agreement provides new opportunities for U.S. service providers across a wide range of sectors such as telecommunications, insurance and express delivery. It also provides strong protection for U.S. intellectual property interests, including copyright protection for the digital age as well as patents and trademarks.

The agreement establishes a secure, predictable legal framework for U.S. investors in Peru.

Let me briefly address two issues that we know are of particular importance to the Members of this Committee, labor and the environment.

Peru has under taken significant labor reforms in the past several years and is committed to undertaking additional reforms in efforts to address concerns raised by the United States.

Peru has ratified all eight ILOs core conventions, and Peru's constitution guarantees freedom of association, collective bargaining and the right the strike.

In 2003, Peru enacted a major labor reform law strengthening labor rights and responding to ILO observations on their labor regime. The agreement includes a variety of tools that will help ensure that workers in Peru benefit from these reforms.

First, the agreement will require Peru to effectively enforce its labor laws. The agreement also calls for Peru to provide fair, equitable and transparent domestic legal procedures through which persons can seek enforcement of Peru's labor laws.

The agreement creates a labor cooperation and capacity building mechanism and a labor affairs council to oversee progress under the labor chapter.

The environment chapter includes specific obligations in the core text of the agreement. Each party must effectively enforce its domestic environmental laws and this obligation is subject to dispute settlement provisions. The agreement also mandates the establishment of an independent secretariat to review and consider public submissions on environment enforcement matters. There is also a parallel environmental cooperation agreement promoting joint cooperative efforts to protect the environment including protection of endangered species.

Mr. Chairman and Members of the Committee, Peru is a country heading in the right direction. Just last month the people of Peru elected a new President committed to promoting free market principles and democracy. On June 28th the Peruvian Congress approved our free trade agreement by a wide margin of support, 79 to 14. Meanwhile ATPA preferences will expire at the end of this year.

We need to seize this opportunity to advance our partnership with Peru and help promote economic growth and political stability in Peru and throughout the Andean region.

I hope that after examining the agreement, the Members of this Committee and the U.S. Congress will agree that it is a good agreement that is solidly in our National interests.

Thank you, Mr. Chairman, Members of the Committee, I am happy to answer any questions you may have.

[The prepared statement of Mr. Eissenstat follows:]

Statement of Everett Eissenstat, Assistant U.S. Trade Representative for the Americas, Office of the U.S. Trade Representative

Chairman Thomas, Chairman Shaw, Ranking Member Rangel, Members of this distinguished committee, thank you for the opportunity today to discuss the economic and political benefits of our free trade agreement with Peru.

I appreciate the views and guidance received from members of this Committee on the U.S.–Peru Trade Promotion Agreement over the last two years. I look forward to working with you and your colleagues as we seek congressional approval of this historic agreement.

The United States–Peru Trade Promotion Agreement marks the beginning of a new chapter in our commercial partnership with Peru. The agreement sets out fair and reciprocal trade rules which will promote economic growth and prosperity in both countries. It eliminates unfair barriers to U.S. exporters, opening a market of 28 million consumers to U.S. manufacturers, farmers, ranchers, and service providers. In 2005, exports of U.S. goods to Peru reached $2.3 billion and through the implementation of this Agreement we expect our exports to rise significantly. While the benefits of this Agreement will accrue for a broad range of U.S. exporters across the country, states with the largest volume of exports to Peru—Texas, Florida, California, Louisiana, and Illinois—will gain even more export opportunities through the implementation of the Agreement. In fact, according to the International Trade Commission, our industrial and agricultural exports to Peru are expected to increase annually by as much as $1.1 billion once the Agreement is fully implemented. To date, it is the best agricultural deal we have ever negotiated in terms of access for U.S. farmers and ranchers to other markets.

In exchange, the Agreement makes permanent the trade benefits Congress first authorized for Peru in 1991 under the Andean Trade Preference Act and enhanced significantly in 2002. By helping to create favorable conditions and incentives, the U.S.–Peru TPA will aid in sustaining real growth, creating more jobs, and attracting investment in Peru. This agreement will also support and enhance the democratic and economic reforms undertaken by Peru's leaders in recent years.

An Emerging Partnership

I would like to put this Agreement in context. In 1991, the U.S. Congress with strong bipartisan support voted to authorize duty-free benefits to Peru through the Andean Trade Preference Act, or ATPA. ATPA was designed to help expand economic opportunities in the Andean region and encourage our Andean neighbors to move away from the production, processing and shipment of illegal drugs and to move toward legitimate products. Peru has benefited significantly from the program, steadily increasing its exports to the United States since 1993. Imports from Peru to the United States totaled $5.1 billion in 2005, of which $2.3 billion benefited from ATPA preferences.

In 2002, two events occurred which helped lay the economic and political foundation for this Agreement. First, Congress enacted the Andean Trade Promotion and Drug Eradication Act (ATPDEA), which renewed and enhanced trade preferences under the ATPA. Second, Peru's President, Alejandro Toledo instituted a series of political and economic reforms which have helped lift many Peruvians out of poverty and have solidified Peru's democratic institutions. These reforms have included: (1) restoring democratic practices, best illustrated through the free and fair presidential elections held this year; (2) increasing expenditures for health and social infrastructure programs; (3) undertaking initiatives in the area of labor rights, particularly to protect the rights of labor unions and children; (4) enhancing respect for the freedom of the press; and (5) improving Peru's investment climate. The entire region took note when the people of Peru reaffirmed their support for these positive reforms in June 2006, by electing a president in June of 2006 committed to continuing to pursue democratic and free-market principles.

The results have been impressive. Since 2003, Peru's real GDP has grown at an annual average rate of five percent. In 2005, Peru's GDP at market exchange rates totaled $78 billion. Two-way trade between Peru and the United States increased from $3.4 billion in 2001 to $7.4 billion in 2005, a growth of 118 percent over four years. This economic expansion has reached all levels of society. Even as Peru's population expanded by 1.6 million between 2001 and 2005, the number of people living in poverty declined. According to Peru's National Institute of Statistics and Information (INEI) and the Ministry of Economy and Finance during those four years, nearly 500,000 people were lifted out of poverty, and more than 1.3 million escaped extreme poverty.

On June 28, the Peruvian Congress approved the United States–Peru Trade Promotion Agreement by a wide margin of support with 79 votes in favor and 14 against. The Agreement received full support from members of President-elect Alan Garcia's APRA party. Meanwhile, our trade preference program with Peru (ATPA) will expire at the end of this year. To ensure that these positive trends I have outlined continue, the time for Congress to act on this Agreement is now.

The political and economic benefits of the United States–Peru Trade Promotion Agreement for the United States are significant (notwithstanding the small size of Peru's economy). This agreement makes trade between us a two-way street. Today, ninety-eight percent of imports from Peru enter the United States duty-free as a result of our unilateral preference programs or our most favored nation (MFN) duty-free rates. Meanwhile, less than two percent of U.S. agricultural exports and four percent of U.S. industrial exports can enter Peru duty-free. This is attributed to the fact that Peru applies duty-free treatment to very few products on a MFN basis.

The Agreement makes our trade relationship more reciprocal and more equitable. On the day the Agreement takes effect, 80 percent of our industrial products will be able to enter Peru duty-free. Within five years, an additional six percent of our industrial products will become duty-free and another four percent within seven years. Duties on the remaining 10 percent of industrial products will be phased-out over ten years. This will mean significant new opportunities for American manufacturers of technology products, mining, agricultural and construction equipment, medical and scientific equipment, auto parts, paper products and chemicals. Peru also agreed to join the WTO Information Technology Agreement, considered the "gold standard" of liberalization in high tech products.

In agriculture we see a similar story. While Peruvian agricultural exports face few if any duties when they enter the United States, U.S. agricultural exports face Peruvian tariffs as high as 25 percent on most products and much higher tariffs for some others such as rice. Under Peru's current WTO commitments, these tariffs can legally be set as high as 30 to 68 percent *ad valorem.* Additionally, Peru applies variable tariffs based on price bands on more than 40 products, including corn, rice, dairy, and sugar.

The United States–Peru Trade Promotion Agreement eliminates the tariff disparity that currently exists between the United States and Peru. It lowers tariffs, turning our one-way preference program into a trade partnership, and assures that our exporters will not face higher tariffs in the future. On the day the Agreement takes effect, almost 90 percent of our current agricultural trade with Peru will enter the Peruvian market duty-free, providing opportunities to expand our current 20 percent share of Peru's agricultural market. In addition, Peru will immediately eliminate its price band system on trade with the United States. Tariffs on other agriculture products will be eliminated gradually, most within five to fifteen years. Within 17 years, all of our agriculture exports will be duty-free.

In addition, the agreement will afford U.S. exporters preferential treatment that will position them favorably vis-&-vis exporters in third countries competing for the Peruvian market. These include strong agricultural producers, including Brazil, Argentina, and Chile, with which Peru has entered into preferential trade agreements over the past several years. The United States–Peru Trade Promotion Agreement also will give U.S. agriculture exporters a competitive edge over countries such as China, which are gaining market presence in Peru, but do not enjoy preferential access.

Here are a few examples of how the Agreement will help boost our agricultural exports to Peru.

U.S. beef and beef products currently face applied tariffs ranging from 0 to 25 percent in Peru, with "bound" (*i.e.* WTO ceiling) rates set at 30 percent. Under the Agreement, the tariffs on top priority products for the U.S. beef industry—high quality beef—will drop to zero immediately upon entry into force of the Agreement. This will enable our beef industry to compete on equal or better terms with beef products from Argentina and Brazil that currently enjoy preferential access to Peru's market.

Tariffs on most U.S. pork products, currently set as high as 25 percent, will be eliminated immediately or within five years after the Agreement enters into force. The U.S. pork industry will then be in a position to compete on an equal or more favorable basis with pork products from Chile that currently enjoy preferential access to Peru.

The U.S. poultry industry is another clear winner. The Agreement provides immediate duty-free treatment for a 12,000-ton tariff rate quota for chicken leg quarters, and the quota will grow at an annual compound rate of eight percent.

Other U.S. agricultural exports such as wheat, cotton, fruits, tree nuts, vegetables and vegetables products, are all expected to increase significantly as the Agreement will immediately eliminate Peru's tariffs on these products, which range from 0 up to 25 percent. Even for sensitive products for which tariffs are phased-out over longer time periods (e.g. rice and dairy), Peru will establish tariff rate quotas that will provide immediate duty-free access for certain quantities that grow as the tariffs are phased-out.

In sum, this Agreement will substantially benefit U.S. agriculture.

The Agreement benefits U.S. exports by going beyond tariff reductions. It eliminates non-tariff barriers that currently limit U.S. products and services from competing in Peru's market. Under the Agreement, Peru will become the first Andean country to lift its import restriction on remanufactured goods. This is a significant achievement, creating a new export market for U.S. remanufactured products such as computers, cell phones, construction and medical equipment, heavy machinery, and auto parts. The Agreement also establishes state-of-the-art customs procedures to expedite the movement of goods between our markets.

The Agreement will also provide important new opportunities for U.S. companies in Peru across a wide range of services sectors: telecommunications, banking, insurance, audio-visual services, transportation, engineering, computer and related services and express delivery, just to name a few. This agreement also provides comprehensive and strong protection for U.S. intellectual property interests, including copyright protection for the digital age, as well as patents, trademarks and proprietary data protections. Additionally, the Agreement provides for stronger enforcement against infringement of intellectual property. The United States–Peru Trade Promotion Agreement also includes strong anti-corruption procedures and provisions on transparency in government contracting and in other areas of trade that will help address this issue. The agreement also establishes a secure, predictable legal framework for U.S. investors in Peru.

Let me briefly address two issues that we know are of particular importance to many members of this Committee—labor and the environment. Peru has undertaken significant labor reforms in the past several years, and is committed to undertaking additional reforms in an effort to address concerns the United States has raised. Peru has ratified all eight core conventions of the International Labor Organization (ILO) and Peru's Constitution guarantees freedom of association, collective bargaining, and the right to strike. In 2003, Peru enacted a major labor reform law, strengthening labor rights and responding to ILO observations on Peru's labor law. Among the changes it made, Peru's labor reform law reduced the number of workers needed to form a union, limited the power of the labor authority to cancel the registration of a union, and eliminated provisions that prohibited unions from engaging in political activity.

The United States–Peru Trade Promotion Agreement includes a variety of tools that will help ensure that workers in Peru benefit from these reforms. First, the Agreement will require Peru to enforce its labor laws effectively. Should Peru fail to do so, the United States can invoke the Agreement's consultation and dispute settlement procedures, which could ultimately lead to the imposition of an annual monetary assessment of up to $15 million. The Agreement also calls for Peru to provide fair, equitable and transparent domestic legal procedures through which persons can seek enforcement of Peru's labor laws. The Agreement also creates a labor cooperation and capacity building mechanism to advance cooperation on labor matters. It establishes a Labor Affairs Council, comprised of senior government officials, to oversee implementation of and review progress under the labor chapter.

The environment chapter, like the labor chapter, includes specific obligations in the core text of the Agreement. Specifically, each Party must effectively enforce its domestic environmental laws, and this obligation is subject to the Agreement's dispute settlement provisions. The environment chapter not only includes the obligation to effectively enforce domestic environmental laws, but also includes obligations on transparency, rule of law, procedural guarantees and access to the judicial, quasi-judicial and administrative proceedings and requirements for public participation in policy decisions in the area of trade and environment. The Agreement calls on the Parties to establish an independent secretariat to review and consider public

submissions on environmental enforcement matters in Peru. An Environmental Affairs Council, comprised senior-level officials with environmental responsibilities, will review how the Agreement's environmental provisions are implemented. We have also included, for the first time in a U.S. free trade agreement, an article affirming both countries' commitment to protect and conserve biological diversity. Finally, in parallel with the free trade agreement, the United States and Peru concluded an Environmental Cooperation Agreement (ECA) that will promote joint cooperative efforts to protect the environment, including protection of endangered species and fragile ecosystems.

We strongly believe that the obligations set out in the environment chapter and the cooperative activities we have agreed to undertake under the ECA will help make trade and environmental protection mutually supportive for both Peru and the United States.

Mr. Chairman and Members of the Committee, the United States–Peru Trade Promotion Agreement enables us to turn our unilateral trade preference program into a trade partnership, level the playing field for U.S. exporters with respect to our competitors in Peru's market, encourage domestic political and economic reforms in Peru, and enhance protection for workers and the environment in that country. I hope that after examining the Agreement, the Members of this Committee and the U.S. Congress will agree that this is a solid agreement that is strongly in our national interest.

Let me conclude where we began. Peru is a country heading in the right direction. Peru's leaders and its people are making the right choices. Just last month, faced with the choice to continue the economic and political reforms instituted by President Toledo or to follow an alternative, anti-market and anti-democratic model promoted by others in the region, the people of Peru elected a new president with a strong mandate to promote free market principles and a stronger democracy. Today, it is our turn to choose. We can turn our back on Peru by rejecting this Agreement or we can seize this opportunity to strengthen our partnership with Peru and help promote economic growth, prosperity and political stability in Peru and throughout the Andean region. I look forward to working with you Mr. Chairman, Ranking Member Rangel, and the other Members of this Committee to achieve strong bipartisan support for this Agreement.

Again, thank you for the opportunity to testify today.

Chairman THOMAS. Thank you very much. The Chair would recognize the gentleman from Florida, the Chairman of the Subcommittee on Trade, with the understanding that the Chair intends to enforce the normal rules of the Committee in terms of 5 minutes for questioning of the witness. Gentleman from Florida.

Mr. SHAW. Thank you, Mr. Chairman. I doubt I will take my 5 minutes. Mr. Eissenstat, your comments were very inclusive, and I think covered most of the things that were brought out and discussed and questioned on the opening statements.

Looking at the Andean Free Trade Agreement and comparing it with the agreement that we have today, other than—that we have before us today, what advantages, other than the fact that the Andean Free Trade Agreement terminates at the end of this year, what advantages or what difference are Peruvian exports to the United States going to differ under this agreement?

Mr. EISSENSTAT. Thank you, Congressman Shaw, that is a very good point. As you know, what we currently have with our trade regime with Peru is a unilateral preference program whereby their imports come into our country virtually duty free. We don't have that same reciprocity with Peru. Under the terms of this agreement, the preference program will turn into a two-way street. Many of our goods and services exports will be duty free. The agreement also opens up opportunities for services, provides manufacturers, as well as agricultural producers.

So, it is a very solid agreement on the trade front.

In addition, this agreement provides tools that we do not currently have to address labor and environment concerns that the United States may have or that may arise under the agreement. So, it is a very solid comprehensive agreement that addresses many concerns and reaches far beyond the current trade regime that we have with Peru today.

Mr. SHAW. So, is it correct to say that this imposes certain restrictions and requirements on Peru that are not now required under the Andean free trade agreement?

Mr. EISSENSTAT. Yes, Congressman Shaw, that is correct. There are provisions in here to not only enforce your own laws but there are cooperative provisions, labor capacity provisions, and a number of cooperative activities that need to be undertaken in the labor environment regimes that aren't part of our current preference program.

This is in addition to on the trade front elimination of the price band for agricultural products, and duty free treatment for virtually 90 percent of our current trade for agriculture. So, there is really a broad panorama of benefits that we receive under the trade promotion agreement that we simply don't have under the preference program today.

Mr. SHAW. Under the Andean free trade agreement, we got no consideration for our exports; is that correct?

Mr. EISSENSTAT. That is right. It is a one way program. This agreement will turn that one way program into a two-way trade relationship.

Mr. SHAW. The Gentleman from Illinois spoke about the tariffs that were placed on Caterpillar equipment going into Peru. I would say that, and I would certainly guess that Caterpillar and other American manufacturers, automobile manufacturers, are going to be much more competitive and will enjoy a much larger export into Peru because of this agreement. Is this a logical assumption?

Mr. EISSENSTAT. Absolutely, Congressman, that is exactly right. As you know, under the agreement 80 percent of consumer and industrial goods will become duty free immediately. All other industrial goods and consumer exports will be phased out over 10 years, which is a very significant achievement; but I would like to point out, in addition to just duty reductions, this agreement provides for the elimination of non tariff barriers.

For example, there are customs cooperation provisions, transparency, anti corruption provisions, as well as enhanced investment protection and elimination of a number of services barriers. So, the agreement really provides new opportunities and not just for big manufacturers. Today 80 percent of the exporters to Peru are small businesses, which amounts to a little over 4,000. For small businesses, elimination of these nontariff barriers are very significant. This agreement creates opportunities across the board for workers, farmers and exporters in the United States.

Mr. SHAW. Finally, this agreement then would help us on our end balance of trade, cut down on our trade deficit and promote American jobs. Is that a correct assumption?

Mr. EISSENSTAT. Exactly right. This agreement, as the ITC study demonstrates, would reduce our trade deficit with Peru by 25 percent.

Mr. SHAW. Thank you. I yield back, Mr. Chairman.

Chairman THOMAS. Thank the gentleman. Gentleman from New York wish to inquire.

Mr. RANGEL. Thank you, Mr. Chairman, and congratulations for assuming your new responsibilities.

Mr. EISSENSTAT. Thank you.

Mr. RANGEL. I am particularly impressed with the fact that you worked for Chairman Jim Kolbe and Senator Grassley and might able to be of some assistance to us to get over the legislative problems that we have in presenting our views to you.

I assume it makes your job easier when you are dealing with the House and Senate in a bipartisan way.

Mr. EISSENSTAT. Ranking Member Rangel, it does. I have enjoyed working in the House. I have enjoyed my work in the Senate, and in fact, it is an honor to be here today. I hope that the experience I have gained will enable me to work with you on a bipartisan way to advance our common agenda through the trade agreements.

Mr. RANGEL. How long have you been with the USTR?

Mr. EISSENSTAT. I started there in January of this year.

Mr. RANGEL. During that period of time, have you ever hurried up the USTR meeting with Members of this Committee on trade issues, Republicans and Democrats, together?

Mr. EISSENSTAT. Well, I have actually been focused on my current portfolio——

Mr. RANGEL. Just have you ever heard of it? Anybody?

Mr. EISSENSTAT. I have certainly heard of meetings with Members of Congress——

Mr. RANGEL. I know, Republican Members and Democratic Members, the magic word is "together."

Mr. EISSENSTAT. I am confident those meetings have taken place. I am confident they have.

Mr. RANGEL. You are? Based on what rumor?

Mr. EISSENSTAT. Congressman——

Mr. RANGEL. I am going leave that alone because we want to start this thing off right.

Having said that, do you think that it is right for Democratic Members of Congress to have to deal with foreigners as it relates to their trade interests? Do you believe that the proper people for us to basically deal with is your office? If we have an interest in what you are negotiating with a foreign country?

Mr. EISSENSTAT. Congressman, I know that during my work in the Congress, we frequently consulted not only with foreign governments, but also with the USTR. I think that is part of the process.

Mr. RANGEL. Let's put it the other way around. Should we not deal with the USTR and then also consult with foreign governments?

Mr. EISSENSTAT. I certainly think that the consultation process is very important on both fronts.

Mr. RANGEL. Well, if you really believe that, you can help us to get closer together.

Do you think that the basic difference between Democrats and Republicans on this Committee, and perhaps on the floor, being the question of labor standards and environment, do you think that is basically the issue?

Mr. EISSENSTAT. I think there is a lot to support in this agreement. I think that when we have an opportunity to review it, Members will find——

Mr. RANGEL. I said, do you think that basically the difference that we have is in the area of labor standards?

Mr. EISSENSTAT. I think there is a lot of interest in labor on both sides of the aisle——

Mr. RANGEL. Let me try it again. Do you think that the basic difference between the Democrats and Republicans as relates to this and any other trade bill is the inability to get the language which we think is just basic and protecting laborers, do you think that is the basic difference? Have you known, read or experience where language has come into those bills that protect basically the ILO standards, that Democrats have voted for those for those bills? Isn't that a part of your legislative memory?

Mr. EISSENSTAT. We have worked, and I worked, to find ways to——

Mr. RANGEL. I asked a question. When language has been put into those bills, albeit with a lot of resistance, have you not seen an increase dramatically in Democrat support for those bills that included this type of language?

Mr. EISSENSTAT. Well, we have seen different variations. For example, in the Chile agreement there was strong bipartisan support. There has been——

Mr. RANGEL. Hasn't it been based on labor standards that you have seen the difference in the bipartisanship?

Mr. EISSENSTAT. Well——

Mr. RANGEL. Don't let me give up on you, Mr. Ambassador. I am going to assume that what I am saying is correct unless you can challenge it so that I can move on. Is it true that President Toledo gave a public statement, certainly gave it to us, he said it publicly, that he was willing to accept the standards as outlined by the ILO, you know which area that I am dealing with, and somehow that did not find itself into, the agreement, is that a fact?

Mr. EISSENSTAT. My time has expired but with the permission of the Committee, I am happy to answer. I think, we try to address a lot of concerns raised by many different Members on both sides of the aisle. President Toledo did not make an offer to include ILO standards——

Mr. RANGEL. He did or did not?

Mr. EISSENSTAT. He did not.

Mr. RANGEL. It was reported that he did by Democratic Members and by the press and by—gee, the assistant is more difficult than I thought.

He made remarks in front of U.S. Chamber of Commerce in early September, 16, I hope you have time to meet with us privately, we haven't made much progress here today. Thank you.

Mr. EISSENSTAT. Thank you.

Chairman THOMAS. The Chair would now recognize the gentleman from Connecticut. Prior to that would the gentleman yield briefly?

Mrs. JOHNSON OF CONNECTICUT. The gentlewoman would yield.

Chairman THOMAS. In the short time that you have been with USTR, are you familiar with the organized letter writing campaign by the minority staff to every government official that we have attempted to negotiate in an official and formal way and the pen pal structure of continuing to bash foreign officials if they don't write the letters exactly the way the minority staff wants them written? Are you familiar with that in your recent experience?

Mr. EISSENSTAT. Chairman Thomas, we have seen some letters from Members of the Committee to foreign government officials on specific issues, yes.

Chairman THOMAS. Thank you.

I thank the gentlewoman.

Mrs. JOHNSON OF CONNECTICUT. Mr. Eissenstat, in the materials provided by your office to us, it makes clear that eight of the ILO core conventions have been ratified. Is that not so?

Mr. EISSENSTAT. That is right.

Mrs. JOHNSON OF CONNECTICUT. Those are the same eight that were ratified by Chile?

Mr. EISSENSTAT. That is correct.

Mrs. JOHNSON OF CONNECTICUT. When those standards are ratified, they become part of the Peruvian law, and therefore, the provisions in the trade agreement to enforce our laws is the equivalent of the requirement to enforce the ILO core standards, is that correct?

Mr. EISSENSTAT. Yes, Congresswoman, that is correct.

Mrs. JOHNSON OF CONNECTICUT. It is difficult to really understand what some of my colleagues on the other side of the aisle are concerned about when it is very clear what progress Peru has made on labor standards, has there been the same effort in this agreement that there was in the CAFTA agreement to address the issue of institutional capability to enforce?

Mr. EISSENSTAT. Congresswoman, that is an excellent point. We have built into the agreement provisions for capacity building and cooperation that mirror some of the CAFTA provisions. We are committed to working with the Peruvian government to increase their institutional capacity to enforce their own laws. As you point out, they have a very strong labor regime, having ratified all eight of the ILO core provisions as well as taking additional steps to strengthen their labor laws.

Mrs. JOHNSON OF CONNECTICUT. Could you give us a little flavor of what institutional building means? What is it that the agreement requires of Peru that would give us confidence that they will improve their ability to enforce their labor laws? At the same time, so I can get my questions in and you can manage the answer in the time remaining, my friend from Michigan cites the compensation fund established by Peru.

Now, we have a parallel approach in American law through the Trade Adjustment Assistance Act to help those areas of industry or agriculture that are specifically disadvantaged by the competition

of foreign guides. We do that routinely. We help those employees get retrained, we help that industry strengthen itself to be able to compete and so on and so forth. This compensation fund that the government of Peru has established, according to my colleague from Michigan's statement, which I didn't get a chance to read all of, but he says that the small farmers see it as completely inadequate.

What is the discussion going on in Peru? What is the commitment of the Peruvian government to a trade adjustment approach so that those affected by trade negatively, as there always will be as we open markets, will get the support they need to assure that they can support their families and be strong economic partners in their communities?

Mr. EISSENSTAT. Thank you. Excellent questions. First, let me address the issue of what in the agreement will actually enable us to move forward on labor issues with Peru.

First, as you know, any violations of a labor commitment—their failure to enforce their own laws, which are quite strong, will allow us to go to consultation under the dispute settlement provisions if it is necessary and ultimately to impose a fine, which we have some control over how that fine is to be utilized. It actually goes to the root of the problem, to remedy the underlying problem, which is a better result than simply leaving the practice in place with sanctions, but there are also are other constructive ways to solve labor problems in the Agreement. For example, we have the formal consultation mechanism, capacity building, a senior level labor affairs council where we can consult on a number of issues to advance labor rights in Peru. These mechanisms are going to be created as a result of the Agreement.

Addressing quickly your point on what the Peruvian government has done and what they intend to do to ensure that the benefits of this agreement go to the broadest range of people. First, let me point out if we do not pass this agreement, they are going to lose many good export jobs that will put a lot of people in very dire straits. So, I think they are counting on our passage of this agreement to ensure that they can keep those jobs.

In addition, the Peruvian government has passed a $160 million compensation program to help aid small farmers. President-elect Garcia has undertaken a number of initiatives. It is not just about being able to produce, but how you produce and can you get financing and can you get your products to market. These are the kinds of things we are going to be able to work with the Peruvian government on.

President-elect Garcia has talked about building highways from the highlands to the ports so they can actually get their products from the poor areas of the country down to the waterfront and to the export markets to be able to compete more effectively. In addition President Garcia has talked about a titling program that will enable a small farmer to be able to get financing that they simply can't get today.

So, there are a number of ways we can work with them through this agreement.

Mrs. JOHNSON OF CONNECTICUT. Thank you. My time has expired. Thank you, Mr. Chairman.

Mr. SHAW. [Presiding.] Mr. Levin.

Mr. LEVIN. Thank you, Mr. Shaw.

Just quickly for you, Mr. Eissenstat, and I hope everybody else, why this core labor standard issue matters to the United States, in four respects: It matters to the workers in a country if they have their rights; it matters to that Nation; it matters to our businesses that need middle-classes to sell to; and it matters to our workers who don't want to compete with entities in nations where the workers don't have their rights. So, that is why the emphasis on core labor standards and how it affects the path of globalization.

It is not a narrow issue, it is not a special interest issue, it is not pushing any buttons. It is a basic issue relating to trying to make globalization work better.

Let me just say about what you said about this agreement and the Generalized System of Preferences (GSP). Mr. Eissenstat, we have dealt with each other, and I welcome you and I congratulate you.

Look, under GSP, it is true that if they are not taking steps to implement the core labor standards, under GSP, we have the unilateral power to withdraw GSP, right?

Mr. EISSENSTAT. That is correct. Withdraw, suspend or limit.

Mr. LEVIN. Okay. So, for you to say that enforce your own laws is a stronger standard than is presently in GSP, is not correct. You say "effectively" in your testimony, it is effectively enforced. The agreement will require Peru to enforce its laws effectively. They could make their laws worse and they would be meeting the requirement of the FTA, right?

Mr. EISSENSTAT. Congressman, that is not the case with Peru.

Mr. LEVIN. No, no, no, I am not saying Peru would do that. Just answer the question. If a country under the standard enforce your own laws makes them worse, we have no remedy, right?

Mr. EISSENSTAT. First let me say that——

Mr. LEVIN. How about yes or no?

Mr. EISSENSTAT. We have multiple mechanisms, including the consultation mechanism.

Mr. LEVIN. You can't do anything if the laws are made worse, right? Except to consult?

Mr. EISSENSTAT. There are provisions and obligations in the Agreement that strive to improve upon their labor regime.

Mr. LEVIN. That is not enforceable, right?

Mr. EISSENSTAT. It is subject to consultation.

Mr. LEVIN. But not enforceable. Here is my point. Look. We have made some progress talking about this issue, but let's have straight talk. There is nothing we can do if the laws are made worse.

I want to read to you a quote from Toledo that the Chairman talked about when he came before the Committee, he asked us not to straitjacket. We are talking about last basic ILO standards, the right to negotiate, the right to bargain, child labor, forced labor and anti-discrimination. The basic standards. By the way, the conventions themselves are not enforceable laws. Those conventions have been signed in Peru when Fujimori strangled the rights of workers in Peru. I want to read Toledo's statement, the president, whom I had the privilege of meeting with whom I admire. We failed to take

him seriously on this and create a bipartisan foundation for trade. This is an exact quote from a Chamber of Commerce document of what the President said.

"We can incorporate into the Andean free trade agreement a page or a paragraph that includes meeting the international standard of labor requirements. We are members of the ILO and we have to comply with it so we can incorporate it."

Let me just ask you quickly, to change the subject for a moment, on the medicine issue and the provisions there, there are a couple of side letters. We raised this issue with Morocco, the ability of a county and its people—by the way, do you know the rate of poverty today in Peru?

Mr. EISSENSTAT. It is around 50 percent.

Mr. LEVIN. Right. Extreme poverty?

Mr. EISSENSTAT. I believe if my memory is correct, it is about 30 percent.

Mr. LEVIN. I believe actually it is not quite that high. That is why this matters.

Including about medicines, there are two side letters. We raised this issue when Morocco came up. Are those side letters enforceable the same as other provisions in the agreement?

Mr. EISSENSTAT. I am sorry, could you identify which side letters exactly?

Mr. LEVIN. It is on prescription medicine. It is on the access to generics.

Mr. EISSENSTAT. The understanding is a bilateral commitment, and it is a clarification of the agreement.

Mr. LEVIN. Is the language in those——

Mr. SHAW. The time of the gentleman has expired. The Chairman said he is going to enforce the 5-minute rule.

Mr. Herger.

Mr. HERGER. Thank you, Mr. Chairman. Mr. Eissenstat, thank you for joining us. As a result of the PTPA, U.S. exports stand to grow by $1.1 billion with a corresponding growth in our GDP of $2.1 billion. This is significant for business and growers alike in my home State of California, which ranked fourth in terms of highest exporting States to Peru in 2004 and third in 2005.

I am especially pleased to see that more than two-thirds of U.S. agriculture exports to Peru will become duty free immediately according to the business roundtable crop export from California it could increase by 61.5 percent after implementation of the agreement. This is critical to the almond, wheat and other growers in my heavily agricultural, rich, Northern California Congressional District. For other agriculture, such as rice, which is similarly a key commodity in my district, we will still see faceouts only stretched out over a longer time. However, the end result will be the same: Increased market access for U.S. growers.

I am also pleased that we have such a willing friend in Peru, noting that the Peruvian congress overwhelmingly approved the trade agreement on June 28th. There is no question that for Peru, the impact of this agreement will extend beyond greater access to less expensive goods from the United States.

Speaking generally, what, in your view, what is your view on how this agreement will help foster greater economic and political stability, both for Peru and the region?

Mr. EISSENSTAT. Thank you, Congressman. This agreement, as you know, provides for significant benefits to the agriculture community. Not only does it provide for immediate duty free access for a lot of our products, but also, as you point out for rice, preferential access under a pretty significant TRQ.

So, it is quite an impressive agreement on agriculture. As far as stability in the region, I think there is no question that passage of this agreement is critical to providing a stable economic environment in Peru.

When you look at the alternative, which is the uncertainty of a preference program versus the certainty of an agreement, investors will know what the future is going to look like so they can make business decisions, based upon open markets and opportunities that they don't have today. It is going to create new opportunities for Peruvians, it is going to help, as you note, a lot of people that have been lifted out of poverty because of the preference programs, and I believe that this will help bring even more people out of poverty and create more opportunities.

The institutional reforms that have been undertaken by President Toledo are profound. The labor reforms are very significant. He has worked to enhance the democratic institutions. We believe President-elect Garcia is committed to that as well.

Clearly, a cooperative arrangement through a trade agreement provides us with a much better ability to continue to work with the Peruvian government than were we to reject this agreement, which President Toledo himself has strongly endorsed and noted is very important to the future of his country. So, I think it is quite significant in many different ways just beyond trade. For stability in the region, it sends a strong message to others in the region that if they make the right choices, if they seek to engage with the United States, there is opportunity and there is a benefit, which is a very important factor today.

Mr. HERGER. Thank you. Let me ask another question. Some of the concern that we hear from Members on the other side of the aisle has to do with labor. Isn't it correct that as we look in past decades, that agreements, as our trade has improved with countries like Japan, looking to post-World War II, to China, to a number of countries that were under developed at that time, that we have seen by the natural process labor wages increase just through competition in these countries?

Mr. EISSENSTAT. It has a very significant effect. I think a profound example is countries like North Korea and South Korea. If we look at the border between North and South Korea, the difference is clear between the ability of the people to participate in the economy and provide a working salary for their family. Then you take a look in Latin America, a country like Chile, that has embraced open market and democracy, it has been able to bring many of its people out of poverty. We expect that trend to continue.

Mr. SHAW. The time of the gentleman has expired. Mr. McCrery.

Mr. MCCRERY. Mr. Eissenstat, you have already talked a little bit about the prospect for increased job creation here in the United States as a result of the Peruvian trade agreement. Doesn't Peru already receive duty free access to the United States market for most of its goods?

Mr. EISSENSTAT. That is correct.

Mr. MCCRERY. Does the United States currently enjoy duty free access for most of its goods to Peru?

Mr. EISSENSTAT. No, we do not.

Mr. MCCRERY. As you stated, this agreement would provide that duty free access to a wide range of goods and services provided by the United States, is that correct?

Mr. EISSENSTAT. That is absolutely correct.

Mr. MCCRERY. Therefore, the logical could conclusion is increased exports to Peru.

Mr. EISSENSTAT. Absolutely. In the ITC report, it solidifies that conclusion.

Mr. MCCRERY. Generally, if we have increased exports, that means increased jobs here in the United States, right?

Mr. EISSENSTAT. That is right.

Mr. MCCRERY. Isn't it true that those jobs associated with trade exports are generally higher paying jobs than the average jobs in our economy?

Mr. EISSENSTAT. That is correct, 13 to 18 percent higher.

Mr. MCCRERY. So, this is a good agreement for job creation of high paying jobs in this country, right?

Mr. EISSENSTAT. That is correct, Congressman.

Mr. MCCRERY. Thank you. I want to talk just a minute about the GSP and the Andean agreement and the labor question. Isn't Peru already a member of the Andean agreement and the GSP?

Mr. EISSENSTAT. That is right. They receive benefits under both preference programs.

Mr. MCCRERY. How long have they been members?

Mr. EISSENSTAT. The Andean preference program has been in effect since 1991. It was enhanced in 2002. I am not clear how long GSP has been in place, but I would suspect a similar timeframe.

Mr. MCCRERY. Has Peru been eligible for those for quite some time?

Mr. EISSENSTAT. Yes, Congressman, that is correct.

Mr. MCCRERY. As was pointed out by a Member of the minority, under GSP, the administration here in the United States can suspend or take other actions if they think a country under the GSP, or the Andean trade agreement, has gone backward in its labor rights, is that right?

Mr. EISSENSTAT. We can withdraw, suspend or limit benefits under the preference programs.

Mr. MCCRERY. Has either Democratic or Republican administrations taken such action with regard to Peru the entire time they have been under GSP?

Mr. EISSENSTAT. They have not.

Mr. MCCRERY. So, why would one believe that the last 15 years experience would be any different going forward, particularly when they agree under this agreement to enforce their own laws and to

have binding dispute settlement with this country under this agreement?

Mr. EISSENSTAT. Well, we believe the better approach is passage of this agreement and the right thing to do to ensure a strong labor regime is to see the opportunities that have been provided by the Toledo regime. They do have very strong labor laws, and we are able to lock those in with the enforce your own law standard and assure they will continue to do so as the agreement continues.

Mr. MCCRERY. Thank you, Mr. Eissenstat.

Mr. SHAW. Mr. McDermott.

Mr. MCDERMOTT. Thank you, Mr. Chairman. I am sure my colleague from Louisiana doesn't mean to imply that if something hasn't happened, we should give it up and forget it. If something is a good thing to do, maybe you should push a little harder. There is oversight and questions that might be raised about that, but let me move to something else, to something that Mr. McCrery alluded to.

Presently, the Majority Leader in the Senate, Mr. Frist, said we are going to be done in September and the Majority Leader in the House of Representatives, Mr. Boehner, has said we are going to be done in September. Being a little bit practical and having hung around these halls for a while, I sort of doubt this is going to get done by then. So, the question is what happens to the Andean agreement and GSP? Both of those are either set to expire, one on the 1st of October, and the other the end of the year, and it is my question, do you have a fallback plan or are you just going to let those things hang or fall on the basis of this agreement?

What is the strategy of the Trade Representative? Usually, and I will tell you that GSP has been here since 1971, usually quite a bit in advance the administration puts forward an extension bill. We see nothing coming out of you, nothing coming out of the Committee. So, it looks like you are just trying to get rid of GSP and force the Peruvians and some others into these individual national agreements.

Mr. EISSENSTAT. Thank you, Congressman. We are trying to take advantage of the opportunity the Trade Promotion Authority provides to expand opportunities for workers, to advance labor, intellectual property rights, and investment.

Mr. MCDERMOTT. I understand your talking points. I am asking you what if you fail in this advancing and all the stuff you are talking about? Just suppose the Congress doesn't act on the Peruvian agreement. What happens then to the exporters and importers from Peru, for instance, or Bolivia, or from Ecuador or anywhere else?

Mr. EISSENSTAT. Congressman, as you know, both programs are created by Congress. Congress is the final arbiter of what happens with those programs. We have heard some Members of Congress, both from the House and Senate, express skepticism over the utility of these programs and their continued viability.

What we hope to achieve through both the Doha round and these agreements are opportunities that provide certainty to investors and certainty to workers. On the expiration of the programs, we certainly want to continue to consult with you and other Members

of Congress as to whether it is appropriate to continue them, and, if so, in what form.

Mr. MCDERMOTT. So, what you are saying to me is that this is a deliberate strategy to get rid of GSP as a structure that the trading world can count on by forcing people either to go with these individual things or to go for the Doha round, is that right?

Mr. EISSENSTAT. The strategy is to provide opportunities through these trade agreements that simply don't exist today.

Mr. MCDERMOTT. What is there in GSP—what additional to GSP is there in this trade agreement?

Mr. EISSENSTAT. There are opportunities for our workers to export to other markets here. This is a big part of what we are seeking to do through these trade agreements. It also opens up markets for service providers.

Mr. MCDERMOTT. You mean like jet engines and computers and those kinds of things we will be exporting to Peru?

Mr. EISSENSTAT. There is a broad panorama——

Mr. MCDERMOTT. Textiles? We will start exporting textiles to Peru?

Mr. EISSENSTAT. We expect to enhance a number of our exports. Today we have exports of machines—somebody pointed out Caterpillar mining equipment. Obviously Peru imports a lot of those. Other exports that are likely to benefit beyond the agricultural goods, include things such as plastic, cotton, cord, grains, computer, high-tech equipment. There is quite a bit.

Mr. MCDERMOTT. My time is almost up. I would like a yes or no. Does the administration support the extension of GSP and the ATPA?

Mr. EISSENSTAT. We are working with Congress to——

Mr. MCDERMOTT. Do you support it?

Mr. EISSENSTAT. Congressman, GSP is not in my portfolio, and we are in a consultation process with the Congress regarding the viability of the program.

Mr. MCDERMOTT. Well, I wonder why they didn't send up somebody to talk about GSP, since is seems so integrally related to this issue. Why would you dodge that question? Shaw the time of the gentleman has expired.

Mr. Camp.

Mr. CAMP. Thank you, Mr. Chairman. Mr. Eissenstat, I am going to sort of add to some of the comments that Mr. McCrery made about the fact that Peru has unilateral trade preferences into the United States and we have tariffs on our goods going back to Peru. I understand that the agreement would eliminate many of those tariffs, particularly on products in the Michigan economy like machinery, computer and electronic products, equipment, furniture, chemicals. Michigan's economy had last year in 2005, an 11.4 million in exports to Peru and today Peruvian tariffs add between 5 and 12 percent to the price of our Michigan products that we are trying to export.

As has been pointed out, the United States has no tariffs on equivalent product from Peru into the United States. According to the U.S. Department of Commerce and the U.S. ITC, a U.S.–Peru TPA would increase exports by the key industries I mentioned earlier to Peru. Those would increase by between 41 and 71 percent,

which is a stunning amount. Obviously, in a State as hard hit as ours, looking for new markets is absolutely critical.

I understand that 74 percent of Michigan's transportation equipment exports would receive immediate duty free treatment, about 84 percent of Michigan's machinery exports would get immediate duty free treatment, and for chemical products, 76 percent of our exports would have immediate duty free treatment into Peru. Obviously, the comment is not just on those numbers, but the jobs that are supported by those exports.

Do you have some idea of how the job creation in the United States might be improved as a result of this agreement?

Mr. EISSENSTAT. Well, thank you, Congressman, that is a great question. The ITC has done an analysis of this agreement that shows that we expect exports to grow by as much as $1.1 billion annually once the agreement is implemented. Those numbers, of course, don't take into account service exports, the elimination of non-tariff barriers, and the investment protections that will be accorded to our innovative industries. So, there are great opportunities for exports, both from Michigan and other areas of the country as well.

Mr. CAMP. I think particularly we have had a great deal of support for unilateral trade preferences to the Andean countries. To have reciprocal benefits in this agreement would seem to me to follow the logic of that very easily. Thank you very much for your testimony and for being here today. I appreciate it.

Mr. EISSENSTAT. Thank you, Congressman.

Mr. CAMP. I yield back.

Mr. SHAW. The gentleman yields back the balance of his time. Mr. Lewis.

Mr. LEWIS OF GEORGIA. Welcome, Ambassador Eissenstat. Welcome. It is good to see you. I wish you well.

I am a little troubled. I don't quite understand what type of message do we send when you will fight tooth and nail to protect pharmaceuticals, software, what type of message are you sending to the community of nations, to workers around the world, that you won't stand up and fight for poor, hard-working human beings?

Mr. EISSENSTAT. Congressman Lewis, I think that the record on our engagement through our trade policy with countries around the world has shown that we send a message that if you want to engage with us, we have certain expectations. We have expectations on labor rights and we expect those rights to be consistent with ILO standards. If you look at Peru's labor regime, they have taken steps that are quite significant.

I just want to cite a couple of points that the ILO itself has said about Peru's labor regime. They have been cited as a "case in progress." The ILO noted with satisfaction the adoption of their labor reforms in 2005. This year, the ILO noted that this was a significant achievement during a regional meeting of the Americas. They also cited Peru, and I would like to quote this, "is a country which has succeeded in rebuilding a culture of dialog between workers, employees and the government."

When we engage with countries in the region, we do address labor. We expect them to have stronger labor rights. We have indicated to Panama and Ecuador that any country that wants to en-

gage with us in a trade agreement needs to have certain standards. These countries recognize that, and they have moved significantly to try to address our concerns.

Peru just recently made a number of very significant steps on its labor reforms. In fact, just this month, Peru passed a new labor inspections law that is quite promising, the law creates separate office for fines and inspections. This will obviously free up inspectors to go out and make sure the laws are enforced. The law creates a national office of inspections to harmonize the inspection processes throughout Peru and professionalizes the labor inspection regime. This is in addition to all of the reforms they undertook in 2003 and 2005. Somebody had mentioned the Supreme Decrees that have been recently adopted to address some of the ILO concerns that have been raised. I think that is a broad sweep forward. Our engagement on the trade front has had a lot to do with that, and I think when the agreement becomes part of our dialog, we will have further opportunities to advance labor issues.

Mr. LEVIN. Will the gentleman yield?

Mr. LEWIS OF GEORGIA. I yield to my friend.

Mr. LEVIN. Mr. Eissenstat, if you listen to your language, they need to have certain standards, ILO standards. You expect them to. You don't negotiate that they shall have them with reasonable transition as part of the agreement. In fact, you tabled the opposite, enforce your own laws, as the standard, not what you say you expect or they need to have.

Could I ask Mr. Lewis to give me 30 seconds to ask you, enforce your own laws, is that standard used in any other section of our FTA, other than labor and the environment?

Mr. EISSENSTAT. Well, two points. First, we follow the guidance——

Mr. LEVIN. I know, but answer my question, is that standard used in any other part of the FTA?

Mr. EISSENSTAT. It is used in the environment and labor——

Mr. LEVIN. Other than the environment and labor. Is it used in the FTA in any other provision?

Mr. EISSENSTAT. We follow the guidance. I don't believe the guidance directs us to do that in other areas.

Mr. LEVIN. So, the answer is no?

Mr. EISSENSTAT. If you look at trade agreements around the world and the labor and environment provisions, you will note that the United States is one of the leaders in this area.

Mr. LEVIN. We have known each other a long time. Answer yes or no: Is enforce your own laws used in any other section or provision of the U.S.–Peru FTA? Yes or no?

Mr. EISSENSTAT. It is not to my knowledge. We follow the guidance of Congress.

Mr. LEVIN. The answer is no?

Mr. EISSENSTAT. That is my understanding.

Mr. LEVIN. Thank you for yielding.

Mr. SHAW. The time of the gentleman has expired.

Mr. Ramstad.

Mr. RAMSTAD. Thank you, Mr. Chairman. Mr. Eissenstat, it is nice to see you again. Congratulations on your new position.

In my judgment, the United States has no better ally in South or Central America than Peru. There is no better champion in the region of democracy, economic growth and stability than President Toledo, and there is no better Ambassador to the United States than Ambassador Ferrero. I know a lot of us who worked closely with Ambassador Ferrero are going to be sorry to see him leave in 2½ weeks when the new administration takes over.

Over the last 5 years, I have seen firsthand President Toledo's commitment to improving the lives of the people of Peru and to substantially reducing poverty. My family and I have traveled to Peru over the last dozen years at least three times. Twenty other families in our community in Minnesota have adopted Peru for our mission work, did adopt Peru for our mission work many years ago.

I traveled at my own expense, I might add, because I believe I have been able to get to know many of the people of Peru a lot better than on any congressional delegation trip where sometimes it becomes a dog and pony show and you see what they want to show you.

I have been to Flores de Vios many, many times, the shantytown on the outskirts of Lima where the poorest of the poor live; dirt floors, cardboard shacks, average income, $400 a year for a family of four. I have been to Sima many times, the orphanage for abandoned street children, where we have established relationships with many of the children and Father Louis and the staff there. So, I think I know Peru as well as anybody on this Committee, the people of Peru.

I myself know and have seen that the living standards have improved under President Toledo. I know that Peru's economy has dramatically improved. Peru is much more stable than it was, certainly than in the pre-Toledo years. I think there is no question that the Peru FTA, trade promotion agreement, will help achieve President Toledo's vision of a strong democracy, strong economic growth and stability in the region. No question in my mind. It is a win-win. Win for the United States and a win for the people of Peru. It will increase the living standards and decrease poverty in that country.

I want to ask you, Mr. Eissenstat, if seems to me that the 300 pound gorilla in the region is also relevant in this discussion today in terms of the stability of that region, certainly it is very relevant to this discussion today, and of course, I am alluding to the president of Venezuela. No question that we need a counterbalance to the Venezuelan President's power in that region, his attempt to move South American countries away from the democratic west and toward his autocratic regime and his dictatorial practices.

Let me ask you this question: As President Chavez continues to put intense political pressure on his South American neighbors, as he continues to exert through sheer unabashed bribery and other tactics such pressures, do you believe this agreement will provide that counterbalance to Chavez's pressure to move South American countries away from democracy and toward more autocratic governments?

Mr. EISSENSTAT. Congressman Ramstad, that is an excellent point. I think you have hit on a fundamental issue that I hope doesn't get lost in this debate. There truly is a battle of ideas in

the region today. Countries are choosing how to engage in the world economy and the kind of democracy that they want to see. I am confident the agreement will help solidify the institutional reforms that President Toledo has taken. I am even more confident the rejection of this agreement will send a signal to this region that are thinking about which way to go, that if you undertake labor reforms, if you institutionalize democracy, if you embrace your relationship with the United States, it doesn't matter. This is not the message we need to send to the region.

This is a very important time. There is a lot of transition. We need to stand with our allies like President Toledo that are ready to stand up and make the right decisions and lead their economies and people toward stronger democracy and more open markets and a better relationship with us as well.

Mr. RAMSTAD. I appreciate your recognition of that important factor in this discussion, and certainly President-elect Garcia, his administration is counting on us as well. I thank you for the good work you are doing, Mr. Eissenstat, and look forward to working with you on this.

Chairman THOMAS. [Presiding.] The gentleman's time has expired.

Mr. Neal.

Mr. NEAL. Mr. Eissenstat, in January, several Ways and Means Democrats sent a letter to the prime minister of Peru outlining concerns about aspects of the labor elements of this agreement that appear to violate core ILO standards. The Peruvian government responded with a document addressing these concerns dated July 7th. The Peruvian government dismissed several of these concerns by saying that they had been addressed by "Supreme Decree." The document also references several laws the Peruvian constitution, constitutional court decisions, constitutional tribunal cases, the criminal code, and Peru's ratification of several ILO conventions.

Since we are relying on the sturdy necessary and steadiness of the applicability and enforcement of these assurances and knowing that Peru has a very strong executive, could you please tell me more about these Supreme Decrees? First, how are they passed and by whom?

Mr. EISSENSTAT. The Supreme Decrees are part of the executive branch process to clarify provisions of the law and to implement legislation.

Mr. NEAL. That wouldn't be similar to presidential signings, would it?

Mr. EISSENSTAT. Honestly, Congressman, I would have to get back to you on this particular point of procedure.

Mr. NEAL. Perhaps most importantly, what are the legal effects?

Mr. EISSENSTAT. These become the law of the land and they are directives and guidance to be followed in carrying out the legislation.

Mr. NEAL. Are they subject to any sort of legislative oversight or review?

Mr. EISSENSTAT. Congressman, if it is okay, I would really need to analyze this a little bit. I would like to get back to you in writing, if that is all right.

Mr. NEAL. Sure. A couple of others that are more yes or no answers. How can they be amended?

Mr. EISSENSTAT. A Supreme Decree, again, I would prefer to respond in writing.

Mr. NEAL. Is there a process for rescinding them?

Mr. EISSENSTAT. Again, I would prefer to get back in writing.

Mr. NEAL. That is fair to get back to me on that. These are very important considerations given the fact it seems the executive is granted considerable authority in each instance and whether or not he is subject to legislative review is an argument that is across the whole hemisphere. So, you will get back?

Mr. EISSENSTAT. Absolutely, Congressman.

Mr. NEAL. Thanks. Thank you, Mr. Chairman.

Chairman THOMAS. I thank the gentleman again. In the written response, other Members of the Committee would be interested in the answer as well.

Mr. EISSENSTAT. Thank you.

Chairman THOMAS. Does the gentleman from Texas wish to inquire, and would he yield to the Chairman briefly?

Mr. JOHNSON OF TEXAS. Certainly.

Chairman THOMAS. I apologize for not being here the entire time, but I did hear the tail-end of a discussion between the gentleman from Michigan, I believe on the gentleman from Georgia's time, in terms of the argument made quite often in terms of enforce your own law regarding labor, and the statement was made is there any other area like this.

I hope, Mr. Eissenstat, you will recall your time with the Chairman of the Committee on Finance, since he is a gentleman from Iowa is very concerned about agriculture products and sanitary and phytosanitary problems.

I think there is a very close analogy, since we utilize the scientific standards of the World Trade Organization (WTO), but in no way could we appeal to a higher standard in terms of trying to enforce upon Peru the acceptance of beef older than 30 months based upon the WTO standards, since you simply can't deal with that kind of specificity, which is very similar to the concerns in terms of labor. That is why those of us from agricultural areas are very aggressive in making sure prior to the agreement that the country with which we are entering into agreement has adopted the scientific standards and gone to specific details.

Oftentimes it requires a compromise. The Peru agreement is a good example. Currently beef over 30 months is not part of the agreement. We will work to change that.

So, there are many areas where, notwithstanding the fact that——

Mr. POMEROY. Will the gentleman yield?

Chairman THOMAS. In a minute, but it is the gentleman from Texas's time. We profess to want to have certain things in an agreement and statements are made to that effect. The agreement has to be carefully negotiated, and in front of us is an agreement carefully negotiated in a number of areas. Our goal is to get Peru to enforce its own laws in the area of sanitary/FITO-sanitary, as well as other areas.

I thank the gentleman from Texas for yielding.

Mr. POMEROY. Would the gentleman from Texas allow me to ask just a pointed question on beef imports?

Mr. JOHNSON OF TEXAS. I will not, unless I have extra time.

Mr. POMEROY. Mr. Chairman, will you give extra time to the gentleman?

Chairman THOMAS. The gentleman will have time on his own very shortly.

Mr. POMEROY. It is just my understanding that no beef is coming in under the side letter. You mentioned beef specifically. I thought this would be an opportune moment to clarify that fact question.

Chairman THOMAS. I think there will be others, and the Chair will make sure you have time to clarify that, because it is of mutual concern, especially when we are looking at other countries that, frankly, have been able to get away with a whole lot more without us being very aggressive toward them in responding to those factual issues.

The gentleman from Texas.

Mr. JOHNSON OF TEXAS. Thank you. I appreciate your presence here. I know you are aware about the LeTourneau situation. As you recall, for about 30 years, the company which, is from Rowlett, Texas, has been battling in and out of court with the government of Peru over work it performed without compensation. They built a 40-mile highway in the Peruvian jungle and was to be compensated 1 million acres. In 1970, Peru expropriated the property and refused to pay the company what it was owed.

I spoke with Ambassador Portman many times, most recently in February, and was told you were working on a resolution.

Well, the resolution came this past March. Seeing no chance of full payment once this trade agreement becomes law, LeTourneau was forced to settle out of court for one-third of the amount it was owed. Not surprisingly, they haven't received a dime yet, although it was promised payment by May. With the upcoming change in administration in Peru, I suspect the check will get lost in the shuffle.

By law, countries given unilateral trade benefits like Peru must not have expropriated property owned by a U.S. citizen or company unless they provide prompt and adequate compensation. Clearly, it doesn't appear that any importance has been placed on cases like this before entering into your trade negotiations, and I would like to know why and how do you explain going forward with trade agreements with countries that are blatantly thumbing their noses at honest American businesses?

Mr. EISSENSTAT. Thank you, Congressman. You are right, this is a long-standing dispute. We have engaged with the government of Peru for quite some time on this dispute as well as a few others. We have made a lot of progress. I suspect we will certainly work with you to ensure that LeTourneau does receive satisfactory resolution. We raised this at very senior levels, even as high as the President himself, and we will continue to push and work and make sure the company is treated fairly.

One of the things that the agreement will enable us to do is create an investor State arbitration panel that will provide a remedy if there is unfair treatment. I think it is a good path forward. We

don't anticipate situations like this. We want to work with you to see that all investment disputes are resolved. We appreciate your interest in this very much, and would like to continue to work with you and the other Members to ensure that the LeTourneau case is resolved in an expeditious and fair manner.

Mr. JOHNSON OF TEXAS. Thank you.

Thank you, Mr. Chairman.

Chairman THOMAS. I thank the gentleman for the time.

The gentleman from California, Mr. Becerra.

Mr. BECERRA. Thank you, Mr. Chairman. Mr. Eissenstat, thanks for being with us. I hope at some point we do have an opportunity to vote for a trade agreement with Peru. I know the Peruvian government and its representatives have worked diligently to try to get us to that point. A number of us still hope at some point that President Toledo's pledge to incorporate protections for workers would be in the agreement and be enforceable so we can make sure that not just for American workers, but for Peruvian workers, this deal is a good deal for them as well.

I want to pose a question, if I may, and put it in context. Today we just got the numbers on the size of the trade deficit for this country, and once again, it has gone up. It is approaching $64 billion for this past month of May. That is the third highest monthly deficit we have ever experienced in this Nation's history.

We are on a path to have a trade deficit this year that will show more than $800 billion difference in what we collect from our exports versus what we pay for the imports that we are taking. So, a deficit of over $800 billion. That is about 14 percent higher than it was last year.

Our deficit with China is growing again. It will probably surpass easily $200 billion for the year. That is again up from last year. We are importing about $2 billion worth more of goods than we are exporting on a daily basis. My understanding is that for every six ships that China sends laden with goods that we are buying, of those six ships that go back to China, only one of those six ships has any American products that China will buy. Then when you finally put on top of all of that the fact that this administration in its so far more than 5 years has initiated only 13 cases in the WTO for unfair labor practices—excuse me, trade practices, by our trading partners, in comparison to, say, the Clinton administration, which averaged about 11 cases per year, not total, but per year.

How do we move forward with an agreement that even the Peruvians will admit does not satisfy basic worker rights standards and protections for workers in America or in Peru and given these trade deficits and the fact that these trade agreements haven't offset these massive trade deficits, why should we now move forward with a trade agreement which even the Peru vans agree does not meet the basic ILO standards for workers rights?

Mr. EISSENSTAT. Thank you for the question. There are a couple of questions there. I will try to address them all. If I can on the trade deficit, it is significant. However, it is not necessarily a measure of our economic health. It is something that we watch closely. Over the past 12 months, our real GDP has increased by 3.5 percent. Between 2004 and 2005——

Mr. BECERRA. Mr. Ambassador, I didn't pose a question on the trade deficit. I just stated a fact. We could talk about the trade deficit. It is larger than it has ever been, and while it may mask some realities out there economically, I think no one will deny it is the largest trade deficit we have ever had.

More to the point, why with our trade deficits growing in the face of all these trade agreements we recently signed, why would we want to move forward with a trade deal where even our trading partner who would be a signatory to this acknowledges that its labor protections for its workers are not up to the standards that some of us on this Committee have been asking?

Mr. EISSENSTAT. First on the trade deficit and its effect on our FTAs, there has been quite a significant increase in exports to all of our FTAs that have been entered into.

Mr. BECERRA. Wait a minute. If you are going to say there has been a significant increase in exports, there has been a greater increase in imports.

Mr. EISSENSTAT. That is correct in two cases and not correct in two cases. I will get to the situation with Peru at the end, but I think that with Jordan, we have had a slight increase in our deficit. The same is true with Chile. However, with Singapore, our trade surplus grew by $4.1 billion.

If you compare those two agreements in a period of time in which the trade deficit is growing, you will see that in the countries that we have FTAs with, we have a positive balance on those four agreements.

Mr. BECERRA. My understanding is that most of these trade agreements, take, for example, Mexico, which is an agreement that has been in force for quite some time, our trade deficit, in fact, it was a trade surplus with Mexico before we passed the North America Free Trade Agreement (NAFTA) (P.L. 103–182). Today we have a trade deficit that is larger than it ever has been with Mexico.

Mr. EISSENSTAT. As you know, the trade deficit is due to macroeconomic factors. If I could address Peru quickly, the ITC report points that this will lead to a decrease in our deficit with Peru by 25 percent. Obviously, that number does not take into account, as I say, services, the elimination of non-tariff barriers and enhanced intellectual property rights protection.

Mr. BECERRA. Workers rights?

Mr. EISSENSTAT. On worker rights, I believe they have many times noted that their laobr regime is consistent and very strong.

Mr. BECERRA. So, then why did we just get this letter from the Peruvian government saying that they are going to make some changes to their existing laws? If they are okay, why would they need to send us a letter saying they are going to change their laws?

Mr. EISSENSTAT. I think it goes to a point that was made earlier today that countries recognize these are high priority issues, and they are willing to make clarifications even if they are not necessary. If you look at this letter carefully and see some of the commitments or clarifications they have made, they haven't necessarily made changes in each case.

Mr. BECERRA. So, is it your opinion this letter is unnecessary?

Chairman THOMAS. The gentleman's time is now 1 minute over. I am just trying to focus you, because we are going to have a vote here shortly and all Members wish to inquire.

Mr. BECERRA. Mr. Chairman, I will conclude just asking if Mr. Eissenstat believes that this letter that the Peruvian government send us to address some of their labor issues is unnecessary?

Mr. EISSENSTAT. Congressman, it was sent in response to inquiries from a number of Members, and I think it demonstrates their commitment to see this agreement become law, and their willingness to put in writing efforts to address concerns raised by the Members. I think that is a valuable thing to do, and I hope that we will have an opportunity to talk about that and other aspects of this agreement as we go forward.

Chairman THOMAS. The gentleman's time has expired.

The Chair will indicate that we are going to have a series of votes on the floor, and I believe a number of Members, including the gentleman from North Dakota, wish to inquire.

Does the gentleman from Pennsylvania wish to inquire?

Mr. ENGLISH. Yes, Mr. Chairman, briefly. I won't ask for equal time.

Mr. Eissenstat, your presentation has been very illuminating. Perhaps you could help me clarify some of my confusion with regard to aspects of the labor rights and enforcement embedded in this agreement.

It strikes me that from what I have been able to determine so far, that Peru actually has stronger labor protections and stronger labor laws on the books than in some instances Chile did, and our agreement with Chile was seemingly substantially less controversial.

Is it fair to say that Peru has a more comprehensive right to strike provision than Chile in that it extends those protections to public workers, for example?

Mr. EISSENSTAT. That is right.

Mr. ENGLISH. Also, as you know, I have been concerned with the issue of child labor. Can you describe for us the programs that Peru employs with regard to enforcing child labor laws and their use of designated child labor inspectors?

Mr. EISSENSTAT. That is a very good point. As you know, President Toledo himself rose from poverty and worked his way to become president of peru, which is quite significant.

They have undertaken a number of initiatives on worker rights and especially relating to children, including increased inspections, and new legislation to enhance penalties for the exploitation of children should that occur. They have had more numerous raids and they have undertaken more institutional reforms to ensure that the rights of children are respected.

Mr. ENGLISH. These things suggest that maybe the way Peru is being represented here is, well, perhaps a little unfair. Much of the benefit of the agreement that you have presented in your testimony, Mr. Eissenstat, is directed to agricultural producers. I have I know we have a number of agricultural districts represented here.

I wonder if you can describe how this agreement is going to benefit a manufacturing district like mine in northwestern Pennsylvania?

Mr. EISSENSTAT. Congressman, that is an excellent point. It is not just about the agricultural exports, but for manufacturers, as I noted, 80 percent will become duty free immediately. The phaseout for the remaining exports is over 10 years, which is a rapid phaseout period. That will immediately reduce costs to exporters to Peru, particularly from Pennsylvania. I will give you an example. This is from a business association that has done some analysis of the benefit of the agreement. It noted that for manufacturing, particularly machinery, they expect an increase in exports of 55.1 percent under this agreement. It is very significant. That means a lot of jobs in Pennsylvania and that is just exemplary of the types of benefits that will accrue to workers in Pennsylvania and throughout the country.

Mr. ENGLISH. Well, I appreciate your analysis. Of course, my district isn't exclusively manufacturing. We do have a significant agriculture component. Getting back to some of the issues that have been raised here previously, I notice that Peru currently has a price band system on trade with the United States. Could you explore in a little more detail what that means to agricultural exports into Peru and how will this agreement effect the price band system?

Mr. EISSENSTAT. It is an excellent point. It is one of the most significant aspects of the agreement, is that it does eliminate application of the price band to our exports. Peru is the first country to make that commitment.

The price band is a variable tariff that depends on the price of a commodity worldwide. So, an exporter that is looking for a market opportunity, if they tried to export to Peru under the present regime, they would have a variable tariff. They wouldn't have certainty as to what the profit margin would be, whether it would be in their interest to do the export.

What the agreement does is eliminate that uncertainty and lets the exporter know what the market is going to look like. The tariff eventually gets to zero, and that provides opportunities that are not only better than what we have today, but better than a lot of our competitors in the region. So, it is a very significant aspect of this agreement, and I appreciate your raising it today.

Mr. ENGLISH. Mr. Chairman, you have been generous yielding me time, even as Mr. Eissenstat has been very generous with his observations. We are very grateful for the presentation. I yield back the balance of my time.

Chairman THOMAS. Does the gentleman from Illinois wish to inquire?

Mr. WELLER. Yes. Thank you, Mr. Chairman. I appreciate the opportunity, considering you were very generous with time earlier.

Mr. Eissenstat, welcome. I think this is your first time before this Committee so we are pleased that you are with us today.

Some have advocated just abandoning and walking away from this agreement that was put forth by President Toledo, his negotiators, as well as our negotiators, and just extending the current Andean trade preferences that Congress created in preparation for

negotiating these bilaterals. We now have a signed agreement with Peru, we have a signed agreement with Colombia. Ecuador, we have had negotiations with on a bilateral basis, but with the issue of $1 billion in U.S. assets having been seized by the government, that has been stalled. Bolivia, its new government has chosen to listen to the siren song of the Marxist rhetoric of the current president of Venezuela and to place its economic future on a medieval-style barter system between Cuba and Venezuela and Bolivia.

So, let me ask this question: Compare when it comes to labor. You know, we have talked about the fact that when it comes to the core conventions of the ILO that Peru has ratified all eight of them; that they have enacted 30 reforms; just in the last few years, they have ratified 71 ILO conventions; and, of course, they have made tremendous progress considering what occurred before in the Fujimori years. President Toledo has made that a real priority.

My understanding is, just looking at the facts, that the Andean Trade Preference Act, which gives special preferences to Peruvian products, for example, 98 percent of their products enter the United States duty free, whereas the vast majority of our manufactured and farm products enter their market with an average of 8 percent tariff. So, U.S. workers suffer, while Peruvian workers have an opportunity.

As a result of that, it has created a deficit because they have had these advantages while we have not. So, should we fail to ratify this agreement, U.S. workers would be shorted.

Again, those who advocate just extending the current situation, the current Andean Trade Preference Act, also advocate that we put in provisions regarding labor.

Tell me again, under the Andean Trade Preference Act, are there any requirements that countries enforce labor laws or live up to the ILO standards under the Andean Trade Preference Act? Should it be extended, rather than ratifying this agreement?

Mr. EISSENSTAT. No, it is, I believe, a strive-to standard. They are to make progress toward those, but there is no guaranty that they will meet them or that that will occur.

Mr. WELLER. So, there is no so-called enforcement mechanism.

Mr. EISSENSTAT. There is an ability to withdraw or suspend preferences, but, as has been noted, that has not occurred and, frankly, would result in harming many of the workers who were trying to see their livelihoods improved. So, it is not a very effective tool in our view.

Mr. WELLER. Could you explain under the Peruvian Trade Preference Act how the Chapter 21 in the agreements dispute settlement procedures regarding labor—how they would work and when it comes to enforcing enforcement of laws——

Chairman THOMAS. The Chair would request that that information be provided in writing. The Chair has at least two additional Members who wish to inquire, and the Chair is planning on recessing following this panel and reconvening at 1:30. I am interested in those specifics as well, but perhaps they could be transmitted in writing.

Mr. EISSENSTAT. Thank you. I would be happy to.

[The information was not received at time of printing.]

Chairman THOMAS. Then would ask the gentlewoman from Ohio if she has a desire to inquire.

Ms. TUBBS JONES. Mr. Chairman, I do; and I thank you very much.

We are kind of leaning trying to see each other, Mr. Ambassador.

Exports from Ohio to Peru have increased substantially over the last 5 years. In 2001, the exports from Ohio to Peru totaled $17.9 million. In 2005, they totaled $32.8 million, a substantial increase that I hope will continue, which is good for Ohio because we need to employ thousands of workers who have lost their manufacturing jobs over the past several years.

From the USTR's perspective, what sectors do you see benefiting the move from the Peru FTA?

Mr. EISSENSTAT. Many of our industrial and consumer exports will gain a competitive advantage under this agreement. For Ohio in particular their production of machinery, transportation equipment, chemicals, and plastics products all stand to benefit; and we expect to see increases in the export of those products to Peru as well as the agricultural commodities produced in your State.

Ms. TUBBS JONES. Free trade agreements should benefit all groups, particularly medium-sized businesses owned by—smaller medium-sized businesses owned by Latinos and African Americans. How do you foresee these agreements helping those minority groups?

Mr. EISSENSTAT. Congresswoman, that is an excellent question. I think whenever we establish a cooperative and growing relationship with a country in Latin America it enhances opportunities for people with cultural affinity in those countries to engage in ways that wouldn't have been possible without this agreement. It reduces non tariff barriers, it enhances digital commerce, it enables a small business exporter to seize opportunities and enhances certainty that they don't have today. I think for minority workers it is a good opportunity and a good market and one that they will find quite attractive once the agreement is implemented.

Ms. TUBBS JONES. With thanks to the Committee, I had an opportunity to visit Peru, Ecuador and Colombia last year and had a great opportunity to meet President Toledo. All of that being said and all the benefit that inures to Ohio businesses, I still have concerns with regard to labor standards, but because my colleagues have done such a good job on that issue, Mr. Chairman, I am going to forgo any further questioning on the issue. I just want to put those in on the record; and, Mr. Chairman, I yield back the balance of my time.

Chairman THOMAS. The Chair thanks the gentlewoman from Ohio.

Gentleman from Colorado wish to inquire.

Mr. BEAUPREZ. Thank you, Mr. Chairman. Mr. Eissenstat, thanks for your patience and for your consideration here today.

My subject is beef, and I am interested in the side letter dated January 5, 2006, to Ambassador Portman from his counterparts in Peru wherein it appears to me that Peru has acknowledged that the United States has complied both in beef and in poultry with World Organization for Animal Health (OIE) guidelines. I would

assume that that means that they are going to accept unrestricted, appropriately certified beef from the United States.

Is that the condition, though, that the circumstances that are actually in the trade agreement, or are we talking about a different target?

Mr. EISSENSTAT. Congressman Beauprez, that is a good question. As it was pointed out earlier today, the SPS agreement is a bilateral commitment between us and the government of Peru. We expect them to meet that commitment. They have made substantial progress. They are now consulting with the OIE and we are consulting with the OIE to make sure that the regulatory regime is consistent with those standards.

I would note that on a number of SPS issues we have made some progress, including on beef where they have agreed to not only boneless beef under 30 months but recently bone-in beef under 30 months. We have also had the avian influenza ban lifted on poultry, we have had the nontariff barrier to rice removed through these negotiations, and we are going to continue to work to ensure that equivalence is recognized, which it is under the current regime, as well as to make sure that the beef standards apply to their beef imports are OIE consistent. We would be very happy to work with you and Members of the Congress that are interested in those issues to ensure that those commitments are——

Mr. BEAUPREZ. By the time this comes back for final ratification I hope progress is made. You know full well the frustration we have had with many other countries around the world on what I believe has been a political discussion as opposed to one based on sound science. While we in Congress get frustrated by that, it is the producers in places like I live in, in Colorado, Nebraska, Kansas, Texas, that are producing this beef that are suffering the penalty of which I think is unfounded.

I would encourage you again to continue your work before this agreement comes back for final ratification because we very much would like to have ratification. I would be remiss if I didn't say our beef producers are very encouraged, as is all of agriculture, by this agreement, but we very much would like to see progress continue to be made.

Mr. EISSENSTAT. Thank you. I appreciate those comments and look forward to working with you.

Chairman THOMAS. Gentleman yield?

Prior to recessing, the Chair would like to underscore the gentleman from Colorado's comments could be decidedly more pointed.

This Committee and this Congress has had it with Japan. An excuse to go back to the former relationship in terms of refusing to accept beef is now the position that Japan holds, with all kinds of promises that something will happen.

I want to assure the gentleman from Colorado that, as we see Peru with great difficulty able to move to a minimally reasonable position and show interest in moving forward, that Japan should do so likewise immediately. Her failure to do so will be reckoned with by this Committee and this Congress, and I want to underscore that point.

Thank the gentleman for yielding.

Mr. BEAUPREZ. Absolutely. Yield back all my time.

Chairman THOMAS. The Chair thanks the Members for the second panel.

We will recess now until 1:30 and reconvene at 1:30.

[Recess.]

Chairman THOMAS. The Committee will reconvene; guests will find seats. The Chair wants to thank panel members. I hope no one has been unduly inconvenienced by virtue of the time factor. It is just that sometimes business intervenes.

The panel: Mr. Richard Norman, Human Resources, Coats North America, Charlotte North Carolina; Ray Souza, owner and operator, Mel-Delin Dairy, Turlock, California, just north of my district; Daniel H. Jara, President and Chief Executive Officer, statewide Hispanic Chamber of Commerce of New Jersey; Patricia Forkan, President, Humane Society International; Frank Santeiro, Managing Director For Global Trade Services; Sarah Lilygren, Vice President for Federal Government Relations, Tyson Foods, otherwise known as poultry hindquarters; and Brett Gibson, Legislative Representative of American Federation of Labor, AFL-CIO.

You have all submitted written testimony. It will be made a part of the record. You can address the Committee in any way you see fit in the time that is made available to you. I will just start my left, your right; and we will go across the panel. Mr. Norman.

You have to turn the microphone on. They are a little more unidirectional than they used to be.

STATEMENT OF RICHARD NORMAN, VICE PRESIDENT FOR HUMAN RESOURCES, COATS NORTH AMERICA, CHARLOTTE, NORTH CAROLINA, ON BEHALF OF U.S. CHAMBER OF COMMERCE AND U.S.–PERU TRADE COALITION

Mr. NORMAN. Chairman Thomas, Ranking Member Rangel, Members of the Committee, thank you for the opportunity to testify before you about the PTPA. I am Richard Norman, Vice President For Human Resources of Coats North America. Our company has been doing business in the United States since 1864 and in Peru since 1957. I am looking forward to sharing our thoughts on the impact of this important agreement for our business and others like us.

I appear today on behalf of my company, the U.S. Chamber of Commerce and the U.S.–Peru Trade Coalition. This is a broad-based group of companies representing all sectors of our economy. This includes U.S. companies, farmers and business organizations.

My company, Coats, employs 25,000 employees worldwide and has manufacturing locations in more than 60 countries. Coats is the largest supplier of sewing thread in the world. Here in the United States, we employ over 1,800 workers in the Carolinas, Georgia, Nevada, and New Hampshire. While some may think that the textile business is not high tech, I am proud to say that our R&D facility in North Carolina creates threads that hold together everything from space suits used by NASA, to the fiberoptic cables to even the airbag that cushioned the landing of the Mars Rover.

We have a business in Lima, Peru, that employs 260 people, producing thread for the local market, half of which is exported back to the United States through ATPDEA in the form of apparel. We

export specialty thread to Peru from our factories in the Carolinas for use in industrial applications.

Our thread is also used in a host of other manufactured products, from electronics to airplanes, that are also sold throughout the world. So, when industry tariffs go down, our business benefits.

On behalf of my company and also the business organizations I represent today, I would like to voice strong support for PTPA. Free trade agreements like PTPA will do much for companies like mine to slash barriers to our exports. They will also improve protection for U.S. investments in South American countries, and they will strengthen our position and make us more competitive in a global economy.

Currently, 90 percent of all U.S. exports to Peru are manufactured goods like Coats' thread. Many of these goods face an average tariff range of 12 to 25 percent. The PTPA will eliminate 80 percent of all tariffs on manufactured goods as soon as it enters into force, and then the rest of the products will become duty free within 10 years.

Peruvian apparel exports reached almost $1 billion in 2005; and exports of U.S. thread, fabric and cotton have grown hand in hand.

Having a source for apparel manufacturing in South America allows for replenishment of styles during the same fashion season, something you can't get from China due to its distance from our market. This is extremely important for U.S. clothing retailers who can replenish more of their hottest sellers before the season ends and fashions roll over.

Development of the Peruvian market allows for diversification of sources of supply for U.S. retailers, ensuring that neither one country nor one region can dominate any market segment exporting into the United States.

Our farm products face tariffs ranging from 12 to 52 percent, while nearly all Peruvian agriculture sales to the United States enjoy duty-free, quota-free treatment under the existing Andean Trade Preferences and Drug Eradication Act.

Today, 97 percent of all U.S. imports from Peru enter this country duty free because of preferential market access programs; and that is why Peru has increased its exports here by 157 percent in the last 3 years. American products and services still face tariffs and other restrictions in Peru; and, as a result, our exports to Peru within the same timeframe increased by only 38 percent. In other words, we have a trade deficit with Peru.

According to the U.S. ITC, after PTPA enters force, our exports to Peru are expected to increase by $1.1 billion anually, while our imports are only expected to rise by $439 million. Leveling the playingfield through PTPA not only helps us sell more but it helps reduce our trade deficit.

The U.S. ITC predicts that PTPA will add $2.1 billion per year to U.S. GDP. Mr. Chairman, we can't afford to leave $2.1 billion on the table. Trade agreements work. Just look at Chile as an example. U.S. exports to Chile have risen 91 percent since 2004. Caterpillar, for example, has doubled its sales to Chile since 2004 and added some 5,000 new jobs in Illinois. Now, that is the kind of success we would like to achieve.

Coats itself, with operations in the United States, saw a 30 percent increase from 2004 to 2005 with our Chile shipments.

The PTPA will not only open markets to U.S. businesses, but it will send a strong message that we are in business and the United States stands by its friends, particularly in a region where we have leaders like Hugo Chavez and Evo Morales who are vying for influence. I would just like to say, give U.S. manufacturers and farmers a level playingfield with zero tariffs and we can compete anywhere in the world. I urge Congress to approve this legislation as soon as possible.

Thank you.

[The prepared statement of Mr. Norman follows:]

Statement of Richard Norman, Vice President for Human Resources, Coats North America, Charlotte, North Carolina, on behalf of U.S. Chamber of Commerce and U.S.–Peru Trade Coalition

On behalf of the U.S. Chamber of Commerce (Chamber) and the U.S.–Peru Trade Coalition, I would like to voice strong support for the U.S.–Peru Trade Promotion Agreement (PTPA). My name is Dick Norman, and I am Vice President of Human Resources for Coats North America, based in Charlotte, North Carolina. Our company employs over 1,800 workers in the Carolinas, Georgia, Nevada and Maine and has been engaged in the textile business with Peru for many years.

First a word about our organizations:

- The U.S. Chamber of Commerce is the world's largest business federation, representing three million businesses of every size, sector, and region.
- The U.S.–Peru Trade Coalition is a broad-based group of U.S. companies, farmers, business organizations and other groups representing the largest and most dynamic sectors of our economy. With over 100 companies and associations taking part, this new coalition is growing very rapidly.

With more than 60,000 employees worldwide, and manufacturing locations in more than 60 countries, Coats is the largest global supplier of sewing thread. Our business is divided into two parts: industrial and consumer. The industrial group, Coats American, was incorporated in 1898 in New Jersey under the name of American Thread Company. Coats American manufactures several different types of thread for use in apparel sewing, embroidery, and specialty products. The consumer business creates sewing and quilting products, hand knitting and crochet yarns, crochet thread, hand embroidery and needlepoint threads and implements. Coats home sewing products, used for mending and sewing projects, can be found in millions of households worldwide.

My company and the business organizations I represent today believe that international trade plays a vital part in the expansion of economic opportunities for American workers, farmers and businesses. PTPA is a critical step in U.S. efforts to promote sustainable economic growth in the Western Hemisphere through trade rather than aid, and it follows in the footsteps of the successful U.S.–Chile Free Trade Agreement (FTA). Indeed, PTPA is a front-loaded, ambitious and comprehensive agreement that promises considerable benefits to both the United States and Peru.

The agreement will substantially improve market access for American farm products, industrial and other non-agricultural goods, and services in Peru. The opportunities created by lowering tariff and non-tariff barriers to U.S.–Peru trade and investment promise to expand two-way trade opportunities and lift living standards in both countries.

Beyond its purely commercial benefits, the agreement offers critical support and stronger ties to a close ally in the Andes, a region where political and economic instability poses a real threat to U.S. and regional security. The election on June 4 of Alan García to succeed Alejandro Toledo as President of Peru marks a clear victory by a candidate endorsing closer ties to the United States at a time when some countries in the region are taking a different course. At this writing, two key committees in Peru's legislature have overwhelmingly approved the agreement, and the national Congress is likely to do so this week—with President-elect García's party lending its full support.

In addition, PTPA will bolster the rule of law, investor protections, internationally recognized workers' rights, and transparency and accountability in business and government. The agreement's strong intellectual property and related enforcement

provisions not only protect U.S. innovation-based industries but contribute to the fight against counterfeit and pirated products, denying an important source of funds for groups engaged in narco-trafficking and terrorism.

Looking forward, the agreement with Peru is an important step in the U.S. strategy to promote trade liberalization and economic integration with the Andean region. U.S. trade with Peru and its Andean neighbors reached nearly $30 billion in 2005. This region represents a significant potential market, with a population approaching 100 million and a collective GDP near $500 billion when measured on a purchasing power parity basis. We welcome the conclusion of negotiations for a similar trade agreement with Colombia as the next step in this important strategy.

Opening Markets

Above all else, PTPA further opens Peru's market to products and services made by American workers, farmers, and companies. Equally important, the agreement makes it easier for U.S. consumers to buy products made by Peru's workers, farmers and companies. Total two-way trade between U.S. and Peru has doubled over the past three years, reaching $7.4 billion in 2005. However, due to U.S. trade preference programs, growth in U.S. exports to Peru reached 38% from 2000–2005, while Peruvian exports to the U.S. grew 157% during the same time period.

The United States unilaterally opened its market to Peru and its neighbors through the Andean Trade Preference Act (ATPA) in 1990 and its successor ATPDEA. According to the U.S. International Trade Commission (USITC), fully 97% of all imports from Peru already enter the U.S. market duty-free; the report continues: "While most of Peru's average tariff rates range from 12% to 25%, most of the U.S. average tariff rates are zero, with only one (sugar, 46.3%) exceeding 3%." In other words, Peru enjoys nearly free access to our marketplace while Peru taxes the products that U.S. companies and farmers ship there.

PTPA will cut Peru's taxes on U.S. products and as a result make this trade relationship a more mutually beneficial, reciprocal partnership. The day the agreement enters into force, eighty percent of U.S. consumer and industrial products and more than two-thirds of current U.S. farm exports will enter Peru duty-free. Consider the following examples of the current imbalance in tariff treatment and the impact of PTPA on this discrepancy:

Without PTPA		Products	With PTPA	
We Pay	They Pay		We Pay	They Pay
12–20%	0–6%	Processed Foods	0%	0%
12%	2.5%	Automobiles	0%	0%
12%	0%	Furniture	0%	0%
12%	0%	Audiovisual products (film and DVDs)	0%	0%
12%	0%	Chemicals, Plastics, Mineral Fuels and Coal	0%	0%
12%	5%	Cotton	0%	0%
12%	0%	Metal Products (copper, zinc, gold, silver)	0%	0%
20%,12% and 4%	0%	Cereals (oats, corn, soybeans)	0%	0%
4%	0%	Other transportation equipment	0%	0%
4%	0%	Computers and related products	0%	0%

Manufacturing: PTPA offers immediate opportunities for the U.S. manufacturing sector. Manufactured goods represented 90% of U.S. merchandise exports to Peru in 2005. The fastest-growing categories among U.S. manufactured exports to Peru have been petroleum and coal products; other furniture-related products; and boilers, tanks, and shipping containers. PTPA promises to not only accelerate this growth by reducing the landed cost of U.S. goods to Peru considerably but open up opportunities in new product categories. The benefits of the agreement are significantly front-loaded. When the agreement goes into effect, 80% of U.S. exports of consumer and industrial goods will become totally duty-free. The remainder will be duty-free within ten years.

As a result of the agreement, Peru will become a full member of the World Trade Organization's Information Technology Agreement, eliminating tariffs on information technology products and providing substantial new opportunities for U.S. high-tech exporters.

Agriculture: U.S. ranchers and farmers should reap substantial benefits from PTPA. According to the Agriculture Coalition for U.S.–Peru Trade, the United States exported an annual average of $227 million in agricultural products to Peru in 2000–2004. U.S. agricultural exports to Peru include wheat ($78 million), feed grains ($20 million), cotton ($38 million), oilseeds and products ($13 million), rice ($9 million), and dairy products ($6 million).

As noted, more than two-thirds of U.S. agricultural exports to Peru will be duty free upon implementation of the agreement, and tariffs on remaining U.S. farm exports will be phased out over 15–17 years. As a result, the Agriculture Coalition estimates the agreement will bring an increase in U.S. agricultural exports to Peru of more than $700 million by the end of the implementation period. The agreement is comprehensive in its coverage, providing commercially meaningful access for U.S. agricultural priorities while taking into account both U.S. and Peruvian agricultural sensitivities. The agreement also creates a mechanism for sanitary and phytosanitary cooperation and should ease related non-tariff barriers to U.S. agricultural exports to Peru.

Services: Service providers will also benefit significantly from the agreement. PTPA's services commitments cover both the cross-border supply of services and the right to invest and establish a local service presence and are strengthened by a set of detailed disciplines on regulatory transparency—which is fundamental to meaningful market access to services. In fact, as a result of PTPA, Peru has agreed to a series of new commitments that extend beyond Peru's existing commitments under the General Agreement on Trade in Services (GATS). Specifically, PTPA extends trade disciplines to services such as computer and related services, real estate, construction, environmental, and pipeline transport services.

While the agreement clearly levels the playing field for U.S. business and agriculture, it is a balanced one with significant benefits for Peru as well. While Peru has enjoyed virtually duty-free access to our market to their products under unilateral preference programs set-up to encourage alternatives to the drug trade, these preferences have always been subject to re-authorization by Congress with no guarantees. For example, both the ATPDEA and GSP benefits are set to expire in December 2006. Together, they represent half of all Peruvian exports that enter the United States duty-free, i.e. almost $2.45 billion, with the ATPDEA accounting for most of that sum. Without the extension of these preferential programs, Peru stands the risk of immediately losing a significant part of its exports. Moreover, most of the goods that have been exported under the ATPA/ATPDEA represent sectors that have previously not existed (e.g., fresh asparagus) and have flourished only because of these trade preferences.

Losing access to the U.S. market would mean losing millions of dollars in revenue and thousands of Peruvian jobs that depend on it. Without these jobs, many Peruvian workers will be forced to find other employment opportunities in a country that still has a very high unemployment rate and where nearly half of the population lives in poverty. However, the PTPA makes Peru's favorable access to our markets permanent and provides additional benefits in the form of improved market functioning and enhanced economic growth. In other words, PTPA will provide continuity in a long-term U.S. policy with regard to Peru—one that calls for economic development and democratic consolidation.

The Rule of Law

The agreement will strengthen protection and enforcement of U.S. trademarks, patents and copyrights, creating new opportunities for U.S. innovation-based and creative industries in Peru. In specific terms, PTPA includes strong intellectual property enforcement mechanisms and penalties provisions, including the criminalization of end-user piracy and counterfeiting and the authority to seize and destroy not only counterfeit goods but also the equipment used to produce them. The agreement also provides necessary mechanisms to fight the problem of trans-shipment of counterfeit goods with specific provisions that are aimed at goods-in-transit.

In addition, U.S. direct investors in Peru will benefit from the strong investment chapter in the agreement, particularly the sections dealing with investment protections and dispute settlement. As noted by the Advisory Committee for Trade Policy and Negotiations in its report to President Bush, PTPA goes beyond earlier agreements in this regard and sets the gold standard for future free trade agreements. Indeed, the agreement enables binding third party arbitration for investor-state dis-

putes not only for investments concluded after the agreement goes into effect, but also for many types of investments that pre-date the agreement.

The agreement provides for rights that are consistent with U.S. law and also contains fully transparent dispute settlement procedures that are open to the public and allow interested parties to provide their input. As such, these trade agreements provide an opportunity for the partner countries to improve their investment climate by undertaking legal and judicial reforms and resolving investment disputes (e.g., the criminalization of commercial disputes).

Growth, Income, and Jobs

PTPA is a great step forward in the evolution of our trading relationship with Peru from one based on unilateral trade preferences to reciprocal market access. As such, the economic, employment, and pocketbook impact of the agreement are quite positive. Indeed, PTPA is expected make modest but nonetheless valuable contributions to economic growth, incomes, and employment opportunities in cities and towns across the country.

According to the U.S. Department of Commerce, Peru was the 43rd largest market for U.S. goods in 2005, out of a total of 228 markets. Texas and Florida were the top state exporters, with California, Louisiana, Illinois, South Carolina, New York, Georgia, Pennsylvania, Tennessee, Washington, and New Jersey also posting significant export totals to Peru in 2005.

According to the USITC's June 2006 report on economy-wide effects of PTPA, the agreement is likely to result in a much larger increase in U.S. exports than in U.S. imports given the substantially greater tariffs faced by U.S. exporters to Peru than Peruvian exporters to the United States. The USITC estimates U.S. exports to Peru will increase by $1.1 billion, while imports will only increase by $439 million. Furthermore, the USITC predicts that PTPA will add $2.1 billion per year to U.S. gross domestic product.

The Chamber has begun preparing state-specific economic impact studies in order to gauge the impact of the agreement. Our initial findings for Texas and Florida provide an idea of how the agreement will impact local economies. The studies show moderate but real gains for industrial output, household earnings, and employment for both states. In the first year, our model shows a potential increase in output across all industries of $155 million in Texas and $143 million in Florida; increased earnings for employees in all industries of $35 million in both states; and the creation of 1,055 and 931 new jobs in Texas and Florida, respectively.

Of course, the real impact of the agreement becomes clearer as we look further into the future. In nine years, our model[1] shows a potential increase in output across all industries of $829 million in Texas and $768 million in Florida; increased earnings of employees in all industries of $188 million in Texas and $186 million in Florida; and the creation of 4,141 and 4,970 jobs, respectively.

Additional Benefits

In addition to contributing strongly to the expansion of trade and economic relations between the United States and Peru, PTPA will lend a helping hand for a close ally in the Andes and will enhance U.S. efforts to strengthen democracy in the region. The embrace of democratic norms throughout the hemisphere over the past 25 years has been remarkable. But in some countries, poor economic policy and weak political parties, among other factors, have recently endangered this progress. The recent surge in populist victories, especially in South America, underscores the fact that democratic elections do not by themselves guarantee the rule of law.

While questions of the rule of law in the region may legitimately be addressed in a number of ways, we believe that the promulgation of ambitious and comprehensive free trade agreements would do more to enhance the rule of law and transparent governance in the region than any other possible step the United States could take. While the commercial benefits are substantial, they go beyond just opening overseas markets for America's workers, farmers and companies. These agreements assist in the creation of a transparent, rules-based economic environment, which is a critical element in the success of democratic institutions and market-based economic policies.

Like much of Latin America, the Andean region is struggling against corruption, which undermines growth, security, and stability. PTPA contains critical provisions to enhance transparency and accountability in governance, providing the countries with important tools to fight the scourge of corruption. As an example, the agree-

[1] This study uses the U.S. Department of Commerce's Bureau of Economic Analysis Regional Input-Output Modeling System (RIMS II) to offer a vision of the potential impact of the Peru TPA.

ment provides for the criminalization of bribery in government procurement, providing for more efficient procurement and a more competitive marketplace.

PTPA also promotes U.S. security interests by forging a deeper partnership with Peru through a framework for government-to-government relationships that is grounded in the tangible national interests of all parties. Such a framework is vital to enhancing cooperation in the fight against terrorism and narcotics trafficking; it also sets an example for other countries around the world as we pursue our global security goals. By promoting economic growth in Peru, PTPA will help stabilize its economy and provide its citizens with long-term alternatives to narcotics trafficking or illegal immigration.

Conclusion

In sum, it is worth noting that the commercial benefits of recent free trade agreements have surpassed all expectation. Consider the U.S.–Chile FTA, which was implemented on January 1, 2004, and immediately began to pay dividends for American businesses and farmers. U.S. exports to Chile surged by 33% in 2004, and by a blistering 85% in 2005. While the USITC had forecast total export growth of 18–52% for the first 12 years of the agreement's implementation, U.S. exports to Chile nearly doubled in just two years—a combined 91% increase over just 24 months. Given the similarities between PTPA and the U.S.–Chile FTA, we may surely expect impressive benefits from this new agreement as well.

While exports are important, it is worth reporting that imports from Chile have also increased. In the end, trade is about more than just exporting—it is about more choices at lower costs for consumers, and as a result a higher standard of living. Sometimes, as is the case with Chile, free trade is about having access fresh grapes in the winter and more crushed grapes (i.e., wine) year-round. With Peru, our consumers will benefit from more access to healthy foods and vegetables like asparagus and fish. This is especially appreciated during the winter.

We appreciate this opportunity to share our strong support for PTPA. We believe that trade expansion is an essential ingredient in any recipe for economic success in the 21st century, and PTPA is an excellent model in this regard. If U.S. companies, workers, and consumers are to thrive amidst rising competition, new trade agreements such as PTPA are critical. U.S. business is more than capable of competing in the global marketplace when trade barriers are removed and markets are open.

Thank you very much.

Chairman THOMAS. Thank you. Mr. Souza, before I call on you, my friend and colleague, Mr. Nunes, is here. He may want to make some statement. I would only ask you, not knowing, were your ancestors from the Azores, Mr. Souza?

Mr. SOUZA. Yes, they were.

Chairman THOMAS. Then, with pleasure, I will yield to the gentleman from California, Mr. Nunes.

Mr. NUNES. Thank you, Mr. Chairman.

I want to welcome my Azorean brother here to the Committee. He is not from my district but from a little bit north. So, welcome, Mr. Souza; and I look forward to your testimony.

I yield back, Mr. Chairman.

Chairman THOMAS. Thank you.

Mr. Souza.

Mr. SOUZA. First of all, I may not be from your district, Congressman Nunes, but we are from the same island in the Azores.

Chairman THOMAS. For those of you who don't understand, I will explain the inside joke.

The Portuguese have been a very significant and important people in the development of California and in the Central Valley, as is the case with some of the former Yugoslavians, all from the island of Split, apparently. Most of those of Portuguese ancestry are from the Azores, who have been an enormous resource and pool of

talent for us in this country. For any of you who want to learn more about this, any time during July or August if you will go to Pismo Beach, California, all of the Central Valley Azoreans, Portuguese Americans, are over there; and it is just a lot of fun.

Nice to have you with us, Mr. Souza.

Mr. SOUZA. Thank you, Congressman. It is a pleasure to be here.

First of all, before I go on, I am assuming that there is no questions from my——

Chairman THOMAS. We will go through the entire panel and then offer questions up so the panelists could have an opportunity to respond all together.

STATEMENT OF RAY SOUZA, OWNER AND OPERATOR, MELDELIN DAIRY, TURLOCK, CALIFORNIA, ON BEHALF OF WESTERN UNITED DAIRYMEN

Mr. SOUZA. Very well. Once again, thank you, Chairman Thomas, for holding this hearing today and inviting me to testify representing the California dairy industry.

Mr. Chairman and Members of the Committee, my name is Ray Souza; and I am a dairy producer from Turlock, California. I have formerly served as president of Western United Dairymen and currently hold the position of vice president. I am a former president of the Western States Dairy Producer Trade Association. I ship to California Dairies, Incorporated, California's largest cooperative.

California milk production growth has averaged 3 percent year over year during the past 5 years. Continued production growth is expected in California and nationwide as dairy farmers continue to increase efficiencies. Growth in domestic demand is unlikely to keep pace with the growth in domestic milk production. To remain viable, the U.S. dairy industry must expand markets for dairy products.

California is well aligned to be a major supplier of dairy products around the world. According to data released by the University of California Agricultural Issues Center, the export value of California dairy products increased by 35 percent in 2004; and the U.S. export value of nonfat dry milk increased by 75 percent, with Mexico being a strong market for nonfat dry milk. As a result, dairy made the list of top five agricultural commodities exported in 2004 in terms of value.

Though we have witnessed some success, greater market access will be critical to the future growth and economic health for the California and U.S. dairy industries alike.

I am glad to be here today to provide our enthusiastic support for this agreement, the PTPA. This is an example of an agreement that is balanced because it offers the opportunity to grow U.S. dairy exports without potential for a third-party country to exploit the agreement and to disadvantage U.S. dairy farmers. Peru has a considerable amount of domestic production but, along with that, a much larger and more developed domestic dairy market than some other countries in the region have.

As more open trade improves the local economy in Peru, California dairy farmers will be positioned to supply that market as it continues to grow. National Milk Producers Federation estimates

that the benefits of this agreement to the U.S. dairy industry over the next several years could grow by as much as $100,000,000 per year on average; and with 21 percent of U.S. milk production coming from California, you can see why this agreement is so important to Californians.

The duty free access for cheese, butter, milk powders and dairy protein products will be a significant benefit to us. Our industry in California has a history of supplying manufactured dairy products such as those on the list, and we believe demand for those products will continue to grow in countries like Peru.

I would also like to applaud the fact that no features of the U.S. milk marketing regulatory system or the dairy producer safety net are affected by this agreement. I would also note that as long as the European Union continues to use export subsidies to sell to Peru, the United States must still use the Dairy Export Incentive Program (DEIP), to help build these markets there. This would be a good time to note that the United States Department of Agriculture (USDA) has not used DEIP anywhere in the last 2 years. With farm milk prices now nearing historic lows, right now would be a good time to use the tool that Congress has authorized, a tool that is fully WTO legal, and get the DEIP program fired up, moving dairy products to foreign markets and building demand instead of moving domestic dairy products to CCC.

I do want to emphasize, however, that whereas having a Peru Trade Promotion Agreement is something we support, U.S. dairy farmers want to be sure that their government is going to fight for them and make sure that the terms of the agreement are enforced. We need to be sure that the Rules of Origin, which in this agreement mirrors those of the NAFTA, are enforced to the letter.

We in the U.S. dairy industry have too much experience with lack of enforcement of agreements. The dairy industry of California is bearing the brunt of an excessive regulatory action taken by Mexico in a trade dispute over another commodity. In other cases of lack of enforcement, the government there has delayed issuing powder quota licenses that should have been available to the U.S. exporters since the first of the year. If we are going to have these agreements, we need to have them in force so that our markets gain the access that they should have while we are at the same time giving Peru market access here.

We have also had significant disagreements over the years with Canada over the access to their heavily protected market for milk and dairy products. The reality is that these agreements look balanced at the time they are negotiated, but without aggressive enforcement by the U.S. Government, we will continue to be the only ones who routinely hold up our end of the bargain.

Also in the enforcement arena are Sanitary and Phytosanitary issues that are often raised by our trading partners to deny access to U.S. dairy products. USDA maintains a list of U.S. dairy plants approved to ship products in the export market. The plants on that list should be able to sell their products to other countries without unfounded SPS barriers thrown up by the receiving countries.

Thank you again, Mr. Chairman, for allowing me to be here today and voice the enthusiastic support of the California dairy industry for the Peru Trade Promotion Agreement.

[The prepared statement of Mr. Souza follows:]

Statement of Ray Souza, Owner and Operator, Mel-Delin Dairy, Turlock, California, on behalf of Western United Dairymen

Mr. Chairman and members of the subcommittee, my name is Ray Souza and I am a dairy producer from Turlock, California. My dairy was started by my grandfather who emigrated from the Azores to the United States and was then passed on to my father, and subsequently purchased by me. We now milk about 800 cows on the dairy that my grandfather started with 17 head.

Thank you Chairman Thomas for having this hearing and inviting me to testify representing the California dairy industry. I formerly served as president of Western United Dairymen and currently hold the position of first vice-president. I was a former president of the Western States Dairy Producer Trade Association. I currently serve on the administration's Agricultural Trade Advisory Committee (ATAC). I ship to California Dairies, Incorporated (CDI), the largest California based cooperative.

California milk production growth has averaged 3% year-over-year during the past five years. Continued production growth is expected in California and nationwide as dairy farmers continue to increase efficiencies and produce more milk. Growth in domestic demand is unlikely to keep pace with growth in domestic milk production. To remain viable, the U.S. dairy industry must expand markets for dairy products.

California is well-aligned to be a major supplier of dairy products around the world. According to data released by the University of California Agricultural Issues Center, the export value of California dairy products increased by 35 percent in 2004. The U.S. export value of nonfat dry milk increased 75 percent with Mexico a strong market for California's nonfat dry milk. As a result, dairy made the list of the top five California agricultural products exported by value in 2004.

Though we have witnessed some success, greater market access will be critical to the future growth of the California and U.S. dairy industry alike.

I am glad to be here today to provide our enthusiastic support for this agreement for United States–Peru Trade Promotion. This is an example of an agreement that is balanced because it offers us the opportunity to grow U.S. dairy exports without the potential for a 3rd party country to exploit this agreement to the disadvantage of U.S. dairy farmers. Peru has a considerable amount of domestic production but along with that a much larger and more developed domestic dairy market than some other countries in the region.

As more open trade improves the local economy in Peru, California dairy farmers will be positioned to supply that market as it continues to grow. National Milk Producers Federation estimates that the benefits of this agreement to the U.S. dairy industry over the next several years should grow to $100 million per year on average. With 21% of U.S. milk production coming from California, you can see why this agreement is important to Californians.

The duty-free access for cheese, butter, milk powders and dairy protein products will be a significant benefit to us. Our industry in California has a history of supplying quality manufactured dairy products, such as those on that list, and we believe demand for those products will continue to grow in countries like Peru.

I would also applaud the fact that no features of the U.S. milk marketing regulatory system or the dairy producer safety net are affected by this agreement. I would also note that as long as the European Union uses export subsidies to sell product to Peru, the U.S. must still use its Dairy Export Incentive Program (DEIP) to help build that market there. This would be a good time to note that the USDA has not used the DEIP anywhere in more than two years. With farm milk prices nearing historic lows, right now would be a good time to get that tool the Congress has authorized, a tool that is fully WTO-legal, by the way, and get DEIP fired up moving dairy products to foreign markets and building demand, instead of moving domestic dairy products to the CCC.

I do want to emphasize, however, that whereas having a Peru Trade Promotion Agreement is something we support, U.S. dairy farmers want to be sure that their government is going to fight for them to make sure the terms of the agreement are enforced. We need to be sure that the Rules of Origin, which in this agreement mirror those in the North American Free Trade Agreement, are enforced to the letter.

We in the U.S. dairy industry have too much experience with lack of enforcement of agreements. The dairy industry in California is bearing the brunt of an excessive retaliatory action taken by Mexico in a trade dispute over another commodity. In another case of lack of enforcement, the government there has delayed issuing milk powder quota licenses that should have been available to U.S. exporters since the

first of the year. If we're going to have these agreements we need them enforced so our market access gains are realized along with the increased access we've given Peru to the market here.

We've also had significant disagreements over the years with Canada over access to their heavily protected market for milk and dairy products. The reality is that these agreements look balanced at the time they're negotiated but without aggressive enforcement by the U.S. government, we'll continue to be the only ones who routinely hold up our end of the bargain.

Also in the enforcement arena are Sanitary and Phytosanitary (SPS) issues that are often raised by our trading partners to deny access to U.S. dairy products. USDA maintains a list of U.S. dairy plants approved to ship products in the export market. The plants on that list should be able to sell products in other countries without unfounded SPS barriers being thrown up in the receiving countries.

Thank you again, Mr. Chairman, for allowing me to be here today to voice the enthusiastic support of the California dairy industry for the Peru Trade Promotion Agreement. I'd be happy to answer questions on this matter.

Chairman THOMAS. Thank you, Mr. Souza, as long as we maintain close watch on point of origin. Mr. Jara.

STATEMENT OF DANIEL H. JARA, PRESIDENT AND CHIEF EXECUTIVE OFFICER, STATEWIDE HISPANIC CHAMBER OF COMMERCE OF NEW JERSEY, JERSEY CITY, NEW JERSEY, ON BEHALF OF HISPANIC ALLIANCE FOR FREE TRADE

Mr. JARA. Chairman Thomas, Ranking Member Rangel, Members of the Committee on Ways and Means and guests, buenas tardes.

On behalf of the statewide Hispanic Chamber of Commerce of New Jersey and on behalf of the Hispanic Alliance For Free Trade, I am pleased to represent our collective Hispanic voices at today's hearing and in this debate.

I am also speaking from the perspective of a small businessowner. I am the owner of Rimac Agency, Inc., an insurance, Hispanic market and international trade consulting firm located in Hackensack, New Jersey.

My name is Daniel Jara. I was born in Lima, Peru. I moved to New Jersey at age 14. I received my secondary, university and graduate education from New Jersey schools. I am proud to testify in support of the agreement from the perspective of a Peruvian Hispanic American hailing from the Garden State of New Jersey.

This agreement is of critical importance for Hispanic Americans and particularly to the Hispanic American business community.

Please permit me to briefly mention my two organizations.

The statewide Hispanic Chamber of Commerce of New Jersey is a network of local Hispanic chambers and businesses that represent the economic interests of over 40,000 small businesses in the State of New Jersey and the Philadelphia area.

The Hispanic Alliance For Free Trade, HAFT, is a national, umbrella organization organized in support of free trade. HAFT is comprised of a cross section of 130 of the leading and most influential Hispanic organizations, including the largest Hispanic business organization, the U.S. Hispanic Chamber of Commerce, representing over 2 million Hispanic businesses and now spanning over 225 local Hispanic chambers across the United States and the Commonwealth of Puerto Rico. HAFT was visible and instrumental in its support of Domincan Republic-Central America Free Trade

Agreement (DR-CAFTA) and is now refocused in its support of the Peru Trade Promotion Agreement.

My career in the Hispanic arena spans 18 years at senior-most local, State and national levels.

In a relatively short time, our Hispanic community has evolved and grown tremendously in both importance and influence. According to the U.S. Census, Hispanics are currently the largest minority in the United States, with an estimated population of nearly 43 million—over 14 percent of the total U.S. population—and estimated to grow by 1.7 million a year. More than one-eighth of the people of the United States are of Hispanic origin and by mid century 25 percent of them, that means one of every four people in the United States, will be of Hispanic descent.

Hispanics have particularly distinguished themselves in the economic and commercial arena. Hispanics as a community wield a great economic power. Hispanic purchasing power is projected to reach $1 trillion by 2008.

It is estimated that there are now over 2 million Hispanic-owned businesses in the United States. These 2 million Hispanic-owned businesses generated almost $300 billion in annual gross receipts. By 2010, it is estimated there will be 3.2 million Hispanic firms, generating $465 billion and making them among the fastest-growing business segments in the Nation, according to the U.S. Small Business Administration.

The U.S. Census data shows that the number of Hispanic-owned businesses has grown at a rate of three times greater than the national average. Furthermore, businesses owned by Hispanic women grew at the rate nearly six times that of the national average. By 2007, one of every ten small businesses will be Hispanic businesses.

Hispanic Americans of Peruvian descent, such as myself, will particularly benefit from this agreement. Currently, the total Peruvian population in the United States is estimated at about one and a half million, many of which reside in New Jersey area where I hail and have my business. For example, in New Jersey alone, there are 49,846 Hispanic businesses, many of them of Peruvian origin. For we Peruvian Americans, PTPA represents an increased economic opportunity for our businesses here as well as for our family and friends in Peru.

New Jersey itself has and will benefit tremendously from this agreement. In 2005, New Jersey benefited from $33 million in total exports to Peru; and, with this new agreement, exports to Peru by New Jersey businesses in key industries will rise between 45 and 57 percent.

This agreement is a win-win situation.

In conclusion, Mr. Chairman and Committee Members, my company and the Hispanic organizations, the statewide Hispanic Chamber of Commerce of New Jersey and the Hispanic Alliance for Free Trade, representing hundreds of the leading Hispanic organizations, millions of Hispanic businesses, respectfully appreciate the opportunity to come before you today.

We believe that Hispanic Americans, especially Hispanic American businesses, have an edge, a leg up when seeking commercial opportunities with this hemisphere. Hispanics are able to leverage

language, culture and family ties in competing for commercial relationships with this hemisphere. As Hispanics, we want to see more opportunities being created by Hispanics for other Hispanics. The passage of this agreement will provide tremendous opportunity for these businesses and contribute to continued growth and success of Hispanics in the United States.

Of equal importance, Hispanic Americans—Peruvian Americans in particular—very much care about the fate of Peru, its people as well as the stability and well-being of this hemisphere. Hispanics care and want to give back by providing for our families and supporting our countries of origin. We are a passionate and hard-working people. We vitally care about eradicating poverty by creating economic growth as well as a stable and prosperous Western Hemisphere. Support of the Peru Trade Promotion Agreement is an important step in this direction. We urge your support. Muchas gracias.

[The prepared statement of Mr. Jara follows:]

Statement of Daniel H. Jara, President and Chief Executive Officer, Statewide Hispanic Chamber of Commerce of New Jersey, Jersey City, New Jersey, on behalf of Hispanic Alliance for Free Trade

Chairman Thomas, Ranking Member Rangel, Members of the Ways and Means Committee and Guests. Buenos Dias!

On behalf of the Statewide Hispanic Chamber of Commerce of New Jersey (SHCC) and on behalf of the Hispanic Alliance for Free Trade (HAFT), I am pleased to represent our collective "Hispanic" voices at today's hearing and in this debate. I am also speaking from the perspective of a small business owner. I am the owner of Rimac Agency, Inc., an insurance, Hispanic market and international trade consulting firm located in Hackensack, New Jersey.

My name is Daniel Jara and I was born in Lima, Peru and moved to New Jersey at age 14 and received my secondary, university and graduate education from New Jersey schools. I am proud to testify in support of the agreement from the perspective of a Peruvian/Hispanic American and hailing from the great "Garden State" of New Jersey. This agreement is of critical importance to Hispanic Americans and particularly to the Hispanic American business community.

Please permit me to briefly mention my two organizations:

- The Statewide Hispanic Chamber of New Jersey (SHCC) is a network of local Hispanic Chambers and businesses that represents the economic interests of over forty thousand small businesses from the State of New Jersey and the Philadelphia area.
- The Hispanic Alliance for Free Trade (HAFT) is a national, umbrella organization organized in support of free trade. HAFT is comprised of a cross section of 130 of the leading and most influential Hispanic organizations including the largest Hispanic business organization—the U.S. Hispanic Chamber of Commerce—representing over 2 million Hispanic businesses with over 210 local Hispanic chambers. HAFT was visible and instrumental in it's support of the DRCAFTA and is now refocused in its support of the Peru Trade Promotion Agreement.

HISPANIC COMMUNITY

My career in the Hispanic arena spans 18 years at senior-most local, state and national levels. In a relatively short time, our Hispanic community has evolved and grown tremendously in both its importance and influence. According to the U.S. Census: Hispanics are currently the largest minority in the U.S. with an estimated population of nearly 43 million (over fourteen percent of the total U.S. population) and estimated to grow by 1.7 million a year; more than one eight of the people in the United States are of Hispanic origin and by mid-century, 25 percent (or one out of every four) people in the United States will be of Hispanic descent. Hispanics have particularly distinguished themselves in the economic and commercial arena. Hispanics as a community wield great economic power. Hispanic purchasing power is projected to reach $1 trillion by 2008!

HISPANIC BUSINESSES

It is estimated that there are now over 2 million Hispanic-owned businesses in the U.S. These 2 million Hispanic owned businesses generate almost $300 billion in annual gross receipts. By 2010, it is estimated that there will be 3.2 million Hispanic firms generating $465 billion and making them among the fastest growing business segments in the nation according to the Small Business Administration. U.S. Census data shows that the number of Hispanic-owned businesses has grown at a rate that is **three times greater** than the national average. Further, businesses owned by Hispanic women grew at a rate that was nearly **six times** that of the national average. By 2007, 1 out of every 10 small businesses will be Hispanic business. (Source Hispanic Trends).

PERUVIAN BUSINESSES/NEW JERSEY AREA

Hispanic Americans of Peruvian American descent, such as myself, would particularly benefit from this agreement. Currently, the total Peruvian population in the United States is estimated at about one and a half million, many of which reside in the New Jersey area from where I hail and have my business. For example, in New Jersey alone, there are 49,846 Hispanic businesses many of them of Peruvian origin. For we Peruvian Americans, the PTPA represents increased economic opportunity for our businesses here as well as for our family and friends in Peru. New Jersey, itself, has and will benefit tremendously from this agreement. In 2005, New Jersey benefited from $33 million in total exports to Peru and with the new agreement, exports to Peru by New Jersey businesses, in key industries, will rise between 45% and 57%.

This agreement is a win-win situation.

CONCLUSION

Mr. Chairman and Committee Members, my company and the Hispanic organizations—the Statewide Hispanic Chamber of Commerce of New Jersey and the Hispanic Alliance for Free Trade representing hundreds of leading Hispanic organizations and millions of Hispanic businesses, respectfully appreciate the opportunity to come before you today. We believe that Hispanic Americans, especially Hispanic American businesses, have an edge—a "leg up" when seeking commercial opportunities with this hemisphere. Hispanics are able to leverage language, cultural and family ties in competing for commercial relationships with this hemisphere. As Hispanics, we want to see more opportunities being created by Hispanics and for other Hispanics. The passage of this agreement would provide tremendous opportunity for these businesses and contribute to the continued growth and success of Hispanics in the U.S.

Of equal importance, Hispanic Americans (Peruvian Americans in particular) vitally care about the fate of Peru, its people as well as the stability and well-being of this hemisphere. Hispanics care and want to give back by providing for our families and supporting our countries of origin. We are a passionate and hardworking people. We vitally care about eradicating poverty by creating economic growth as well as a stable and prosperous Western Hemisphere. Support of the Peru Trade Promotion Agreement is an important step in this direction. We urge your support. BUENOS DIAS.

Mr. SHAW. [Presiding.] Thank you. Ms. Forkan.

STATEMENT OF PATRICIA FORKAN, PRESIDENT, HUMANE SOCIETY INTERNATIONAL

Ms. FORKAN. Mr. Chairman, Members of the Committee on Ways and Means, I am pleased to be here today to speak on the PTPA but specifically the environmental provisions.

My name is Patricia Forkan. I am President of Humane Society International (HSI). We are the international arm of The Humane Society of United States (HSUS). Founded in 1954, HSUS today is the largest animal protection organization in the United States with over 9.5 million members and constituents. Through HSI, we maintain a significant global presence and have offices on four continents.

As President of HSI, I have served on Treasury Employees Political Action Committee (TEPAC) for a number of years and work closely with USTR and other U.S. Government agencies on trade and environmental issues. We have participated in three WTO ministerial conferences, and I was on the U.S. delegation in Hong Kong.

In 2005, I appeared before the Senate Committee on Finance to testify on CAFTA and discussed our support of the environmental provisions of that agreement. It is our view that each FTA signed by the United States should be judged on its individual provisions and through an objective lens. I don't propose to testify today that each and every aspect of PTPA will further the aims most important to my organization, that is, protecting the environment and promoting the protection and humane treatment of all animals, but what I will say is HSI views the environmental provisions of this agreement as providing needed opportunities and incentives to enhance environmental protection in Peru and in the United States.

I also commend the U.S. Congress for including specific environmental negotiating objectives in the Trade Act of 2002, the TPA, and in mandating side environmental cooperation agreements. We applaud the commitment of the United States to include the consideration of the environment along with economic and trade policy, something that no other country in the world does.

Turning to the environment chapter of the PTPA, I would like to highlight certain provisions.

First, the environment chapter includes the obligation for parties to effectively enforce their environmental laws, including MEAs such as CITES. This obligation is subject to dispute settlement, providing a very strong incentive for both parties to enforce their laws, an incentive sadly lacking in most MEAs themselves.

Second, the parties have agreed to set up an independent secretariat to accept information from the public concerning environmental enforcement activities. If a country is failing to enforce its laws, the public will have a specific mechanism to bring these failures to light through access to an independent entity not controlled by the government. Increased public participation and empowering civil society to monitor governments is perhaps one of the best and most low-cost ways to ensure effective enforcement.

Third, as a member of TEPAC, I particularly recognize the importance of public participation. For this reason, HSI believes that the provision of the PTPA requiring Peru to set up and consult an advisory Committee at the national level is extremely important. We hope this provision will serve to provide Peruvian civil society with a say in their country's environmental policies, programs and enforcement regimes.

Fourth, for the very first time in a trade agreement, the United States included a commitment to protect and conserve biodiversity. Peru is one of the most biologically diverse countries in the world. It is home to very unique species such as alpacas, vicunas, river dolphins, as well as some endangered species.

We are perhaps most excited about this biodiversity provision. It underscores the U.S. and Peruvian commitment to the environment and conservation of biodiversity, including endangered species and other animals. Through innovative programs and efforts, including

through the Environmental Cooperation Agreement (ECA), such protections may be increased and enhanced.

Lastly, we are hopeful that the ECA will provide a strong basis for ongoing environmental cooperation. I strongly encourage Congress to ensure that the ECA is adequately funded to be able to achieve the lofty aims originally envisioned by TPA. We all are aware of the need to be fiscally responsible, but cooperation is an area where we can achieve a great deal of good and improve the life and health of people and animals in addition to increasing economic opportunities. I recommend that Congress set aside a specific amount of funding for environmental cooperation with Peru, as you did in the case of the CAFTA-DR.

In summation, HSI and HSUS are strongly encouraged that the PTPA will support increased environmental protection in both countries. Thank you for allowing me to testify.

[The prepared statement of Ms. Forkan follows:]

Statement of Patricia Forkan, President, Humane Society International

Chairman Thomas, Ranking Member Rangel, Members of the Ways and Means Committee, and Ladies and Gentlemen—Good Morning.

It is my pleasure to be here today to testify on the U.S.–Peru Trade Promotion Agreement (PTPA), specifically the environmental provisions.

INTRODUCTION

My name is Patricia Forkan and I am the President of Humane Society International (HSI), the international arm of The Humane Society of the United States (HSUS). Founded in 1954, today HSUS is the largest animal protection organization in the United States with over 9.5 million members and constituents. With HSI, we maintain a significant global presence and have offices on four continents.

As President of HSI, I have served on the Trade and Environment Policy Advisory Committee (TEPAC) for a number of years now and work closely with USTR and other U.S. government agencies on trade and environment issues. In addition, HSI and HSUS have participated as accredited Non-Governmental Organizations at three WTO Ministerial Conferences. Indeed, at the most recent Ministerial meeting in Hong Kong, I had the honor of being named as an official member of the U.S. delegation. As a result of this experience, I believe that I bring a unique and balanced perspective to trade and environmental policy discussions.

About fifteen months ago, I sat before the Senate Finance Committee and testified on the Free Trade Agreement with Central America and the Dominican Republic (CAFTA—DR) and discussed HSI and HSUS's support of the environmental provisions of that Agreement. It is our view that each free trade agreement signed by the Untied States should be judged on its individual provisions and through an objective lens. I do not propose to testify today that each and every aspect of the PTPA will further the aims most important to my organization—protecting the environment and promoting the protection and humane treatment of all animals. But, what I will say is that HSI and HSUS view the environmental provisions of this Agreement as providing needed opportunities and incentives to enhance environmental protection in Peru and the United States.

I commend the U.S. Congress for including specific environmental negotiating objectives in the "Trade Act of 2002" or Trade Promotion Authority (TPA) and in mandating side environmental cooperation agreements. HSI and HSUS applaud the commitment of the United States to include environment along with other areas of economic and trade policy—something no other country in the world does.

PTPA ENVIRONMENT CHAPTER

Turning to the Environment Chapter of the PTPA, I would like to highlight certain provisions.

First, the Environment Chapter includes the obligation for Parties to effectively enforce their environmental laws—including Multilateral Environmental Agreements (MEAs) such as the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES). This obligation is subject to dispute settlement providing a strong incentive for both Parties to enforce their laws, an incentive sadly lacking in most MEAs themselves.

Second, the Parties have agreed to set up an independent secretariat to accept information from the public concerning environmental enforcement activities. If a country is failing to enforce its laws, the public will have a specific mechanism to bring these failures to light through access to an "independent entity" not controlled by the government. Increased public participation and empowering civil society to monitor governments is perhaps one of the best and most low-cost ways to ensure effective enforcement.

Third, as a member of TEPAC, I particularly recognize the importance of public participation in the development of trade and environmental policy. For this reason, HSI and HSUS believe that the provision of the PTPA requiring Peru to set up and consult an advisory committee at the national level is important. We hope this provision will serve to provide Peruvian civil society, NGOs, and the private sector with a say in their country's environmental policies, programs, and enforcement regimes.

Fourth, for the first time in a trade agreement, the United States included a commitment to protect and conserve biodiversity. Peru is one of the most biologically diverse countries in the world. It is home to unique species such as alpacas, vicuñas and Andean river dolphins as well as a number of endangered species including the yellow-tailed woolly monkey, yellow-eared parrot, Andean mountain cat, and the Andean tapir. We are perhaps most excited about this biodiversity provision. It underscores the U.S. and Peruvian commitment to the environment and conservation of precious biodiversity, including endangered species and other animals. Through innovative programs and efforts, including through the Environmental Cooperation Agreement (ECA), such protections may be increased and enhanced.

Lastly, we are hopeful that the ECA will provide a strong basis for ongoing environmental cooperation. I strongly encourage Congress to ensure that the ECA is adequately funded to be able to achieve the lofty aims originally envisioned by TPA. We all are aware of the need to be fiscally responsible, but cooperation is an area where we can achieve a great deal of good and improve the life and health of people and animals in addition to increasing economic opportunities. I recommend that Congress set aside a specific amount of funding for environmental cooperation with Peru as you did in the case of CAFTA–DR.

CONCLUSION

HSI and HSUS support the efforts of the United States and Peru in including the effective enforcement, public participation, and biodiversity provisions in the Environment Chapter of the PTPA. The Environmental Cooperation Agreement illustrates the strong commitment by both Parties to work together to protect the environment and conserve precious natural resources including biodiversity. For all of these reasons, HSI and HSUS are strongly encouraged that the PTPA will support increased environmental protection in both countries.

Thank you very much for the opportunity to speak with you today.

Mr. SHAW. Thank you. Mr. Santeiro.

STATEMENT OF FRANCISCO X. SANTEIRO, MANAGING DIRECTOR FOR GLOBAL TRADE SERVICES, LATIN AMERICA AND CARIBBEAN DIVISION, FEDEX EXPRESS, MIAMI, FLORIDA, ON BEHALF OF AMERICAN CHAMBER OF COMMERCE IN PERU AND THE ASSOCIATION OF AMERICAN CHAMBERS OF COMMERCE IN LATIN AMERICA

Mr. SANTEIRO. Mr. Chairman, Members of the Committee, it is an honor for me to testify today in strong support of the PTPA.

My name is Francisco Santeiro, Frank. I am Managing Director for Global Trade Services, Latin America and Caribbean Division of FedEx Express.

I am testifying today on behalf of two organizations. The first is the Association of American Chambers of Commerce of Latin America (AACLA). The AACCLA is the premier advocate for U.S. businesses in Latin America and the Caribbean, and its 23 member-AmChams represent more than 20,000 companies and over 80 percent of U.S. investment in the region.

Second, the American Chamber of Commerce of Peru, which represents more than 450-member companies that comprise over 90 percent of U.S. investment in Peru.

FedEx is a proud member of both of these organizations and a strong supporter of PTPA. FedEx is a $32 billion company, offering global express delivery services and other related transportation services. FedEx offers a broad range of express delivery services to accommodate the widest range of shipments to more than 220 countries and territories, often within 24 to 48 hours. FedEx Express is the largest U.S. company in Latin America and the Caribbean and employs more than 3,000 people throughout the region.

Let me quickly echo comments made throughout the day.

The PTPA will allow U.S. and Peruvian companies to better take advantage of a booming bilateral trade relationship, U.S. trade with Peru has doubled over the past 3 years, reaching 7.4 billion last year. I am happy to say that FedEx is carrying a good percentage of that freight.

More than 5,000 U.S. companies export their products to Peru. Of these, more than 4,000, or about 80 percent, are small or medium-sized businesses. Sales by these smaller companies represent more than 40 percent of all U.S. exports to Peru, well above the 27 percent share of U.S. exports that America's smaller companies contribute globally.

FedEx knows how important smaller companies are to international trade. We help these small and medium-sized firms grow by providing access to booming markets such as Peru and the access that opportunities to those markets present.

My company's success is bound to the success of America's small companies, just as Peru's development is tied to growth in trade with the United States; and PTPA is the partnership that can bring us together in a stronger, more effective team. The commercial relationship is critical to Peru, as well. Consider the findings of a November, 2005, study conducted by AmCham Peru with Lima-based APOYO consulting:

In 2004, U.S. companies employed over 100,000 Peruvians directly and generated at least three times as many jobs indirectly. Far from leading a race to the bottom, these companies are paying wages that are triple the average in Peru's urban areas and many times those in rural areas.

Peruvian exports to the United States supported an impressive 800,000 jobs in 2005, three times the number a decade earlier. This figure represents more than one-third of Peru's formal sector employment, underscoring how economic ties to the United States are providing Peru with critically needed jobs, income and tax revenues. Peruvian exporters using FedEx sell value-added competitive products. Those companies are creating jobs—critically needed jobs for Peru.

The opening of cross-border trade and investment in services through agreements such as PTPA is critical for the U.S. economy, because the service represents an area of competitive advantage for U.S. companies.

For the specific sector FedEx represents, the express delivery services, which has a reference in the treaty, PTPA is an outstanding agreement. PTPA has a chapter on customs administra-

tion and trade facilitation. PTPA will make the flow of bilateral trade faster, cheaper and more efficient by streamlining the administration of customs and ports.

Studies have shown that inefficient customs procedures in Latin America and the Caribbean add anywhere from 5 to 15 percent to the cost of trade. At a time when the simple average tariff in the region has fallen to about 10 percent, it is clear the cost of inefficient customs and ports looms as a significant barrier to trade to American companies operating, selling to Peru, more significant than tariffs in many places.

Speed matters, too. In today's competitive global market, speed to markets and reduced transaction costs are key success factors for any company involved in international trade.

Nowhere is this clearer than in the express delivery business. An express shipment in Taiwan can clear customs sometimes in under 15 minutes. In Latin America, the clearance times are considerably longer. We need to fix this for our American shippers.

Slow customs procedures represent a missed opportunity to take advantage of one of the region's key competitive advantages over Asia, namely its proximity to consumer markets in United States and Canada.

While customs reform need not wait for a trade agreement, PTPA's approach to trade facilitation offers the advantages of certainty, stability and enhanced commonality as well as permanence of the reforms. In other words, this kind of reforms work best when done in concert, as we have seen in recent FTAs implemented by the United States.

We urge you to bring PTPA up for congressional consideration as soon as possible and urge you to cast a favorable vote. Thank you very much.

[The prepared statement of Mr. Santeiro follows:]

Statement of Francisco X. Santeiro, Managing Director for Global Trade Services, Latin America and Caribbean Division, FedEx Express, Miami, Florida, on behalf of American Chamber of Commerce in Peru and the Association of American Chambers of Commerce in Latin America

On behalf of the Association of American Chambers of Commerce in Latin America (AACCLA) and the American Chamber of Commerce of Peru (AmCham Peru), it is a high honor for me to appear before the U.S. House of Representatives Committee on Ways and Means to testify in strong support of the U.S.–Peru Trade Promotion Agreement (PTPA). My name is Francisco X. Santeiro, and I am Managing Director for Global Trade Services, Latin America and Caribbean Division, FedEx Express.

I am testifying here today on behalf of two organizations:

- *The Association of American Chambers of Commerce in Latin America (AACCLA).* For nearly a century, the American Chambers of Commerce (AmChams) have been the most influential voice of U.S. business in Latin America and the Caribbean. Today, these 23 AmChams represent more than 20,000 companies and over 80% of U.S. investment in the region. With the mission of promoting trade and investment between the United States and the countries of the region through free trade, free markets, and free enterprise, AACCLA has become the premier advocate for U.S. business in the Americas.
- *The American Chamber of Commerce of Peru.* AmCham Peru represents more than 450 member companies that comprise over 90% of U.S. investment in Peru. AmCham promotes free enterprise and free markets while working to strengthen trade and investment between Peru and the United States within a framework of social responsibility and the highest business ethics.

My company is a proud member of both of these organizations and a strong supporter of the PTPA. FedEx is a $32-billion network of companies, offering a mix of

transportation, information, document management and supply chain solutions. FedEx offers the widest range of transportation services—express, ground, freight and expedited—to accommodate the widest range of shipments to more than 220 countries and territories, often within 24 to 48 hours. FedEx Express is the largest FedEx company in Latin America and the Caribbean, and it employs more than 3,000 people throughout the region.

PTPA promises growth, hope, and opportunity for Peru and the United States. It will open markets, foster growth and development, enhance the rule of law, and lend support to a close ally. The same is true of the recently concluded U.S.–Colombia Trade Promotion Agreement, which we also strongly endorse. I will elaborate on these points but wish to focus the bulk of my comments on PTPA's benefits for service providers and, in particular, for the express delivery industry as an example of the agreement's many virtues.

The Agreement with Peru: Growth, Hope, and Opportunity

First, we would like to give a summary of the arguments in favor of PTPA from the perspective of AACCLA, AmCham Peru, and FedEx.

Growth: A Burgeoning Trade Relationship

PTPA will allow U.S. and Peruvian companies to better take advantage of a booming bilateral trade relationship. U.S. trade with Peru has doubled over the past three years. Two-way commerce reached $7.4 billion in 2005, sustaining tens of thousands of U.S. jobs.

More than 5,000 U.S. companies exported their products to Peru in 2003, the most recent year for which data is available. Of those, more than 4,000, or about 80%, were small and medium-sized companies. Sales by these smaller companies represented 42% of all U.S. exports to Peru, well above the 27% share of U.S. exports that America's smaller companies contribute globally.

U.S. farmers and ranchers sell more than $250 million worth of agricultural products to Peru each year, and the Agriculture Coalition for U.S.–Peru Trade estimates the agreement will boost U.S. agricultural exports to Peru by more than $700 million per annum upon full implementation.

Nonetheless, this commercial relationship is even more important to Peru. Consider the eye-opening findings of a November 2005 study conducted by AmCham Peru with Lima-based APOYO Consulting:

- In 2004, U.S. companies employed over 100,000 Peruvians directly and generated at least three times as many jobs indirectly. Far from leading a "race to the bottom," these companies are paying wages that are triple the average in Peru's urban areas (and many times those in rural areas).
- Peruvian exports to the United States supported an impressive 800,000 jobs in 2005—three times the number a decade earlier. This figure represents more than one-third of Peru's formal sector employment, underscoring how economic ties to the United States are providing Peru with critically needed jobs, income, and tax revenues.

Hope: A Helping Hand for a Close Partner

The agreement will enhance U.S. efforts to strengthen democracy in the Andean region and lend support for the rule of law, investor protections, internationally recognized workers' rights, and transparency and accountability in business and government. The agreement's strong intellectual property and related enforcement provisions against trafficking in counterfeit or pirated products will help combat organized crime.

PTPA will promote economic growth in Peru, stabilizing its economy and providing its citizens with long-term alternatives to narcotics trafficking or illegal immigration. It will promote U.S. security and economic interests by forging a deeper partnership with a valued ally and setting an example for other countries around the world as we pursue our global security and economic goals.

Like much of Latin America, the Andean region is struggling against corruption, which undermines growth, security, and stability. PTPA contains critical provisions to enhance transparency and accountability in governance, providing Peru with important tools to fight the scourge of corruption.

Opportunity: A Level Playing Field in Trade

To foster democracy and development in the Andean region, the United States unilaterally opened its markets to most imports from Peru and its neighbors through the 1991 Andean Trade Preference Act, which was renewed and expanded in 2002. As a result, fully 97% of all imports from Peru already enter the U.S. marketplace duty-free, and the average U.S. duty on imports from Peru is just one-tenth of one percent.

By contrast, the U.S. International Trade Commission reports that "most of Peru's average tariff rates range from 12% to 25%." In other words, Peru enjoys nearly free access to our marketplace while our access to theirs remains limited.

PTPA will fix this imbalance by making this trade relationship a mutually beneficial, reciprocal partnership. Four-fifths of U.S. consumer and industrial products and more than two-thirds of current U.S. farm exports will enter Peru duty-free immediately upon implementation of PTPA.

Services: A Great Agreement for Key Growth Industries

In sum, PTPA is an outstanding agreement whether considered from a commercial perspective or on the basis of its foreign policy implications. However, its benefits for service providers in the United States and Peru deserve further attention. The commitments that Peru has made in the agreement to liberalize its service industries hold the promise of economic development, higher standards of living, and enhanced global competitiveness. This is a win-win agreement for Peru and for U.S. service industries.

According to the Coalition of Service Industries—an active leader of the U.S.–Peru Trade Coalition—services represent nearly 78% of U.S. economic output, and a similar proportion of private employment. U.S. services exports exceeded $323 billion in 2005, and the United States enjoys a services trade surplus of approximately $65 billion. As such, the liberalization of cross-border trade and investment in services through agreements such as PTPA is particularly significant for the U.S. economy precisely because services represent an area of competitive advantage for U.S. companies.

Under PTPA, Peru will open up substantial portions of its services market, subject to few exceptions. Peru has agreed to significant commitments on regulatory transparency and principles to guide independent regulatory authorities. Key sectors where new opportunities will be created for U.S. companies include telecommunications, banking, insurance, distribution, computer, audiovisual and entertainment, energy, transport, construction, real estate, construction, environmental, professional and other services.

From a policy perspective, PTPA's services commitments cover both the cross-border supply of services and the right to invest and establish a local service presence. These obligations are strengthened by a set of detailed disciplines on regulatory transparency, which is fundamental to meaningful market access to services. In fact, as a result of PTPA, Peru has agreed to a series of new commitments that extend beyond Peru's existing commitments under the General Agreement on Trade in Services (GATS).

Express Delivery Services: An Example of PTPA's Strength

For the specific service sector FedEx represents—express delivery services—PTPA is an outstanding agreement. I'd like to call particular attention to PTPA's chapter on customs administration and trade facilitation. Trade facilitation is a term of art for reforms to make the flow of international commerce faster, cheaper, and more efficient by streamlining the administration of ports and customs.

Why do customs administration and trade facilitation matter to the business customers who are moving their merchandise through ports and customs, whether by express shipment or other means? Studies have shown that relatively inefficient customs clearance procedures in Latin America and the Caribbean add anywhere from 5% to 15% to the cost of trade. At a time when the simple average import tariff in Latin America and the Caribbean has fallen to about 10%, it's clear that the cost of inefficient customs and ports looms as a significant barrier to trade—more significant than tariffs in many places.

In addition to direct costs, speed is a critical success factor in international trade. Nowhere is this clearer than in the express delivery business. An express shipment in Taiwan can clear customs in less than 15 minutes, but in some Latin American countries the average clearance time is best measured in days. For Latin America, slow customs procedures represent a missed opportunity to take advantage of one of its key competitive advantages vis-&-vis Asia—namely, the region's proximity to the rich markets of the United States and Canada. Inefficient customs and port procedures squander this advantage. In essence, they move Latin America farther away from its key export markets.

It's true that governments may implement customs reforms and see benefits for their own competitiveness immediately, regardless of whether they sign a trade agreement or other nations reciprocate. However, a rules-based approach as exemplified by PTPA offers the advantages of certainty, stability, and enhanced commonality. In other words, these kinds of reforms work best when done in concert, as we've seen in recent free trade agreements implemented by the United States.

PTPA's chapter on customs administration and trade facilitation is actually quite simple. It includes simple obligations for each party to publish its customs-related laws, regulations, and procedures on the Internet, as well as publish in advance any new regulations that are proposed. It provides for the release of goods "within a period no greater than that required to ensure compliance with—customs laws, and to the extent possible release the goods within 48 hours of arrival". This language keeps customs administrators focused on the need for speed and efficiency, both of which are central to international competitiveness in today's global economy.

PTPA will also put Peru on the path toward greater automation and efficient use of information technology in its customs procedures. Customs automation will assist Peruvian customs officials as they seek to employ modern risk management systems and focus inspections on "high-risk goods and simplify the clearance and movement of low-risk goods, while respecting the confidential nature of the information it obtains through such activities." In today's uncertain international security environment, such simple steps can ensure that resources are focused on safeguarding against real threats.

These provisions cover customs generally, but for the express delivery industry, PTPA is also a model. The agreement specifically instructs each party to maintain "a separate and expedited customs procedure for express shipments" and allow the "processing of information necessary for the release of an express shipment before the express shipment arrives." These and other provisions lighten the burden of paperwork.

Most importantly, PTPA instructs the parties to "provide for clearance of express shipments within six hours after submission of the necessary customs documents, provided the shipment has arrived." Having a time-specific benchmark is incredibly useful. As customs experts often point out, if you can't measure customs clearance times, you can't improve them; and if you don't have a goal, you never will.

Conclusion

Mr. Chairman, Mr. Ranking Member, we greatly appreciate this opportunity to testify before this committee in support of an agreement that is so clearly in the commercial interest and the national interest of the United States. It also will bring real benefits for our friends, allies, and neighbors in Peru. Despite the many commitments and pressures of the legislative calendar, we urge you to bring PTPA up for Congressional consideration as soon as possible—and to cast a favorable vote. We urge this for the sake of your constituents, but also for the sake of our friends in Peru.

Thank you very much.

Mr. SHAW. Thank you. Ms. Lilygren.

STATEMENT OF SARA LILYGREN, VICE PRESIDENT FOR FEDERAL GOVERNMENT RELATIONS, TYSON FOODS, INC., ON BEHALF OF NATIONAL CHICKEN COUNCIL

Ms. LILYGREN. Thank you, Chairman Thomas and Members of the Committee, for the opportunity to present the views of the National Chicken Council, the USA Poultry and Egg Export Council, the National Turkey Federation and the United Egg Producers on the PTPA.

I am Sara Lilygren, Vice President of Federal Government Relations for Tyson Foods. Tyson is the leading processor of chicken in the United States, with more than 6,500 family farms producing the live birds for our production. We are also a leading processor of beef and pork, and exports are vital to both Tyson Foods and the poultry and egg industry.

The U.S. poultry associations have long been strong supporters of this administration's efforts to liberalize international trade, in particular FTAs with certain developing and emerging economies in the Western Hemisphere. The U.S.–Peru TPA clearly represents

one of the best market access arrangements for poultry ever negotiated in a FTA.

The arrangement recognizes interests on both sides of the table, providing immediate or near-term market access for nearly all poultry products while liberalizing trade in the most sensitive product which is chicken leg quarters. The trade of chicken leg quarters is addressed through the use of a tariff rate quota over a longer period of time. Appropriately, the U.S. industry will gain immediate market access duty free for 12,000 metric tons of chicken leg quarters.

The agreement also has a growth factor so that over 10 years the amount of duty free access will grow to approximately 24,000 metric tons. The United States has never exported, by the way, more than 2,400 metric tons of poultry, including all poultry products to Peru in any year. It is a tremendous advantage for us.

In the meantime, the tariffs on all other products will be eliminated immediately or will be reduced and eliminated over the next 5 years.

In reaching agreement on the Peru TPA, U.S. government negotiators also achieved a number of improvements over past agreement TPAs. Most notably, the U.S. government obtained specific commitments on the part of the Peruvian government to recognize and accept the Animal and Plant Health Inspection Service, or APHIS, system for determining disease status and the Food Safety and Inspection Service, or SFIS, system for approving poultry slaughter and processing facilities.

In the past, U.S. poultry exports to Peru have been blocked by Peruvian government regulators on grounds that the U.S. product allegedly posed some threat of avian flu or New Castle disease or even salmonella. Hopefully, the commitments that Peru has now made to respect the decisions of U.S. animal health regulators will ensure that the U.S. industry benefits immediately from the market access provisions and won't have those benefits blocked by the imposition of nontariff barriers in the form of dubious SPS requirements.

In this regard, the Peruvian agreement is a further improvement on past agreements in that our government negotiators have anticipated some of the basic implementation problems that we have experienced in the past and taken measures to eliminate them.

Economic studies have shown that when the economies of developing countries improve and their low-income citizens become middle class, the first thing that they spend their extra income on is an improved diet with additional farm agriculture animal protein; and the least costly and most dependable source of dietary protein in the world is poultry and egg products. In other words, in the context of a FTA, the U.S. poultry and egg industry and the domestic industry of our free trade partner aren't competing over a fixed pie with the result that increased imports displace domestic production. In fact, the greater economic prosperity occasioned by a successful FTA can mean a larger market for both domestic and imported poultry and eggs.

In conclusion, Mr. Chairman, the U.S. poultry and egg industry, especially its export segment, has worked long and diligently to support the administration in its free trade initiatives, particularly

those in the Western Hemisphere. Those efforts have clearly paid dividends with the conclusion that the U.S.–Peru TPA represents the best package of market access commitments obtained thus far for our sector of the economy. We congratulate the USTR and USDA negotiators in their work, and we respectfully ask this Committee and its Members to fully support the USPTPA when it is ultimately submitted for congressional approval.

[The prepared statement of Ms. Lilygren follows:]

Statement of Sara Lilygren, Vice President for Federal Government Relations, Tyson Foods, Inc., on behalf of National Chicken Council

Thank you, Chairman Thomas, Ranking Member Rangel, and Members of the Committee for the opportunity to present the U.S. poultry and egg producers/processors views, comments, and recommendations regarding the implementation of the U.S.–Peru Trade Promotion Agreement. On behalf of the National Chicken Council, the USA Poultry and Egg Export Council, the National Turkey Federation, and the United Egg Producers, I am pleased to share the position of these organizations on the important issue of today's hearing.

I am Sara Lilygren, Vice President of Federal Governmental Relations for Tyson Foods. I am pleased to represent the organizations supporting the comments being presented. Tyson Foods is the leading processor of chicken in the United States with more than 6,500 family farms producing the live birds for the company. Tyson is also a leading processor of beef and pork. Exports are a vital part of the economic well-being of Tyson Foods and the U.S. poultry and egg industry.

U.S. poultry associations have long been strong supporters of this Administration's continuing efforts to liberalize international trade and, in particular, of its efforts to forge free trade arrangements with certain developing and emerging economies in the Western Hemisphere. The U.S. poultry industry was a strong supporter of the NAFTA agreement and has worked diligently with both the United States government and with its counterpart industry in Mexico to ensure a successful and mutually acceptable implementation. Several years ago, when difficulties arose with respect to Mexico's implementation of its original NAFTA poultry access commitment on chicken leg quarters, the U.S. poultry export industry met with its Mexican counterparts and developed a joint proposal to resolve the issue through a mutually-acceptable exercise of the NAFTA safeguard provisions. That proposal was eventually accepted by both governments and liberalization of the NAFTA poultry markets continued without unnecessary trade disruption.

Similarly, the U.S. poultry and egg export industries were active in assisting the U.S. government to achieve a successful resolution of poultry market access during the CAFTA negotiations. All the Central American countries had identified poultry products and, specifically, chicken leg quarters, as particularly sensitive. Rather than allow poultry issues to undermine the negotiations, the U.S. poultry and egg industry met with representatives of its counterpart industries in Central America and, through a series of meetings over more than a year, forged a mutually-acceptable proposal for CAFTA poultry market access that was similar in many respects to the solution that had been achieved in NAFTA. The proposal was also accepted by the respective governments and became the basis for the poultry market access commitments in the CAFTA.

The U.S. poultry industry has not yet realized the benefits of the CAFTA negotiations. Full CAFTA implementation has been delayed while the parties work to resolve disagreements about the methods of implementation for some agricultural products, for intellectual property, and for textiles. However, industry leaders are hopeful that significantly improved market access will be achieved soon. The CAFTA came into force with respect to El Salvador, Honduras and Nicaragua earlier this year, and with Guatemala on the first of this month. Guatemala is now officially in CAFTA and is a key player in poultry trade. The U.S. industry will begin to benefit from a new 21,800 metric ton Tariff Rate Quota (TRQ) for chicken leg quarters, as well as immediate liberalization or significantly lower tariff rates for all other poultry and egg items. A joint arrangement for an export trading company is a key component in the process involved in filling the TRQ for leg quarters.

In recent months there have been certain significant steps taken by some of our CAFTA partners to recognize and accept USDA regulatory systems. In particular, certain progress has been made involving APHIS's system for determining the prevalence of animal diseases and FSIS's system for approving and inspecting poultry processing facilities. However, more needs to be achieved in that area. For example,

El Salvador continues to block imports of U.S. shell eggs and poultry by imposing questionable sanitary inspection requirements and that issue needs to be resolved quickly before other countries implement similar measures, like the ones published by Honduras last month. More progress needs to be achieved for the market access for U.S. eggs and poultry negotiated in the agreement. Some progress is being achieved with CAFTA partners on Sanitary/Phytosanitary (SPS), issues. The U.S. government continues to press for additional improvement on these issue.

As in the cases of NAFTA and CAFTA, the U.S. poultry industry has supported the Administration's efforts to forge free trade agreements with the countries of the Andean region. In anticipation of Andean FTA negotiations, representatives of the U.S. poultry industry met on several occasions with their counterpart industries in that region, once in Atlanta and once in Cartagena, Colombia. They were never able to develop a joint proposal as they had in the NAFTA and CAFTA cases. Nonetheless, the U.S. industry has continued its dialogue with the Andean region poultry industries during the course of the negotiations. Moreover, the industry has worked very closely with our government negotiators both at the Office of the U.S. Trade Representative and within the U.S. Department of Agriculture to ensure that they fully understood the poultry and egg industries' interests in the negotiations as well as the areas in which it was possible to construct compromise solutions and longer-term liberalization scenarios in order to ensure successful negotiations.

Those close working relationships have been advantageous both to our industry and to the U.S. government, as is evident by the results recently achieved in the U.S.–Peru Trade Promotion Agreement (TPA). The U.S.–Peru FPA clearly represents one of the best market access arrangements for poultry ever negotiated in a free trade agreement. The arrangement recognizes interests on both sides of the table, providing immediate or near term market access for nearly all poultry products, while liberalizing trade in the most sensitive product—chicken leg quarters. The trade of chicken leg quarters is addressed through the use of a tariff rate quota over a longer period of time. Appropriately, the U.S. industry will gain immediate market access, duty-free, for 12,000 metric tons of chicken leg quarters. Initially, any additional CLQ imports will be subject to a reasonable over-quota duty of 25 percent, but that duty will be slowly reduced and eliminated over time. The agreement also has a growth factor so that, over ten years, the amount of duty free access will grow to approximately 24,000 metric tons. This approach presents a considerable opportunity. The United States has never exported more than 2,400 metric tons of poultry, and that includes all poultry products, to Peru in any year.

In the meantime, the tariffs on all other products will be eliminated immediately, or will be reduced and eliminated over the next five years. A few issues remain to be clarified. For example, the U.S.–Peru TPA calls for TRQ access on a "first-come-first-served" basis. The industry awaits further information on how such a system will operate. However, for the most part, the U.S.–Peru TPA negotiations have been a great success and, hopefully, will provide the model for poultry market access negotiations in future free trade agreements.

In reaching agreement on the Peru TPA, U.S. government negotiators also achieved a number of improvements over past agreements TPA's. Most notably, the U.S. government obtained specific commitments on the part of the Peruvian government to recognize and accept the APHIS system for determining disease status and the FSIS system for approving poultry slaughter and processing facilities. In the past, U.S. poultry exports to Peru have been blocked by Peruvian regulators on grounds that the U.S. product allegedly posed a threat of avian influenza and Newcastle disease or even Salmonella. Hopefully, the commitments that Peru has now made to respect decisions of U.S. animal health regulators will ensure that the U.S. industry will benefit immediately from the market access provisions of the agreement and will not have those benefits blocked by the imposition of non-tariffs barriers in the form of dubious SPS requirements. In this regard, the Peruvian agreement is a further improvement on past agreements in that our government negotiators have anticipated some of the basic implementation problems that we have experienced in the past and have taken additional measures to try to ensure implementation occurs more quickly and smoothly in the case of Peru.

There have been concerns voiced by some that a trade agreement with the United States could be ruinous to industries in less developed countries. In the case of poultry trade, we do not believe that will be true for several reasons. First, the U.S. poultry and egg industries have made it their practice to accommodate particularly sensitive situations when they occur so that mutually acceptable terms can be incorporated into these agreements. In short, our industry sees that it is in their interest to be accepted as welcome participants in these markets. Secondly, a free trade area with the United States provides a developing country with the opportunity to significantly raise the standard of living for many of its citizens and thereby to in-

crease the consumption of poultry products to the benefit of both the domestic and the U.S. poultry industries. Economic studies have shown that when the economies of developing counties improve and their low-income citizens become middle class, the first thing that they spend their extra income on is an improved diet with additional farm agriculture animal protein. And, the least costly and most dependable source of dietary protein in the world is poultry and egg products. In other words, in the context of a free trade agreement, the U.S. poultry and egg industry and the domestic industry of our free trade partner are not competing over a fixed pie with a result that increased imports simply displace domestic production. The greater economic prosperity occasioned by a successful free trade agreement can mean a larger market for both domestic and imported poultry and eggs.

In conclusions, Mr. Chairman, the U.S. poultry and egg industry, especially its export segment, has worked long and diligently to support the Administration in its free trade initiatives, particularly those in the Western Hemisphere. In the course of achieving NAFTA and CAFTA, we have developed an excellent working relationship with our government negotiators, and have reached out to our counterpart industries in those countries to help guarantee a successful negotiations and also to achieve mutually acceptable results for both industries. Those efforts have clearly paid dividends with the conclusion of the U.S.–Peru TPA that represents the best package of market access commitments obtained thus far. We congratulate the USTR and USDA negotiators on their work in that agreement. We respectfully ask this committee and its members to fully support the U.S–Peru TPA when it is ultimately submitted for congressional approval.

U.S. POULTRY AND EGG EXPORTS TO PERU—2001 TO PRESENT

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREIGN AGRICULTURAL SERVICE
HS 10-DIGIT EXPORTS

AREA/ COUNTRIES OF DESTINATION AND COMMODITIES EXPORTED				JANUARY - DECEMBER QUANTITIES				JANUARY - APRIL COMPARISONS			
				2001	2002	2003	2004	2005	2005	2006	[illegible]
PERU	CHCKNS,YNG,FRZN	207110020	MT	11.2	10.9	10.2	0	0	0	0.6	--
	CHCKNS,YNG,FR/CH	207120020	MT	4.8	0	0	0	0	0	0	--
	CHCKNS,NES FRZN	207120040	MT	6.2	0	0	0	0	0	0	--
	CHCKN CTS FR/CH	207130000	MT	3.6	0	0	0	0	0	0	--
	CKN LG QUART,FZN	207140010	MT	1,438.80	499.9	0	188.6	0	0	0	--
	CHK OTHER LEG,FZ	207140025	MT	0	0	0	23.6	0	0	0	--
	CHKWINGS&OTH,FZN	207140030	MT	0	136.1	0	0	0	0	0	--
	CHK,OFL,EXLV,FZN	207140050	MT	70.7	0	0	0	0	0	0	--
	CHK OTHER,FZN	207140090	MT	235.1	164.7	7	0	0	0	0	--
	TURKEYS, FROZEN	207250000	MT	7.6	0	0	0	0	0	0	--
	TRKY,LEGSWBO,FZN	207270010	MT	24.1	0	0	0	0	0	0	--
	TRKY,MDT,NOB,FZN	207270025	MT	51.3	0	0	0	0	0	0	--
	TRKY,OTHER	207270090	MT	0	47.2	0	0	0	0	0	--
TOTAL			MT	1,853.30	858.8	17.2	212.2	0	0	0.6	--

Data Source: Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREIGN AGRICULTURAL SERVICE
HS 10-DIGIT EXPORTS

AREA/ COUNTRIES OF DESTINATION AND COMMODITIES EXPORTED			JANUARY - DECEMBER VALUES IN 1000 DOLLARS				JANUARY - APRIL COMPARISONS			
			2001	2002	2003	2004	2005	2005	2006	[illegible]
PERU	BIRD EGGS/HATCH	407000020	169	0	0	0	14	0	0	--
	CHCKNS,YNG,FRZN	207110020	14	20	29	0	0	0	5	--
	CHCKNS,YNG,FR/CH	207120020	6	0	0	0	0	0	0	--
	CHCKNS,NES FRZN	207120040	19	0	0	0	0	0	0	--
	CHCKN CTS FR/CH	207130000	12	0	0	0	0	0	0	--
	CKN LG QUART,FZN	207140010	813	268	0	128	0	0	0	--
	CHK OTHER LEG,FZ	207140025	0	0	0	16	0	0	0	--
	CHK WINGS&OTH,FZN	207140030	0	31	0	0	0	0	0	--
	CHK,OFL,EX LV,FZN	207140050	64	0	0	0	0	0	0	--
	CHK OTHER,FZN	207140090	136	100	4	0	0	0	0	--
	TURKEYS, FROZEN	207250000	30	0	0	0	0	0	0	--
	TRKY,LEGS W/BO,FZN	207270010	14	0	0	0	0	0	0	--
	TRKY,MDT,NOB,FZN	207270025	28	0	0	0	0	0	0	--
	TRKY,OTHER	207270090	0	21	0	0	0	0	0	--
	BRD EGG FR,PR,CK	407000040	0	0	0	0	0	0	4	--
TOTAL			1,305	440	34	144	14	0	9	--

Data Source: Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREIGN AGRICULTURAL SERVICE
HS 10-DIGIT EXPORTS

AREA/ COUNTRIES OF DESTINATION AND COMMODITIES EXPORTED				JANUARY - DECEMBER QUANTITIES				JANUARY - APRIL COMPARISONS			
				2001	2002	2003	2004	2005	2005	2006	[illegible]
PERU	BIRD EGGS/HATCH	407000020	DOZ	3,616.00	0	0	0	7,020.00	0	0	--
	BRD EGG FR,PR,CK	407000040	DOZ	0	0	0	0	0	0	3,600.00	--
TOTAL			DOZ	3,616.00	0	0	0	7,020.00	0	3,600.00	--

Data Source: Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics

- The National Chicken Council (NCC) represents companies that produce and process about 95 percent of the young meat chickens (broilers) in the United States.
- The USA Poultry & Egg Export Council (USAPEEC) represents companies that export over 95 percent of U.S. poultry and eggs sold into international markets.
- The National Turkey Federation (NTF) represents 98 percent of the U.S. turkey industry, including processors, growers, breeders, hatcheries, and allied industry companies.
- The United Egg Producers (UEP) represents companies that produce over 90 percent of the shell eggs.

Mr. SHAW. Thank you. Mr. Gibson.

STATEMENT OF BRETT GIBSON, LEGISLATIVE REPRESENTATIVE, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. GIBSON. Good afternoon, Mr. Chairman, Members of the Committee. I thank you for the opportunity to testify today on behalf of the nine million working men and women of the AFL-CIO on the U.S.–Peru Free Trade Agreement.

Like the other FTA's negotiated by this administration, the Peru FTA provides the wrong answers to the challenges faced in Peru and United States. This failed model neither addresses the problems confronted by workers in Peru nor contributes to the creation of good jobs and decent wages at home.

The workers' rights provisions are entirely inadequate to ensure the workers' fundamental rights are respected. At the same time, flawed provisions on services, investment, government procurement and intellectual property rights will undermine the development and ability of both governments to protect public health, communities and the environment. Inclusion of these weak labor provisions in this agreement is inexcusable.

In 2005, then President Alejandro Toledo publicly expressed his support for the inclusion of ILO core labor standards in the trade agreement and a mechanism to enforce them. Moreover, following the contentious CAFTA debate, then U.S. Trade Representative Robert Portman also promised to consider the concerns raised by Congress in future trade agreements. Yet we continue to see the same weak language again and again.

Workers in Peru and in the United States deserve protections at least as strong as those afforded commercial interests; and until these provisions are included in trade agreements, they will continue to face strong opposition.

In addition to the weak provisions included in the FTA, we have very serious concerns about Peru's labor laws. As the ILO has observed, Peru's laws fall short of compliance with ILO's core labor standards, especially freedom of association and the right to organize and bargain collectively.

Moreover, existing laws are not respected and practiced. Employers can and often do avoid unions by employing workers on short, fixed-term contracts, commercial contracts or by hiring workers through a management-dominated service cooperative. Should a worker with a fixed-term contract attempt to organize or join a union, the contract is simply not renewed upon its expiration.

Protections against employer interference or anti-union discrimination are weak. Even when workers do have a collective bargaining agreement, employers may unilaterally modify the terms and the conditions by negotiating a new contract.

Most troubling, the law gives the employer the power to fire any worker without cause. This effectively eliminates the protections for workers to organize, bargain collectively and strike.

Even if Peru's laws were brought fully into compliance with ILO standards, the U.S. government would have absolutely no recourse to dispute settlement or enforcement if a future government were to reverse these gains under this FTA. Labor provisions included in the Peru FTA do not include any enforceable provisions preventing the weakening of or derogation from domestic labor laws. This is not an academic point with regard to Peru, whose government in the nineties harshly repressed organized labor and substantially weakened the labor code.

The commercial provisions of the agreement also raise some concerns. Our trade deficit with Peru alone has already climbed from $335 million in 2000 to $2.8 billion in 2005. The agreement will likely result in a deteriorating trade balance in specific sectors, including sensitive sectors such as apparel and metals.

American workers are willing to support increased trade if the rules that govern it promote fairness, stimulate growth, create jobs and protect fundamental rights. AFL-CIO is committed to fighting for better trade policies that benefit U.S. workers and the U.S.

economy. We urge Congress to reject this U.S.–Peru Free Trade Agreement and begin work on a more just, economic, and social relationship with Peru.

Thank you again, Mr. Chairman.

[The prepared statement of Mr. Gibson follows:]

Statement of Brett Gibson, Legislative Representative, American Federation of Labor and Congress of Industrial Organizations (AFL–CIO)

Mr. Chairman, members of the Committee, thank you for the opportunity to testify today on behalf of the nine million working men and women of the AFL–CIO on this very important topic.

The trade debate in the United States continues to be more contentious than necessary. It does not have to be this way. We in the labor movement, along with our allies in the environmental, family farm, small business, development, and faith communities, have repeatedly communicated our substantive and concrete concerns about the direction of U.S. trade policy to the Administration—through testimony, advisory committee reports, and meetings. Yet our concerns have been completely ignored, and the Administration continues to barrel ahead with ill-advised bilateral trade deals that will only further exacerbate our current trade imbalance, and erode the living standards of American workers and our counterparts overseas.

Mr. Chairman, members of the Committee, we ask you to reject the Peru FTA and urge the administration to renegotiate this deeply flawed deal.

In our view, the Peru FTA provides precisely the wrong answers to the challenges faced in Peru and the United States. The agreement is based on a failed model that neither addresses the problems confronted by workers in Peru, nor contributes to the creation of good jobs and decent wages at home. Once again, the workers' rights provisions are entirely inadequate to ensure that fundamental human rights are respected, and the dispute settlement mechanism for workers' rights and environmental protections is far weaker than that available for commercial provisions. At the same time, flawed provisions on services, investment, government procurement, and intellectual property rights will undermine the ability of both governments to protect public health, strong communities, and the environment.

In addition to the problems outlined above, which are common to all of the trade agreements negotiated by this Administration, we continue to have very serious concerns about the labor laws of Peru. As the International Labor Organization (ILO) recently observed, many of Peru's labor laws still do not comply with ILO core labor standards. Moreover, existing laws are not respected in practice. Despite improvements made to Peru's legal framework in 2003, labor laws today do not provide for the full exercise of the most important and fundamental workers' rights: freedom of association and the right to organize and bargain collectively.

Workers in Peru suffer from a labor relations system that makes the entire employment relationship precarious and unfair. Employers can and often do avoid unions by employing workers on short, fixed-term contracts, commercial contracts, or by hiring workers through a management-dominated service cooperative. Should a worker with a fixed-term contract attempt to organize or join a union, the contract is generally not renewed upon expiration. Those workers hired through a cooperative are not considered employees but members of the cooperative; thus, they are completely denied the ability to exercise their basic labor rights.

Workers fortunate enough to be in a union are largely unprotected from employer interference or from anti-union discrimination, further limiting the ability of workers to organize and bargain for better, dignified working conditions. Even if a worker does have a collective bargaining agreement, employers may unilaterally modify its terms as a condition for negotiating a new contract. Most troubling, the law gives the employer the power to fire any worker *without cause, and without the right to legally challenge the action.* This effectively eliminates the rights for workers hired under direct, permanent contracts to organize, bargain collectively, and strike.

Labor law reform is currently stalled in the Peruvian Congress. But even if these reforms were fully implemented, the labor provisions included in the Peru FTA do *not* include any enforceable provisions preventing the weakening of or derogation from domestic labor laws. This means that even if Peru's labor laws are brought fully into compliance with ILO standards, the U.S. government would have absolutely no recourse to dispute settlement or enforcement if a future government were to reverse those gains and weaken or gut Peru's labor laws after Congressional passage of the FTA.

In addition to our concerns on Peru's labor situation, any vote on the Peru FTA must take into account the broader economic reality that we are facing today. Our

trade deficit hit a record-shattering $726 billion last year; we have lost more than three million manufacturing jobs since 1998; and average wages have not kept pace with inflation this year—despite healthy productivity growth. The number of people in poverty continues to grow, and real median family income continues to fall. Offshore outsourcing of white-collar jobs is increasingly impacting highly educated, highly skilled workers—leading to rising unemployment rates for engineers and college graduates. Together, record trade and budget deficits, unsustainable levels of consumer debt, and stagnant wages paint a picture of an economy living beyond its means, dangerously unstable in a volatile global environment.

The AFL–CIO Executive Council adopted a statement in March calling for a moratorium on all new free trade agreements, including with Peru, until we can rewrite them to protect and advance workers' interests.

Labor Provisions of the Peru FTA

Like CAFTA, the Peru FTA's labor provisions constitute a significant step backwards from existing labor rights provisions in the U.S.–Jordan FTA and in our Generalized System of Preferences (GSP) program. In the Peru agreement, only one labor rights obligation—the obligation for a government to enforce its own labor laws—is actually enforceable through dispute settlement. All of the other obligations contained in the labor chapter, many of which are drawn from Congressional negotiating objectives, are explicitly excluded from the dispute settlement system and are thus completely unenforceable.

The USTR has no legitimate excuse for continuing to negotiate these weak and inadequate labor provisions. During a visit to Washington, D.C., in 2005, President Alejandro Toledo expressed support for including an enforceable commitment to comply with ILO core labor standards in the trade agreement. Our government has consciously chosen not to include this provision in the final text, despite the willingness of the Peruvian government to do so. It is no longer credible for USTR to claim that other governments are not willing to include meaningful worker rights provisions in FTAs.

The labor provisions of the Peru FTA, like those in all the FTAs negotiated by this Administration, are simply inadequate to ensure that workers' fundamental human rights will be protected. These weak labor provisions:

- do not contain any enforceable requirements that domestic labor laws comply with the international standards established by the International Labor Organization (ILO). While the labor chapter includes a commitment to respect the ILO core labor standards, this commitment is not subject to the enforcement mechanisms of the trade agreement.
- do not prevent a government from "weakening or reducing the protections afforded in domestic labor laws" to "encourage trade or investment." A government could roll back its labor laws without threat of sanction or fine. This is a very real problem. In 2005, for example, the Mexican government drafted and attempted to pass legislation that would have substantially weakened its labor code. Unfortunately, this is an all-too-common occurrence.
- do not include any requirement that countries effectively enforce non-discrimination laws, even though this is an ILO core labor standard. The Andean governments expressed willingness to include non-discrimination within the definition of internationally recognized worker rights, but USTR refused to make this important change.Penalties are Insufficient

Penalties are Insufficient

Even for the one labor obligation in the FTA that is subject to dispute resolution—the requirement to effectively enforce domestic laws—the procedures and remedies for addressing violations are significantly weaker than those available for commercial disputes in the agreement. This directly violates Trade Promotion Authority, which instructs our negotiators to seek provisions in trade agreements that treat all principle negotiating objectives equally and provide equivalent dispute settlement procedures and equivalent remedies for all disputes.

The labor enforcement procedures cap the maximum amount of fines and sanctions available at an unacceptably low level, and allow violators to pay fines that end up back in their own territory with inadequate oversight. These provisions not only make the labor provisions of the agreement virtually unenforceable, they also differ dramatically from the enforcement procedures and remedies available for commercial disputes:

- In commercial disputes, the violating party can choose to pay a monetary assessment instead of facing trade sanctions, and in such cases the assessment will be capped at half the value of the sanctions. In labor disputes, however,

the assessment is capped at an absolute level, no matter what the level of harm caused by the offending measure.

- Not only are the caps on fines much lower for labor disputes, but any possibility of trade sanctions is much lower as well. In commercial disputes, a party can suspend the full original amount of trade benefits (equal to the harm caused by the offending measure) if a monetary assessment (capped at half that value) is not paid. In a labor dispute, the level of trade benefits a party can revoke if a monetary assessment is not paid is limited to the value of the assessment itself—capped at $15 million.
- Finally, the fines are robbed of much of their punitive or deterrent effect by the manner of their payment. In commercial disputes under the Peru FTA, the deterrent effect of punitive remedies is clearly recognized—it is presumed that any monetary assessment will be paid out by the violating party to the complaining party, unless a panel decides otherwise. Yet for labor disputes, the violating country pays the fine to a joint commission to improve labor rights enforcement, and the fine ends up back in its own territory. No rules prevent a government from simply transferring an equal amount of money out of its labor budget at the same time it pays the fine. And there is no guarantee that the fine will actually be used to ensure effective labor law enforcement, since trade benefits can only be withdrawn if a fine is not paid. If the commission pays the fine back to the offending government, but the government uses the money on unrelated or ineffective programs so that enforcement problems continue un-addressed, no trade action can be taken.

The labor provisions in the Peru FTA are woefully inadequate, and clearly fall short of the TPA negotiating objectives. They will be extremely difficult to enforce with any efficacy, and monetary assessments that are imposed may be inadequate to actually remedy violations. Given Peru's failure to respect core workers' rights and the huge inadequacies in its labor laws, it is especially problematic to implement an FTA with weak labor protections at this time.

Labor Rights in Peru

Workers continue to face legal and practical obstacles to the exercise of their rights to freely associate, to join a trade union and to bargain collectively in Peru. Under the autocratic rule of President Alberto Fujimori, which lasted from 1990 to 2000, trade unionists suffered heavy losses. Collective bargaining agreements were abrogated, harsh industrial policies were enacted, and political repression became the norm. As a result, there was a sharp drop in the union density in Peru, from 21.9% in 1990 to 4.6% in 2002. Similarly, the percentage of workers covered by collective bargaining agreements dropped from 37.9% to 11.7%, during the same period.[1] Although the outgoing administration of President Toledo took some steps to moderate the Fujimori era "reforms," serious problems still persist in the labor laws and practices in Peru. Additional reforms to the General Labor Law, which would have made additional steps towards bringing the country's labor code into compliance with ILO labor standards, have been drafted but unfortunately never enacted.

With the coming of a new administration, it seemed possible that an improved General Labor Law could pass soon. However, we are deeply troubled by recent remarks made by Congressman Jorge del Castillo, the Secretary General of APRA—the political party of president-elect Alan Garcia. In the June 22 issue of *Gestion,* he explains that the current congress would not approve the revised General Labor Law. Even worse, he goes on to say that the labor reforms do not constitute a priority for the new congress, but that they will focus instead on austerity reforms and investment policy. His remarks clearly do not bode well for Peruvian workers and the prospect for needed labor law reforms.

Right to Organize and Bargain Collectively:

In 1992, President Fujimori decreed that collective bargaining agreements would expire within a year and would thereafter be subject to renegotiation. With unions already on the defensive, the gains won through years, and in some cases decades, of negotiation were wiped away. Today's collective bargaining agreements contain only a fraction of the rights and benefits of pre-1992 contracts. Unfortunately, not much has changed as to collective bargaining.

Section 9 of Legislative Decree 728 allows employers to introduce changes unilaterally to the content of previously concluded collective agreements, a practice denounced by the ILO.[2] At the expiration of a collective bargaining agreement, all pre-

[1] ILO, Peru: Proposal of the National Program for Decent Work 2004–2006 (Dec. 2003), p.70.
[2] CEACR: Individual Observation Concerning Convention No. 98, Right to Organize and Collective Bargaining, Peru (2005).

viously negotiated agreements must be ratified in order for the previously established terms and conditions to continue in force. Employers often introduce modifications unilaterally as a "condition" to move forward with re-negotiation of an existing agreement.

The ILO has also found that legal procedures for addressing anti-union discrimination and employer interference are so slow as to be ineffective. It recently recommended that "the legislation—make express provision for rapid appeal procedures and effective and dissuasive sanctions against acts of interference by employers against workers' organizations and that cases concerning issues of anti-union discrimination and interference should be examined promptly so that the necessary remedial measures can be really effective." [3]

Freedom of Association—Right to Strike

Article 73(b) of the Industrial relations Act of 1992 requires that a majority of the workers in a workplace vote in favor of a strike before it can be held. The ILO has found such a requirement to be excessive, as ILO standards only call for the support of a majority of those voting.[4] The right to strike is further restricted for those workers employed in "essential public services." However, the government's list of "essential services" is vast and goes far beyond what is deemed essential under international law.[5]

The ILO has also held that an independent body should determine the legality of a strike. In the case of a strike in an essential public service, an independent body should also determine how many workers are needed to maintain minimum services. In Peru, the Ministry of Labor makes these determinations.[6]

According to the State Department's 2005 Report on Human Rights Practices, there was a single legal strike and 45 illegal strikes between January and August. Labor leaders alleged that it was difficult to get approval for a legal strike and believed that the Ministry of Labor was reluctant to do so for fear of hurting the economy.

Use of Short-Term Contracts and Labor Cooperatives to Frustrate Labor Rights:

Under the laws of Peru, employers may hire new employees through renewable, fixed-term contracts, which are typically for no longer than a few months. Employees may be employed for years on such contracts, despite their temporary nature. However, if an employee attempts to form or join a union, the contract is typically not renewed. Further, it is more difficult to prove anti-union discrimination in the termination of a temporary three-month contract, as the employer can justify the dismissal on the basis that the work was temporary and that the worker is no longer needed.

Some workers are also hired through a service cooperative. Workers hired by such cooperatives, which are often set up and controlled an employer, are not considered employees of the establishment but rather are deemed members of the cooperative. Thus, since the relationship with the employer is indirect, the employee is not protected by the terms of the General Labor Law. Such workers also do not receive legally established benefits and protections either.

Forced Labor

Forced labor continues to be practiced in rural areas of Peru, affecting primarily the indigenous populations of Atalaya and Ucayali. In 2004, the ILO published the report, *Forced Labor In The Extraction Of Timber In Peruvian Amazonia* as a product of the ILO's special action program to combat forced labor. The report found the "existence of forced labor, particularly in work related to the unlawful extraction of timber in various regions of the Peruvian Amazon basin. . . . The number of persons affected is reported to be around 33,000, mainly belonging to various ethnic groups of Peruvian Amazonia." [7] The report found extreme cases in which indigenous workers are actually captured and forced to work in timber camps, although forms of debt bondage is a more common practice. The document also reported that

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[3] Id.

[4] CEACR Individual Observation Concerning Convention No. 87, Freedom of Association and Protection of the Right to Organize, Peru (2005)

[5] According to the Public Service Law, essential services are defined as: a) health services; b) waste collection and public sanitation; c) electricity, water, drainage systems, gas and fuel services; d) funeral and burial services; e) prison system; f) communications and telecommunications; g) transportation; h) national security, national defense and strategic services; i) justice system as decided by the Supreme Court; j) others determined under the law.

[6] See id, supra, n. 4.

[7] CEACR: Individual Observation Concerning Forced Labor Convention, No. 29, Peru (2006).

major international corporations and powerful timber industry groups provided the financing of timber extraction activities.

Following the release of the report, the government prepared a National Plan of Action for the Eradication of Forced Labor. However, the ILO reported that the government did not receive any legal complaints concerning forced labor. Given that forced labor is known to exist, the absence of any penalties was found to be "indicative of the incapacity of the judicial system to prosecute such practices and penalize those who are guilty." In accordance with Article 25 of the Convention, the Government is under the obligation to ensure that the penalties imposed on those found guilty of the exaction of forced labor are really adequate and strictly enforced.

Child Labor

The 2005 U.S. Department of State Report on Human Rights Practices notes that although the law generally restricts child labor "the law's provisions were violated routinely in the informal sector." The National Institute for Statistics and Information (INEI) estimated that "2.3 million children between 6 and 17 years of age were engaged in work, of which 1.9 million labored in the informal sector."

Child labor in the mining sector, a "worst form" due to the hazards it poses to the health and welfare of children, persists in Peru. We note that ILO/IPEC has established programs in Peru to help raise awareness of the problem and to expand health and education services. However, there is a long way to go before the problem is resolved, as thousands of children continue to labor in the mines. Peru must take the necessary measures to eradicate the exploitation of children in the mining sector and to improve the conditions of work for adult miners.

Conditions of Work—Export Agriculture and EPZs

Workers in the export agriculture sector enjoy fewer benefits, by law, than their non-agricultural counterparts. Under Law 27,360 of 2000, workers are entitled to less vacation, do not receive compensation for holidays, and in the case of arbitrary dismissal are eligible to collect only up to 15 days wages for each year of service.

Workers, largely women, who enter this line of work are usually between 18 and 25. They work long days, between 9 and 12 hours daily and up to 18 to 20 hours during harvest or during the shipment of product. In general, they do not receive overtime pay. This situation is even worse for those who are transported from their homes to work in the fields, as they are unable to return home until the company agrees. Fieldworkers are also exposed to toxic pesticides and experience a range of occupational health problems, including loss of sight, gastritis, fungal infections, breathing problems and back problems. In the processing factories, workers are required to stand the entire day in highly physical labor without the ability to move about or change position. Additionally, workers are not provided adequate protective gear and are subject to frequent changes in temperature.

In the four Export Processing Zones (EPZs), special regulations "provide for the use of temporary labor as needed, for greater flexibility in labor contracts, and for setting wage rates based on supply and demand."[8]

Trade Impacts of the Peru FTA

The overall trade relationship with Peru is small relative to the economy of the United States. However, the trade agreement will likely exacerbate the already enormous and growing U.S. trade deficit. In fact, the U.S. trade deficit with Peru has grown eightfold in just five years: from $335 million in 2000 to $2.8 billion in 2005. In the first four months of 2006, the trade deficit reached $900 million, up 27% over the previous year at the same time. The agreement is likely to result in a deteriorating trade balance in specific sectors, including sensitive sectors such as apparel. Imports of cotton apparel from Peru doubled in the last five years and are expected to increase. Imports in other sectors, especially metals (e.g., gold, copper, and aluminum), are projected to increase enough to impact U.S. output and employment, according to the recent U.S. ITC study, "*U.S.–Peru Trade Promotion Agreement: Potential Economy-Wide and Selected Sectoral Effects.*" Even where the market access provisions of the agreement themselves may not have much of a negative impact on our trade relationship, these provisions when combined with rules on investment, procurement, and services could further facilitate the shift of U.S. investment and production overseas, harming American workers.

Investment: In TPA, Congress directed USTR to ensure "that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than United States investors in the United States." Yet the investment provisions of the Peru FTA contain large loopholes that allow foreign investors

[8] U.S. Department of State, Country Reports on Human Rights Practice—Peru (2005).

to claim rights above and beyond those that our domestic investors enjoy. The agreement's rules on expropriation, its extremely broad definition of what constitutes property, and its definition of "fair and equitable treatment" are not based directly on U.S. law, and annexes to the agreement clarifying these provisions also fail to provide adequate guidance to dispute panels. As a result, arbitrators could interpret the agreement's rules to grant foreign investors greater rights than they would enjoy under our domestic law. In addition, the agreement's deeply flawed investor-to-state dispute resolution mechanism contains none of the controls (such as a standing appellate mechanism, exhaustion requirements, or a diplomatic screen) that could limit abuse of this private right of action. Finally, the marked difference between the dispute resolution procedures and remedies available to individual investors and the enforcement provisions available for the violation of workers' rights and environmental standards flouts TPA's requirement that all negotiating objectives be treated equally, with recourse to equivalent dispute settlement procedures and remedies.

Intellectual Property Rights: In TPA, Congress instructed our trade negotiators to ensure that future trade agreements respect the declaration on the Trade Related Aspects on Intellectual Property Rights (TRIPs) agreement and public health, adopted by the WTO at its Fourth Ministerial Conference at Doha, Qatar. The Peru FTA contains a number of "TRIPs-plus" provisions on pharmaceutical patents, including on test data and marketing approval, which could be used to constrain the ability of a government to issue compulsory licenses as permitted under TRIPs and the Doha Declaration.

Government Procurement: The FTA's rules on procurement restrict the public policy aims that may be met through procurement policies at the federal level. These rules could be used to challenge a variety of important procurement provisions including domestic sourcing preferences, prevailing wage laws, project-labor agreements, and responsible contractor requirements. We believe that governments must retain their ability to invest tax dollars in domestic job creation and to pursue other legitimate social objectives, and that procurement rules which restrict this authority are inappropriate.

Safeguards: Workers have extensive experience with large international transfers of production in the wake of the negotiation of free trade agreements and thus are acutely aware of the need for effective safeguards. The safeguard provisions in the Peru agreement, which offer no more protection than the limited safeguard mechanism in NAFTA, are not acceptable. U.S. negotiators should have recognized that much faster, stronger safeguard remedies are needed. The Peru FTA has failed to provide the necessary import surge protections for American workers.

Services: NAFTA and WTO rules restrict the ability of governments to regulate services—even public services. Increased pressure to deregulate and privatize could raise the cost and reduce the quality of basic services. Yet the Peru agreement does not contain a broad, explicit carve-out for important public services. Public services provided on a commercial basis or in competition with private providers are generally subject to the rules on trade in services in the Peru FTA, unless specifically exempted.

Conclusion

Congress should reject the Peru FTA, and send a strong message to USTR that future agreements must make a radical departure from the failed NAFTA model in order to succeed.

American workers are willing to support increased trade if the rules that govern it stimulate growth, create jobs, and protect fundamental rights. The AFL–CIO is committed to fighting for better trade policies that benefit U.S. workers and the U.S. economy as a whole. For the reasons stated above, we urge the Congress to reject the U.S.–Peru FTA and begin work on a more just economic and social relationship with Peru.

Mr. SHAW. Thank you, Mr. Gibson. Can you give us specific examples of labor infractions, giving us the name of the company?

Mr. GIBSON. I would be happy to provide that in writing. I don't have any specific companies right now but do know——

Mr. SHAW. You don't have that information with you?

Mr. GIBSON. I don't have that information with me, but I would be more than happy to provide a written copy.

[The information follows:]

August 4, 2006

The Honorable Clay E. Shaw, Jr
1236 Longworth House Office Building
Washington, DC 20515

Re: Violations of internationally recognized labor rights in Peru

Dear Representative Shaw:

I write regarding your request at the Ways and Means Hearing on Peru of July 12, 2006 to provide information as to companies violating internationally recognized labor rights in that nation. Below are summaries of three recent cases involving serious violations of the right to freely associate, to organize and bargain collectively, all of which were committed by prominent multinational corporations. As more information becomes available, we will be sure to provide you with updates and any additional cases.

You will note that each of these cases involve the use of third party contractors as a means of weakening the union. As we have explained in the attached factsheet, the law permits the use of third party contractors to perform the regular, permanent work of an enterprise. If a worker so hired tries to organize a union or undertake some other concerted activity, s/he is simply not rehired upon the expiration of the contract. Further, an employer may just simply fire the employee and risk payment of minimal compensation to the worker. The ability of an individual worker of limited means to use the judicial process to win reinstatement for anti-union dismissal is very low.

Moreover, the ability to employ third-party contractors has led to an all out attack on existing trade unions, as employers have sought to dismiss their organized workers and rehire them or others indirectly. As long as this legal loophole exists, workers in Peru will continue to face insurmountable obstacles to their ability to exercise their most fundamental labor rights. Most cases of labor conflict in Peru today arise from employers' efforts to avoid or destroy unions through subcontracting. The three cases provided below are in no way unique; rather they are exemplary of increasingly standard practices.

1. *Maple Gas Corp.*

Maple Gas Corporation is a Texas-based energy company with significant investments in the gas and oil sector in Peru. The workers at Maple Gas formed a union on October 25, 2003. The company has tried to break the union ever since through threats and intimidation of the union's members. After slowly reducing the number of members employed at Maple Gas, the company brought a lawsuit against the union seeking its dissolution using the argument that the union no longer had the minimum number of members. The company's request was ultimately rejected because it had relied on false information; the union still had the requisite minimum number of workers.

On July 7, 2006, pursuant to a court order, Maple Gas was directed to reinstate Mr. Alex Ruíz Ushiñahua, who held the union position of Secretary of Organization. In the sentence, the judge indicated that the reason for his dismissal was the formation of the union and therefore just cause for his dismissal did not exist. The union reports that the company continues with its antiunion policies. Maple Gas is currently offering members up to 16,000 soles ($5,000) to resign from the company and to accept employment in a labor services company, Orus Service, created by the company. The workers who have refused to accept this proposal have been prevented from entering the worksite, which constitutes an arbitrary dismissal prohibited under the laws of Peru.

2. *JR Lindley / Coca-Cola / Inca Kola*

JR Lindley, S.A.is a leading bottling company of non-alcoholic beverages, such as its flagship product, Inca Kola. After JR Lindley purchased 60 % of the shares of ELSA in May 2004, it then became the exclusive bottler of Coca Cola in Peru. Through its subsidiary, Peru Beverage Limited, Coca Cola owns 38.52% of JR Lindley. Upon the purchase of ELSA, JR Lindley restructured the company and undertook a mass dismissal. Of the 233 workers who were immediately dismissed, 133 were union members. The company even dismissed the union's General Secretary, Julio Falla Juárez, who had legal protection from dismissal ("fuero sindical"). The union alleges that the objective of the reorganization and the subsequent dismissals was to break the union and to reduce to the maximum extent possible the number of direct employees in order to make use of service companies. JR Lindley had done the same thing a few years earlier at Inca Kola, when it fired roughly 2,000 work-

ers. The subcontracted workers there earn far less and have little chance of unionizing.

Although Peruvian law required the company to negotiate with the union regarding the terms on which the affected workers would leave their jobs and over the measures necessary to limit the personnel reduction, the company failed to do so. Subsequently, the Ministry of Labor disapproved of the mass dismissal and ordered the reinstatement of the dismissed workers. The company refused to accept the finding of the Ministry of Labor, prompting the union to file a lawsuit in court demanding the reinstatement of the workers. The union won the case, but the company disobeyed the judicial order.

Later that year, the union attempted to bargain collectively with the company. However, the negotiations were marked by a delay of almost 7 months due to the company's refusal to present a final proposal to the union. This led the union to eventually break off talks and initiate a strike. On September 30, 2004, the union struck in protest of the company's lack of attention to the collective negotiation and the unjustified dismissal of the workers. During the strike, workers were attacked by the police, who tried to enter the union premises without judicial order. By day's end, 8 trade unionists were detained and 4 were injured.

Since then, the company bought the "voluntary" resignations of most of the remaining union members such that today the union has nearly disappeared. Of the ten remaining members, including the General Secretary, they are awaiting the final decision in their cases. Although the cases arose out of the same facts, the initial decisions have been inconsistent.

3. *Phelps Dodge (Cerro Verde)*

Phelps Dodge-Cerro Verde has for several years contracted with services companies to provide labor services to the company. Recently, the company unjustly dismissed two workers, Agapito Manuel Miranda and Roque Somata Gómez, after 3 years of solid employment with the company. It is alleged that the two were dismissed after the company learned that a group of workers, headed by the two, had begun to organize a union in the company. This case is representative of numerous other cases in Peru where workers are fired for attempting to form a union.

Thank you again for your inquiry.

Sincerely,

Brett Gibson, Representative
Department of Legislation

Mr. SHAW. Mr. McCrery, I understand that you do not have any questions? Gentleman from Louisiana.

Mr. MCCRERY. Yes, Mr. Chairman. Thank you.

Mr. Gibson, I continue to be somewhat perplexed by your organization's positions on these FTAs, given that clearly the weight of the evidence is contrary to one of your statements, which implied that this agreement will be bad for jobs in the United States, when all of the evidence seems to be on the other side of that, that as we create more opportunities for trade through these FTAs, we actually increase the number of jobs and generally they are higher paying jobs than jobs in the general economy.

Also, I want to probe just a little bit this question of the labor portions of these agreements, because you are an American citizen, right?

Mr. GIBSON. Yes, sir.

Mr. MCCRERY. Do you believe that the United States should have sovereignty over its own laws?

Mr. GIBSON. It certainly should.

Mr. MCCRERY. We should. Well, if you were a citizen of some other country, you would probably feel the same way about that country, wouldn't you?

Mr. GIBSON. Perhaps.

Mr. MCCRERY. Well, at least you are saying that, as an American citizen, you think the U.S. Government ought to have sovereignty over its own laws, which means we reserve the right to make our own laws, right? That is what sovereignty is all about, right?

Mr. GIBSON. Yes.

Mr. MCCRERY. Well, it seems to me that you are suggesting we build into these trade agreements a provision that would give up some of our sovereignty. You are saying, okay, let's make Peru not only agree to enforce their labor laws, but they can't change any of their laws that would go backward, in your view, in terms of labor rights. That is giving up their sovereignty.

I assume that if we got Peru to agree to that, they would want the same agreement for the United States, which would be if we were to go backward in their view on our labor laws that they could object and bring it to some tribunal and get a judgment, thereby restricting the sovereignty of the United States.

Surely, that is not what you as an American citizen would want for our country, just as a Peruvian citizen would not want the United States to impose something on his country that would diminish the sovereignty of Peru; and yet that seems to be what you are suggesting.

Mr. GIBSON. Can I respond to that?

Mr. MCCRERY. Sure.

Mr. GIBSON. I would say what we are asking for here is, first of all, I wouldn't want the United States to lower its labor laws at any point in the future. Secondarily, what we are looking for here is an international standard and international norms in these FTAs. With respect to the sovereignty issue, we make demands of these other countries in the commercial provisions of the agreements, the pharmaceutical provisions of these agreements.

If you look back toward NAFTA chapter 11, our laws have been challenged under chapter 11. Let's just take the case of Methanex and methyl tertiary-butyl ether (MTBE), a gasoline additive, challenging the—a Canadian company challenging a California State law banning MTBE. That is another challenge to our sovereignty as well.

So, there is other areas where I think the sovereignty issue comes up in a more disturbing manner, but, like I said, we are looking for international labor standards here.

Mr. MCCRERY. Well, I am advised that that case has been dismissed, but you get my point: this is not as easy a question as you would have some believe, that it is just a matter of upholding labor rights around the world. It does have questions of sovereignty; and everybody, I would submit, in every country feels pretty strongly about protecting the sovereignty of their own country.

So, I would urge you to continue to work with this administration and any succeeding administration to get agreements that do create job opportunities here in this country, as I believe this one would.

Thank you.

Thank you, Mr. Chairman.

Mr. SHAW. Mr. Becerra.

Mr. BECERRA. Thank you, Mr. Chairman; and thank you all for your testimony.

Let me ask, before I ask a couple of questions to my friend from Louisiana, I had mentioned that it seems to me that the United States did impose on the sovereign Nation of Peru that it do change its laws. If you take a look at our provisions with regard to intellectual property, we said that they cannot move forward in this deal unless they conformed their laws to the provisions that are on this deal which would require them to have stronger laws in place to protect our intellectual property and stronger laws to enforce our rights within our intellectual property. I think all us of us would agree we are pleased that we did that.

So, with regard to labor, with regard to any produce or any service or with regard to intellectual property, it is clear that each side is making demands on the other's sovereignty in existing laws. So, I think we have to be real clear that what we are asking with regard to protection of workers' rights is nothing different than what we are requesting with regard to protection of intellectual property.

Let me see if I can ask all of the panelists who represent an industry a question, whether it is poultry, whether it is textile, whether it is a service, whether it is dairy. If Peru had been required in this agreement simply to follow its current practices and standards with regard to, say, poultry, dairy, service sector, textiles, would you be supporting this agreement?

Anyone who would support this agreement with existing laws that Peru has on your industry, please raise your hand if you would support this agreement.

Your industry is?

Mr. NORMAN. I am in the textile industry.

Mr. BECERRA. So, if the textile laws remained the same for Peru, you would still be supporting this agreement?

Mr. NORMAN. I would at this point, yes.

Mr. BECERRA. Anyone else?

Mr. SANTEIRO. The changes in the customs procedures that I referred to are coming perhaps more slowly. There is an international tendency in that direction. I think, given the fact that FedEx is a strong supporter of free trade, we would like to look at the specific issue being discussed before making a statement whether we would support it or not.

Mr. BECERRA. I am just trying to check, because that is an instance of what we are telling the countries when it comes to protecting their workers and our workers, that just go ahead and do whatever you are doing right now with your laws. You don't need to change them. I want to make sure that I do—is it Mr. Norman?

Mr. NORMAN. Yes, it is.

Mr. BECERRA. I want to make sure I understand that, because my understanding was when it came to textiles in the CAFTA agreement, when it came to NAFTA, when it came to Chile, when it came to everything else, you all fought very hard to make sure there were changes. So, I am surprised to hear you say today that you could live with the current practices and laws in place for Peru. That hasn't been your past practice when it comes to defending the interests of the industry.

I would be interested to chat with the folks in your industry, in your association, given that you are saying you would have been pleased with the existing laws in place in Peru when it came to textiles.

Mr. NORMAN. The ones that are in place today. I do think that this agreement gives us the chance to really accelerate what we are doing.

Mr. BECERRA. Well, it does accelerate it, but that is not existing law. So then, you do prefer what is in the agreement versus keeping what is currently in practice?

Mr. NORMAN. Yes, we do.

Mr. BECERRA. I think most of us who argue that we should have done the same with regard to protecting worker rights are saying simply that, that we can't afford to just ask people to stay with the status quo. We want to make sure all of our workers are protected, just the way our intellectual property should be protected, and just the way we should make sure poultry, dairy, textiles, sector services, should also be treated, in a way that is as free and fair as possible.

I have a question for Ms. Forkan. Ms. Forkan, in your testimony, you mentioned that the agreement which had the same language on labor for environment, that says you must effectively enforce your environmental laws, you say that it includes multilateral environmental agreements, such as the Convention on International Trade and Endangered Species of Wild Fauna and Flora.

I am not sure which agreement you were looking at, but the agreement that was signed simply says this. In article 18(2) it says, "A party shall not fail to effectively enforce its environmental laws."

Then if you turn to article 1813, it defines what an environmental law is, and that is any statute or regulation of a party. It doesn't deal with any type of international or multilateral trade agreement in the definition. So, I hope you will take a closer look at the agreement.

Ms. FORKAN. Can I answer that? Yes, when you sign an MEA, you have to have implementing legislation that is domestic legislation, so that the United States has implementing legislation for CITES, for the International Whaling Commission, for all those things. So, we are talking about the implementing legislation that is domestically passed.

Mr. SHAW. [Presiding.] The time of the gentleman has expired, and I am going to have to enforce it because we have a vote coming up.

Mr. Weller.

Mr. WELLER. Thank you, Mr. Chairman.

I first want to begin by thanking all of the panelists for taking the time to be here to discuss what I think is an important economic initiative between two friends, Peru and the United States.

Since the issue of labor has come up, Mr. Chairman, I would like to ask unanimous consent to include for the record the letter from Prime Minister Kuczynski that was forwarded to us by the Ambassador of Peru in response to various questions raised regarding Peru labor law.

Mr. SHAW. Without objection.

[The information follows.]

08-07-2006 16:34 Da-Peruvian Embassy +202 6598124 T-445 P.001/008 F-003

EMBASSY OF PERU
1700 MASSACHUSETTS AVE. N.W.
WASHINGTON, D.C. 20036

July 7, 2006

The Honorable Congressman
William M. Thomas
Chairman of the Ways and Means Committee
Unites States House of Representatives
Washington, DC

Dear Mr. Chairman,

I have the pleasure of extending you attached the letter sent by the Prime Minister of Peru, Mr. Pedro Pablo Kuczynski, in response to concerns on labor issues raised last year by the Ranking Minority Member of the Ways and Means Committee, Congressman Charles Rangel and others democratic members of your Committee to the USTR. The attached document also addresses questions that democratic trade counsels put forward to the Embassy earlier this year.

I look forward to working with you further on this and other important matters with a view to contribute to the prompt approval of the US- Peru Trade Promotion Agreement.

Eduardo Ferrero
Ambassador

c/c
Ambassador Susan Schwab, United States Trade Representative
Angela Ellard, Majority Staff Director

08-07-2006 15:34 De-Peruvian Embassy +202 8598124 T-445 P.002/008 F-003

PRESIDENCIA DEL CONSEJO DE MINISTROS

Pedro-Pablo Kuczynski
Presidente

Lima, July 7, 2006

The Honorable Charles B. Rangel
U.S. House of Representatives
Washington, DC 20510

Dear Congressman Rangel,

With regard to the concerns on Peru's labor situation expressed by four Congressmen of the Democratic Party in the letter they sent to Ambassador Rob Portman in September 20th 2005, please find attached to this letter a document in which we are trying to respond to the issues raised in the above mentioned communication.

Sincerely,

Pedro Pablo

It was a pleasure to see you in Washington!

PPK

cc: The Honorable Bill Thomas
The Honorable Ben Cardin
The Honorable Sander Levin
The Honorable Xavier Becerra
The Honorable Susan C. Schwab

E-mail: pkuczynski@pcm.gob.pe
Teléfonos: 610-9870 - 610-9871

Av. 28 de Julio 876 - Lima 18 - Miraflores

Labor Situation and worker's rights in Peru

Peru has made significant labor law reforms in recent years and is committed to ensuring that our labor laws are consistent with internationally recognized labor rights. In 2005, the International Labor Organization (ILO) noted with satisfaction the adoption of the many labor law reforms by Peru and recently praised Peru as a leading example of efforts in the Americas to bring national laws into compliance with ILO standards.

Peru has ratified all eight core conventions of the ILO. We passed major labor law reform in 2003 that strengthens labor rights and addresses ILO observations on Peru's labor laws. These reforms eliminated provisions that denied union membership for workers during probationary periods, required workers to be active members of a trade union and employed for one year to be eligible for union leadership positions, prohibited unions from engaging in political activity, required compulsory arbitration in the case of a strike involving essential public services, obligated a trade union to compile reports requested by the labor authority, and required public servants to annually renew requests for deduction of union dues. The reforms also reduced the number of workers needed to form a union, limited the power of the labor authority to cancel a union's registration, removed the waiting period for reapplying to register a union and instead permitted reapplication after the union has remedied the problem, and lessened the requirement to show "dual majority" support in order to conclude a collective bargaining agreement covering workers in a "branch of activity" or occupation.

In addition to the observations discussed above, the ILO has urged continued consideration of a small number of additional observations.

The ILO observed that Peruvian labor law does not specifically provide for sanctions for acts of interference by employers in trade union organizations and that the judicial procedures for dealing with complaints of anti-union discrimination or interference remain slow.

The Peruvian Constitution recognizes the right of workers to unionize, to bargain collectively and to strike. Law 25593, Law on Collective Work Relations (LCWR) prohibits employers from interfering with workers' right to form unions. Peru has also ratified ILO Conventions 87 and 89. The Constitutional Court has held that the constitutional protections on freedom of association set out in Article 28 of Peru's Constitution must be interpreted in accordance with ILO Conventions 87 and 98.[1] (In particular, Case 3311-2005-PA/TC established a judicial precedent

[1] More broadly, the Constitutional Court has ruled that: "In compliance with the fourth and final transitory provision of the Constitution, constitutional rights must be interpreted within the context of the international treaties signed by Peru on the subject. This rule provides for these treaties to be a parameter

for guaranteeing that unions may operate free from employer acts of interference.)

The Law on Productivity and Competitiveness provides that dismissals for union activity are null and void and that a worker may seek judicial relief for such dismissal. This right is provided to the worker is included in The Employment Promotion Act of 1991. The Employment Promotion Act also allows workers the option of reinstatement or indemnity in all cases of dismissals, including dismissals for union activities.

Workers also have an option to seek reinstatement by filing an "amparo" (injunction), a constitutional challenge on the grounds that a dismissal is in violation of the Constitution. Such procedures have been more expeditious than labor courts. The best known example involves a ruling of the Constitutional Tribunal in September 2002 that "Telefónica del Perú" had to rehire over 400 employees dismissed for their union activities. Several similar decisions followed.

Furthermore under Article 168 of the Criminal Code, it is a criminal offense to use violence or a threat of violence to compel someone to join a union or to prevent someone from joining a union.

Moreover, current labor law provides labor inspectors the authority to investigate and reach conclusions on violations of fundamental labor rights, including anti-union interference, which could be used as evidence in any labor court proceeding. Under the new labor inspection law, currently under review by the Peruvian Congress, violations of fundamental labor rights will be defined as a severe violation for enforcement purposes.

The ILO recommended that the government repeal section 9 of Legislative Decree 728 (previously section 42 of the Employment Promotion Act of 1995), under which an employer could introduce changes to working shifts, days and hours as well as the form and manner in which work is performed that could amount to unilateral changes in the content of collective bargaining agreements or require their renegotiation.

Section 9 of Legislative Decree 728 only allows an employer to make non-substantial modifications to an individual work contract. Section 9 does not permit unilateral changes to a collective bargaining agreement.

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of interpretation for the rights recognized by the Constitution. Therefore, the concepts, reach and scope of protection specified in these treaties, constitute parameters that must be observed, if that is the case, to interpret a constitutional right. All of this, of course, without prejudice of the direct application of the international treaty provisions as integral part of Peruvian legislation."

According to rulings of the Constitutional Court, Article 28 of the Constitution makes collective bargaining agreements binding for the parties. In one recent case, the Constitutional Court held that an employer could not unilaterally change the work day from what was otherwise specified in the collective bargaining agreement (Case 4635-2004-AA/TC). In another case, it found that an employer could not modify a vacation bonus provision of a collective bargaining agreement (Case 1358-2001-AA/TC). These rulings are broadly recognized in Peru to prevent unilateral changes to a collective bargaining agreement under section 9 of Legislative Decree 728.

Furthermore, to clarify this matter and dispel any conflicting interpretations, last week we approved a Supreme Decree stipulating that section 9 does not allow employers to unilaterally change the contents or conditions established in collective bargaining agreements

The ILO requested that the Government take measures to amend section 73(b) of the LCWR so that, to be able to call a strike, the decision only has to be adopted by the majority of those voting.

Article 72 of the LCWR defines a strike as the collective suspension of work and abandonment of the workplace that has been made voluntarily and peacefully and agreed upon by a majority of the workers.

Section 73(b) of the LCWR, modified by Law 27912 of January 8th 2003, establishes that in order for a strike to be declared a majority of the workers must supported it. The LWCR does not define what constitutes a "majority of the workers"; thus, permitting the unions to determine for themselves what constitutes a strike-granting majority. Therefore, a union is free to base what constitutes a strike-majority on the number of votes cast, rather than the number of workers in the establishment. Unions make the determination of what constitutes a strike-granting majority without <u>any intervention of the government,</u> consistent with Article 3 of ILO Convention 87. This issue was clarified last week through a Supreme Decree.

In addition to the ILO observations, we are aware that a few other questions have been raised regarding Peruvian labor law.

One such question involves the share of arbitration costs between unions and employers. If an arbitration concerns collective bargaining issues, workers and employers are obligated to pay arbitration costs. Supreme Decree 011-02-TR, issued pursuant to Article 53 of the LCWR, establishes a scale of arbitration costs. If the parties cannot agree on the allocation of arbitration costs, the arbitrator may decide the appropriate allocation. In other types of

cases, arbitration costs are determined by the parties and the arbitrator and not based upon a scale. In order to facilitate arbitration and alleviate the costs for unions, the Ministry of Labor just introduced a modification that significantly reduces the required reimbursement rates for arbitrations involving collective bargaining agreements.

Another question concerns the adequacy of child labor protections. The government has undertaken a number of initiatives to address the issue. Under these initiatives, Peru has strengthened child labor laws, raised public awareness, and developed national plans of action.

The legal regime against child labor has been strengthened. In 2000, Peru adopted a new Child and Adolescent Code, which it modified again in 2001 to raise the legal minimum age. The Child and Adolescent Code also prohibits the use of children in forced and slave labor practices, labor that is economically exploitative, and prostitution and trafficking. In 2004, Peru passed additional penal laws to further protect children from trafficking and sexual exploitation. The Government has also increased the penalties for such crimes as child prostitution and child pornography.

Peru has also established integrated committees to address child labor concerns. A multi-sectoral committee is responsible for implementing the Plan of Action for Children and Adolescents 2002-2010 (PNAI) as adopted by the Ministry of Women and Social Development (MIMDES). Peru has participated in the ILO's International Program for the Elimination of Child Labor (IPEC) for over a decade and these efforts are coordinated through the National Committee for the Prevention and Eradication of Child Labor (CPETI).

A further question concerns an allegation of the use of temporary employees to thwart union recruitment. There is no provision in Peruvian labor law that prohibits temporary employees from affiliating with the same union as permanent employees. Article 79 of the LPCL states that workers hired for indeterminate periods and those hired for determined periods (temporary) have the same rights. If an employer fired a temporary employee for trying to exercise his rights to affiliate, he would have a cause of action for reinstatement under Articles 29 and 34 of the LPCL, and the worker also would have a right to invoke the constitutional protections of Article 28.

A question also has been raised concerning special regulations for workers in Export Processing Zones. There is no difference between labor legislation applicable to export processing zones, free zones, industrial processing zones or CETICOS and general labor legislation.

Even though, the LPCL indicates that temporary work contracts executed in free economic zones, as well as whatever other type of special system, will be regulated by their own provisions, laws concerning CETICOS (Law 26953 and Supreme Decree 112-97-EP) do not establish any type of special labor system; therefore, workers fall under the scope of general labor provisions.

At the same time, Law 27688, law for the free zone and commercial zone of Tacna, does not establish any special labor system either. Its Article 20 expressly indicates that workers that provide services in this area fall under the scope of general labor provisions.

We also are aware of a question concerning the right to strike in essential public services, in particular the authority of the Ministry of Labor, rather than an independent body, to determine minimum essential services that need to be maintained when a strike is declared in an essential public service. The only limitation on the right to strike in essential public services is the maintenance of a minimum service. This limitation reconciles the right of workers to strike with the public interest.

The Peruvian Congress is currently considering the new General Labor law, which already has been favorably reported by the Congress' Labor Committee and is ready for floor consideration. The bill provides for the National Labor Council – a tripartite agency comprising representatives from the Ministry, workers and employers -- to set up minimum services in cases of disagreement, when a strike is declared in essential public services. Although, the Executive has approved a Supreme Decree establishing that in cases of disagreement to set up minimum services between workers and employers, the Ministry of Labor will designate an independent entity to settle the aforementioned disagreement. Nevertheless, this issue should soon be settled by Congress through the aforementioned Law.

The LCWR modified an earlier provision to establish a more specific list of essential services. The list includes sanitary and health services, water and sewage, electricity, gas and fuels, funeral homes, autopsies, necropsies, penitentiaries, telecommunication, transportation, legal services (as determined by the Supreme Court of Justice) and strategic or security services related to national security.

Lastly, a question has been raised concerning responsibility and criteria for the declaration of the legality of a strike. For private sector strikes, the Ministry of Labor and Employment Promotion is the agency responsible for declaring the legality of strikes. In the case of the public sector, each Ministry is responsible for declaring the legality of the strike that affects its own sector.

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A strike is legal if it fulfills certain requirements: the union must have exhausted all possibilities of reaching a settlement through the collective bargaining process; the union must have adopted the decision to strike in accordance with its own statutes; the strike must represent the will of the majority of workers; notice of the strike must be conveyed to the employers as well as to the Ministry of Labor and Employment Promotion within the legal time frame, and the dispute process must not have been submitted to arbitration.

Mr. WELLER. Mr. Gibson, your testimony is consistent with the previous testimony by the AFL-CIO before this Committee regarding trade agreements, and it is my understanding your organization has called for a moratorium on any new trade agreements as your current policy. So, your statement is consistent with that.

The question I have for you, you know, Peru has ratified all of the ILO's eight core conventions, it has been cited several times by the ILO for its progress in improving its labor laws and it has ratified 71 ILO conventions. In the last 5 years, under President Toledo, they have enacted 30 major reforms, some as recently as in the past year.

I guess the question I have is, some of my friends on this Committee have suggested we just abandon this agreement, walk away from it, and then instead, extend the Andean Trade Promotion and Drug Eradication Act, which expires at the end of this year.

Now, under the Andean Trade Promotion and Drug Eradication Act, this truck, which is a model of a version of a piece of mining equipment, an off-road construction, or in this case, truck used to haul products coming out of the mines in Peru, it would essentially fill this room if it actually was a real one here, it is about a million dollar piece of equipment. It is produced by members of the United Auto Workers in Decatur, and the parts come from a plant in Joliet, in my district, in Illinois, which is represented by the Machinists.

The concern I have on this truck is that it has a 12 percent tariff under existing law. So, on a million dollar piece of equipment, that is a $120,000 tax on a piece of equipment made by union workers in Illinois.

As you know, with expanded trade with Chile and elsewhere, Caterpillar, which is the manufacturer of this, has added about over 5,000 workers in Illinois, in my State. So, trade has been pretty important to us. If we fail to ratify this agreement, that $120,000 tax on this piece of equipment made by union workers in my State of Illinois would continue. Also from the standpoint of labor, the Andean Trade Promotion Drug Eradication Act does not require that countries enforce their labor laws, nor that they live up to the obligations of the ILO.

So, my question to you is very, very simple. It is a yes-or-no question. You have already advocated a no vote on the trade agreement, but if the alternative were to be before this Congress, would you support or oppose extension of the Andean Trade Promotion Drug Eradication Act? What is your organization's position?

Mr. GIBSON. Well, I don't think it is quite as simple as a yes-or-no question.

Mr. WELLER. Well, for us, it is a yes-or-no vote. So, it is a simple question.

Mr. GIBSON. I would think if it was the alternative, we would support—we do support trade. I want to make that clear.

Mr. WELLER. So, you would support continuing a $120,000 tax on a piece of union made equipment exported to Peru?

Mr. GIBSON. I am not prepared to say whether our organization would support or not the Andean Trade Act.

Mr. WELLER. Did you support it before when we originally created this a few years ago?

Mr. GIBSON. I wasn't at the organization at the time.

Mr. WELLER. So, you don't know. I would like to know, and if you could provide for us in writing a yes-or-no answer on what your position would be? Now, you have already advocated a no vote on this agreement. If you are in opposition to this agreement, some have advocated if we are unable to pass this, we just extend the existing trade preferences. I would like to know from your organization, do you oppose or support that extension, if you can provide that to this Committee.

Mr. GIBSON. Certainly I will provide that.

Mr. WELLER. Thank you.

Mr. Jara, I am thrilled to have a small businessman before this Committee. One thing I have noted in this trade agreement, we often talk about the tariffs and the fact that under the Peruvian trade agreement, almost all of them are eliminated on our manufactured products as well as our farm products here. But also it does away with a lot of what are called non-tariff trade barriers. Representing smaller employers, I am wondering what your perspective is on that?

Mr. SHAW. I would have to cut the gentleman off and ask that that question be answered by writing.

Mr. WELLER. Could I finish the question?

Mr. SHAW. Complete the question. We have a vote on the floor.

Mr. WELLER. I understand, Mr. Chairman.

What I would ask is if you could give us a perspective from the smaller exporters on eliminating these non-tariff barriers. A $10,000 permit can be no big deal to a major corporation, but to a small exporter it can really make a big difference. I would like to hear from you on that.

[The information follows:]

August 4, 2006

The Honorable Jerry Weller
108 Cannon House Office Building
Washington, DC 20515

Dear Representative Weller:

I write regarding your inquiry at the Ways and Means Hearing on Peru of July 12, 2006 as to whether the AFL–CIO would support an extension of the Andean Trade Preferences and Drug Eradication Act (ATDPEA) should it require renewal this year.

The AFL–CIO would support an extension of ATPDEA with Bolivia, Colombia, Ecuador and Peru, so long as the opportunity of extension is used to ensure that some of the concerns we have expressed in the past with respect to the workers' rights conditions and country coverage are addressed.

With respect to worker rights, we would like to see a streamlined submissions process that is both transparent and consistent. The AFL–CIO would also like to see the labor language strengthened and clarified, to ensure that countries are required to respect all the core International Labor Organization standards, not just take steps toward affording those rights.

Sincerely,

Brett Gibson, Representative
Department of Legislation

Mr. SHAW. The time of the gentleman has expired.

Mr. Levin?

Mr. LEVIN. Let me just say the example you used about the mines is a very vivid one and the machinery that is used in the mines. I suggest that everybody look at what happened to the rights of mine workers under the Fujimori administration and what happened to their conditions at work, and what is true today in terms of the continuation of the subcontracting, private contract, short-term contract provisions which have become prevalent for people who work in the mines. So, you ought to take a look at that.

Secondly, the sovereignty issue, by definition, trade agreements require the giving up of sovereignty. There are limitations on tariffs, on investments, on a lot of things. So, to use the sovereignty issue as to worker rights is really inappropriate. In every agree-

ment, look at the arguments at the Doha Round. We would be giving up sovereignty as to our subsidization of agriculture.

Thirdly, in terms, Mr. Weller, of the conventions, those conventions were in existence in the Fujimori years. Conventions by themselves don't become operative parts of the laws of the country. They pass laws relating to the subjects. China has signed conventions. Do people have their rights, despite the conventions that were signed? The answer is they don't. So, we need to look at what the realities are and why it matters in terms of how globalization proceeds. That is the issue.

Mr. WELLER. Would the gentleman yield to the point you are making? Do you acknowledge though that President Toledo, under his administration, has implemented 30 major reforms in labor laws?

Mr. LEVIN. Look, the answer is there were some reforms of 82–83. I don't know where you get the 30. Today, those laws do not meet ILO requirements. When I was in Peru, I asked the ILO representatives point blank, is Peru today in practice and in law compliant with the basic ILO standards, and the answer was no. In terms of GSP, a number of us have put into the hopper the extension of GSP, if this does not go into effect to replace it.

By the way, this hearing has been, I think, inadequate in pointing out the experience under GSP. The GSP talks about taking steps to apply the ILO standards. This document says enforce your own laws, whatever.

With SPS, we don't let Peru enforce their own laws as the standard. We never dreamed of doing that. We have forced Central American and Latin American countries to agree not to use their SPS standards, appropriately. You can argue that they are giving up their sovereignty, but we want some safeguards for our products. It is important for our country, our businesspeople, for the other countries, that there be some safeguards that are enforceable relating to the rights of workers.

Your mine example is very fitting. Machinery matters, our exporting of it. So, does the conditions of the people who work with that machinery.

Mr. WELLER. Will the gentleman yield?

Mr. LEVIN. Sure.

Mr. WELLER. You mentioned the reform was only done in the eighties.

Mr. LEVIN. No, I said there were reforms in 2002 and 2003.

Mr. WELLER. Under President Toledo, these reforms were enacted into law by their Congress in 2003, 2004 and I think this past year.

Mr. LEVIN. Mr. Weller, you didn't listen. Let me take back my time. I said it hasn't expired. I said 2002–2003, there was a labor reform passed, and it doesn't get at some of the problems that persist from the Fujimori years. That is a fact. I referred to those laws and I applauded them. They were a step forward.

Mr. SHAW. I assume the gentleman yields back the balance of his time.

We are out of time. I want to thank this panel for being here. I think one thing that has been made crystal clearly by this hearing is that this agreement means American jobs, better American

jobs, high paying American jobs, union American jobs, and I would hope that the Committee could work out any differences it has and pass this by a large majority.

This meeting is adjourned.

[Whereupon, at 3:37 p.m., the Committee was adjourned.]

[Questions submitted by Mr. Weller, Mr. Neal, Mr. Reynolds, Mr. Herger, and Mr. Levin to Mr. Eissenstat, and their responses follow:]

Question submitted by Representative Weller to Mr. Eissenstat

Question: Under PTPA how does dispute settlement for labor and environment disputes work, and how is it different from dispute settlement for commercial disputes?

Answer:

- All disputes, whether they concern labor and environment matters or other commercial matters, begin with consultations between the disputing Parties. In the case of labor and environment, consultations are provided for in the Labor and Environment Chapters, respectively. For most other cases, consultations are provided for in the Dispute Settlement Chapter.
- The Labor and Environment Chapters contemplate consultations beginning at a subcabinet level. If the matter is not resolved at that level, either disputing Party may seek to elevate the consultations to cabinet-level representatives. The Dispute Settlement Chapter likewise sets out two levels of government-to-government consultations for commercial disputes.
- Where a dispute involves an alleged failure by a Party to effectively enforce its own labor or environmental laws, and where consultations under the Labor or Environment Chapter fail to resolve the dispute within 60 days of the initial request for consultations, a Party may pursue the matter under the procedures in the Dispute Settlement Chapter.
- When a Party pursues a labor or environment dispute under the Dispute Settlement Chapter, the same procedures apply as apply to commercial disputes. The only distinction is that the members of panels established to review disputes involving labor or the environment must have special expertise (as opposed to a looser "endeavor to select panelists with expertise" for all other disputes).
- Where dispute settlement concludes with a panel finding that a Party has not conformed with an obligation under the FT A, the ordinary solution will be for the disputing Parties to agree on a resolution of the dispute, which normally shall conform to the panel's determination. Where appropriate, the disputing Parties may agree on a mutually satisfactory action plan to resolve the dispute. This is true for labor and environment disputes, as well as commercial disputes.
- However, it may be the case that the disputing parties are unable to agree on a resolution. Alternatively, they may agree on a resolution, but the complaining Party may believe that the other Party has failed to observe the terms of the agreed resolution. In either case, the PTP A makes remedies available to the complaining Party.
- In commercial disputes, the remedy for non-compliance by a Party is for the complaining Party to suspend tariff concessions (that is, raise tariffs) so as to offset the harm to that Party of the non-compliance. However, the defending Party may opt to pay a monetary assessment in lieu of having the complaining Party raise tariffs. In either case, if the disputing Parties are unable to agree on the amount by which tariffs may be raised or the amount of the monetary assessment, the question may be decided by the panel.
- In labor and environment disputes, the remedy for non-compliance is payment of a monetary assessment. That assessment would go into a fund administered jointly by the disputing Parties. They would decide jointly on disposition of the fund's proceeds, with a view to using the money to remedy the non-enforcement underlying the dispute. If a Party fails to pay the assessment, the complaining Party may take appropriate steps to collect it or otherwise secure compliance. These steps may include the suspension of tariff benefits.
- Several conditions apply to monetary assessments in labor and environment disputes:
- An assessment may not exceed $15 million per year, indexed for inflation.
- In determining the level of an assessment, several factors in addition to the trade effects of non-enforcement of labor or environmental law are to be taken into account. These include: pervasiveness and duration of the non-enforcement;

reasons for the non-enforcement; level of enforcement that reasonably could be expected, in light of resource constraints; and efforts made to begin remedying the nonenforcement.

- The reference to factors in addition to trade effects is recognition that in disputes involving non-enforcement of labor or environmental laws, it may be difficult to quantifY trade effects.
- A non-complying Party continues to pay monetary assessments each year until it has come into compliance with its obligations.

Question submitted by Representative Neal to Mr. Eissenstat

Question: In regards to Supreme Decrees, are they similar to presidential signings? What are their legal effects? Are they subject to any legislative oversight or review? How can they be amended?

Answer: Supreme Decrees ("decretos supremos") are similar to regulations in our system, not presidential signings. They implement laws enacted by the Peruvian Congress. They are issued by the President, in conjunction with the relevant Minister or Ministers, depending on the subject matter. Some laws may require that the decree be approved by the Council of Ministers (akin to our Cabinet), usually where the subject matter is cross-cutting or does not fall neatly into one Ministry. Supreme Decrees must be published in the Peruvian official gazette (Diario Oficial "EI Peruano") and usually take effect upon publication. They can be amended by the executive and can be superseded by a law.

Question submitted by Representative Reynolds to Mr. Eissenstat

Question: How does the Administration plan to ensure that the agreement's stringent rules of origin, particularly for dairy products, are sufficiently enforced? There is currently a very open flow of trade between Peru and neighboring Bolivia, for instance, not to mention sizable trade between Peru and other important dairy-producing countries, including New Zealand. How will the Administration verify that the dairy products receiving preferential tariff treatment under this TPA are only those that are made from milk produced in Peru itself, as required by the agreement?

Answer: U.S. Customs and Border Protection ("CBP") already possesses authority to enforce the laws and regulations of the United States relating to the importation of goods. The chapter on Rules of Origin in the Peru Trade Promotion Agreement provides enhanced enforcement provisions to allow CBP to conduct verifications in connection with imports, including dairy imports, for which a claim for preferential tariff treatment ("PTT") has been made. The verification provisions allow CBP to conduct verifications by means of written requests, questionnaires and, visits to the premises of Peruvian dairy producers and exporters to verifY compliance with the rules of origin.

Further, pursuant to these provisions CBP may deny a claim for PTT if the Peruvian exporter or producer, or the U.S. importer, fails to provide CBP with the information it has requested to substantiate the claim for PTT. CBP may also deny a claim for PTT if the Peruvian producer or exporter does not consent to a verification visit. Lastly, CBP may suspend the claim for PTT for that product and for subsequent importations of identical goods if, through verification, CBP finds a pattern of conduct indicating that the importer, exporter or producer has provided false or unsupported declarations or certifications. CBP may suspend PTT until CBP determines that the importer, exporter or producer has come into compliance.

The Agreement also requires each Party to provide for the imposition of penalties on an exporter or producer that provides a false certification of origin, ifno correction is voluntarily submitted.

Question submitted by Representative Herger to Mr. Eissenstat

Question: Regarding the resumption of the U.S.–Peru trade in beef products, I was pleased at the great steps forward negotiated along side this agreement, such as Peru's agreeing to commit to scientifically based, internationally accepted sanitary and phytosanitary procedures. However, I remain concerned about Peru's reluctance to act fully on its commitments, and accept OIE standards for beef from U.S. producers.

I would appreciate it if you would elaborate on any progress being made toward this end, which would allow increased trade for all U.S. beef products.

Answer: I am pleased to inform you that at the end of October, both Peru and Colombia lifted their former BSE-related restrictions on imports of U.S. beef and beef products, and implemented measures consistent with the guidelines on BSE in the Terrestrial Animal Health Code of the World Organization for Animal Health (OIE). Both Peru and Colombia now are open to all beef and beef products of the United States (except high risk materials) when accompanied by a sanitary certificate from the United States Department of Agriculture's Food Safety and Inspection Service (FSIS). These openings represent progress in our efforts to re-open global markets for U.S. beef and beef products, and help ensure that U.S. exporters to Peru and Colombia will realize the new access our free trade agreements provide in those markets when the agreements enter into force.

In addition to addressing sanitary restrictions related to BSE, we also reached agreement with both Peru and Colombia confirming that they will continue to recognize the equivalence of the U.S. meat inspection system. Further, they will not require plant-by-plant inspections as a condition for the importation of U.S. beef and beef products.

Question submitted by Representative Levin to Mr. Eissenstat

Question: Are the two side letters on medicines as enforceable as other provisions in the Agreement?

Answer: In connection with the signing of the PTPA, the United States and Peru signed "Understandings Regarding Certain Public Health Measures"; in addition the United States sent a letter to Peru confirming the coverage of those Understandings. This response is directed to those two documents.

The main thrust of the Understandings is not to impose specific obligations on the Parties, but to reflect the Parties' mutual understanding of what the IPR chapter—which does contain obligations—does and does not do. They constitute a formal agreement between the Parties and are, thus, a significant part of the interpretive context of the PTP A and the obligations in the

PTP A. According to Article 31 of the Vienna Convention on the Law of Treaties, which reflects customary rules of treaty interpretation in intemationallaw, the terms of a treaty must be interpreted "in their context," and that "context" includes "any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty." As interpretive context, therefore, the Understandings playa significant role in the interpretation of relevant obligations in the PTP A.

Similarly, the unilateral letter does not contain obligations directly subject to dispute settlement, but is a confirmation by the United States that references to the IPR chapter of the PTP A in the Understandings include the parts of that chapter related to data protection.

[Submissions for the record follow.]

Statement of Kevin M. Burke, American Apparel & Footwear Association

Thank you for providing the American Apparel & Footwear Association (AAFA)—the national association of the apparel and footwear industries, and their suppliers—this opportunity to submit written testimony on the U.S./Peru Trade Promotion Agreement (TPA).

Below are several observations we make with respect to individual provisions in the agreement.

In general, AAFA supports Congressional passage of the U.S./Peru TPA as the best way to achieve continuation of the current duty-free status for products made in the region using regional inputs. We urge Congress to ensure that the transition between the current trade preference program and the U.S./Peru TPA is as seamless and transparent as possible to prevent any disruption or uncertainty over the continuation of the current duty-free status for products made in the region using regional inputs.

Thanks to the efforts of the U.S. negotiators, the agreement's flexible and forward-looking footwear provisions should provide new opportunities to grow the small, but thriving, footwear trade between the United States and Peru. However,

the presence of restrictive and cumbersome textile and apparel rules of origin (as discussed further below) in the U.S./Peru TPA will serve as a deterrent to the development of new apparel and textile trade between the two countries.

Again, we generally support the agreement's provisions for footwear. The rule will ensure that the growth in footwear trade between the United States and Peru started under the current Andean Trade Promotion & Drug Eradication Act (ATPDEA) will continue. We had hoped, however, for an even more liberal rule of origin for non-import-sensitive footwear articles along the lines of what was negotiated in the U.S./Dominican Republic-Central American Free Trade Agreement (CAFTA–DR). The CAFTA–DR rules contains only a straightforward tariff shift approach while the U.S./Peru TPA also contains a 20 percent value added rule. The simpler rule, as contained in the CAFTA–DR, stands the greatest chance of helping maintain and grow the footwear trade relationship with Peru and serve as an incentive for footwear firms to place more business in that country (and away from China, which now accounts for more than 80 percent of U.S. imports). We do, however, applaud and thank the U.S. government's negotiators for ensuring that this provision did not become yet even more restrictive as pushed for by the Peruvians.

At the same time, we are extremely disappointed that the U.S./Peru TPA contains very restrictive and, in many cases, unworkable rules of origin for apparel and textiles. Because of the agreement's apparel and textile provisions, we believe the U.S./Peru Trade Promotion Agreement represents a missed opportunity to preserve and expand the region's apparel and textile industries. Again, we view the CAFTA–DR provisions as a model that would have worked well in Peru. The CAFTA–DR contains many forward looking provisions that create export opportunities for U.S. textile firms and provide the region the tools it needs to effectively compete: cumulation, a robust short supply list, single transformation for key products, yarn-forward on essential character, inclusion of all apparel and textile products. Many of those features are missing from the Peru agreement.

We do, however, applaud the last minute inclusion of language in the U.S./Peru TPA that allows the two sides to eventually negotiate a cumulation provision that links this agreement with other agreements in the hemisphere. Regrettably, this language leaves the timeline and conclusion of the negotiations and the scope of such a provision undefined. We would encourage the inclusion of language to clarify and encourage the expeditious negotiation and implementation of the cumulation provisions.

Overall, we are again concerned about any possible gap between the expiration of the Andean Trade Promotion & Drug Eradication Act (ATPDEA) and the implementation of the U.S./Peru TPA. Any gap in expiration of ATPDEA and the implementation of the U.S./Peru TPA would further erode trade patterns that, in the case of apparel and textiles, will already be weakened by the restrictive rules in the U.S./Peru TPA. As we are now experiencing with the CAFTA–DR, any gap could cause huge costs and disincentives for industry, further driving business out of the region. Many U.S. firms are now making sourcing decisions for the beginning of 2007—the period after the scheduled expiration of the duty-free environment of the ATPDEA. But because there is no duty-free certainty—ATPDEA will be expired and it remains unclear if the duty-free environment of the Peru TPA will take effect by January 1, 2007—many firms will have no choice but to place business elsewhere.

We believe there is still an opportunity to rectify this gap by including provisions in the U.S./Peru TPA implementing legislation that will make clear that a duty-free environment will continue to exist notwithstanding the date for ultimate passage of the agreement. Moreover, because business decisions are being made now, this correction needs to be communicated to the trade community soon.

Finally, we remain deeply concerned that the Peru and the Colombia free trade agreements are currently on separate tracks. The industry partnership we have is now regionally based where there is sharing of inputs between Peru and Colombia. That sharing of inputs is permitted under the ATPDEA but will be prohibited if the Peru and Colombia agreements remain separate. This situation also needs to be rectified as soon as possible in order for the industry to make its sourcing decisions.

American Chamber of Commerce of Peru, Lima, Peru

By Permission of the Chairman

Introduction

This statement is submitted on behalf of the American Chamber of Commerce of Peru (AmCham Peru), an independent, non-profit organization that represents more than 450 Peruvian, American and other foreign companies, whose sales altogether account for about an equivalent to 60% of Peru's GDP.

AmCham Peru strongly supports the United States—Peru Trade Promotion Agreement (PTPA) since it is, without doubt, a win-win result for both the United States and Peru. Hence, through this statement, AmCham Peru states the reasons of why the PTPA should receive full support from the U.S. Congress. Also, it intends to help clarify some doubts and concerns that have been exposed by some congressional members regarding the agreement.

I. Clarifying major concerns about the PTPA

1) U.S. beef access to the Peruvian market

Due to the discovery of bovine spongiform encephalopathy (BSE) in the United States in 2003, Peru closed its market to U.S. beef. The PTPA negotiation has fostered a change in that situation. On May 9, 2006, after further discussion and in light of the PTPA provisions, Peru finally announced a partial reopening of its market to U.S. fresh and frozen boneless beef, stomachs, kidneys and livers.

This improvement on U.S beef access to the Peruvian market started on January 5, when Peru sent a letter exchange to Ambassador Robert Portman by which it was confirmed that Peru would recognize the meat inspection system of the United States as equivalent of its own. This was ratified by an additional letter exchange on Sanitary and Phytosanitary issues for the PTPA of April 10, in which the Certification Statements for Beef and Beef Products were also specified, granting free and effective access of all American beef (including boneless, bone-in and other variety meats) to the Peruvian market by no later than May 31, 2006.

Moreover, as stated by The National Cattlemen's Beef Association on its Issues Update of May-June 2006, "The Peru Trade Promotion Agreement is the best-negotiated free trade agreement for U.S. beef to date. It immediately eliminates duties on high-quality beef (grading Prime or Choice), and reduces tariffs on all other products in a shorter time frame than most agreements".

2) American investments protection under the PTPA

The PTPA contains an "Investment" chapter, by which it concedes national treatment to American investors in Peru and vice versa, as soon as the agreement enters into force. Hence, granting a treatment no less favorable than that which Peruvian investors may receive locally in terms of fair and equitable treatment, full protection and security of the investments. In addition, in the event of an investment dispute, it includes an Investor-State dispute settlement procedure which constitutes an alternative to the local Judiciary Branch; thus, allowing a reduction in the transaction costs in terms of time and which are inherent to the judiciary and its bureaucracy.

If implemented, the PTPA would also be beneficial to current American investors operating in Peru, since it provides a legal and regulatory framework—which includes tax policy—that introduces certainty in a long term horizon, vital for minimal-risk corporate action planning.

In terms of the Investor-State dispute cases that were a major concern even before negotiations of the PTPA took place, just recently, the last pending Le Tourneau case has just been solved (july 6). Also, concerns about the possible criminalization of commercial disputes which were raised due to the General Electric case should be discarded, given the fact that Peruvian Judiciary—through the favorable sentence to GE on last November—has already set a precedent that hinders the duality of procedures for a single dispute resolution case. Consequently, it may prevent new commercial law cases to be processed as if they were penal law cases.

3) Labor provisions and its enforcement

Since long ago, Peru's labor policy has been consistent with internationally accepted principles and goals. Peru has already ratified and implemented to its own legislation the main ILO conventions regarding to Standards and Fundamental Principles and Rights at Work. Furthermore, Peruvian government passed different Action Plans in order to assure the effective enforcement of labor rights in 2005. The

USTR has also recognized the Peruvian Government efforts to fulfill labor standards.

Labor issue	Government Action Plan
Child Labor	National Plan to Prevent and Eradicate Child Labor in Peru, according to C138—Minimum Age Convention and C182—Worst Forms of Child Labor Convention ratified in 2002
Forced Labor	National Action Plan to Eradicate Forced Labor in 2005
Discrimination	National Plan for Equal Opportunities between Women and Men

Source: Peru's Ministry of Labor
Prepared by: AmCham Perú

Nevertheless, some misinformed groups think that there is no labor laws enforcement in Peru, despite there is, but to a lesser extent than it should be. In fact, the root of the problem is not enforcement of labor laws, but the insufficient ratio of coverage of those laws, which would prevail as long as informality still exists. Hence, in order to attack the problem, the creation of formal firms should be fostered. If so, more formal jobs that would be fully protected by current labor legislation would be created as well. As a result, more people would enjoy the benefits of adequate protection of workers rights, which includes current in force rights of free association and to bargain collectively, among many others.

Moreover, formalization combats current informal child labor, which does not mainly occur in informal companies but in the streets, due to unemployed parents most of the times. As a Peru's National Institute of Statistics and Informatics study found [1]—and which is quoted by groups such as the AFL–CIO-, child labor is fostered mainly in the informal commerce sector of Peru's poorest regions, where insufficient well paid jobs are the main reasons for poverty.

However, this situation might change if the PTPA is implemented.

First, the PTPA reaffirms Peru's commitment to respect the principles of the International Labor Organization, including guarantees to not weaken labor in order to increase trade flows. Secondly, due to the PTPA, more jobs would be created in Peru, helping diminish poverty rates and diminishing the opportunity cost of attending school for children of poor families; thus, diminishing child labor rates as well. Thirdly, these new jobs would be formal ones, since in order to properly establish a business relationship with their American counterparts, Peruvian companies must be formal. To date, many Peruvian exporting firms are inspected by U.S. buyers in the fulfillment of all basic labor standards, in order to avoid any consumer boycott in the U.S. market, which in turn have been serving as a formalization boost as well.

Hence, as the formalization process is accelerated, more Peruvians employed by these firms will enjoy the benefits of local labor regulations which includes the right of free association, bargain collectively, etc. The Andean Trade Preferences for Drug Eradication Act (ATPDEA) has shown to be effective in this matter. New agro industry Peruvian firms generated by the ATPDEA have helped reduce labor black market and are registering and paying social insurance to their employees, practice not yet observed in traditional agriculture. According to AGAP [2] and SUNAT,[3] in 2004 the amount of employees with social insurance grew 53% in agro exports sector since ATPDEA implementation.

Moreover, the PTPA includes specific capacity building provisions for labor issues. Therefore, Peru will acquire the tools and knowledge to properly enforce labor regulations, to promote good labor practices at all levels and to enhance current action plans enacted by the government. This would be a most suitable way to face the problem, rather than recurring to commercial sanctions that might not necessarily help solving the deficiencies that still remain.

II. Why the PTPA is good for American companies

By 2003—the most recent year for which data is available-, over 5,000 U.S. companies—80% of them being small and medium-sized—export their products to Peru, according to the U.S. Chamber of Commerce. Hence, consolidating and expanding their share in the Peruvian market should be a key goal in order to preserve the many thousands of American jobs depending on it. The PTPA constitutes a key tool

[1] INEI (2002), OIT, IPEC–Sudamerica. Visión del Trabajo infantil y adolescente en el Perú, 2001
[2] Asociación de Gremios Agroexportadores del Perú.
[3] Peru's Tax Administration Office

in doing so, due to the tariff-free access that over 80% of American products would gain immediately after the PTPA is implemented.

Moreover, having Peru demonstrated a sustained and healthy economic growth in recent years—with a GDP that increased 6.7% in 2005—it should no longer be seen as just a "small developing market," but as one with enormous potential instead, especially for American products. Besides, it should be noticed that the United States and Peru are both complementary economies, thus not opposing their respective comparative and competitive advantages while trading with each other. While Peru specializes in agricultural exports and other manufactures such as apparel, and products based on natural ingredients, the United States specializes in capital goods, high tech products and basic agriculture commodities production-where Peru can't effectively compete—and also in its highly developed processed food products industry.

Peru: Top providers of capital goods for agriculture, 2005	US$	Share (%)
BRASIL	17,863,824	43.33
UNITED STATES	5,636,065	13.67
URUGUAY	2,240,476	5.43
COLOMBIA	1,976,667	4.79
SPAIN	1,833,402	4.45

Source: Peru Customs Office
Prepared by: AmCham Peru

Peru: Top providers of transportation equipment, 2005	US$	Share (%)
UNITED STATES	170,891,389	24.82
BRASIL	140,881,313	20.46
JAPAN	89,331,177	12.97
ARGENTINA	39,977,395	5.81
CHINA	39,465,264	5.73

Source: Peru Customs Office
Prepared by: AmCham Peru

Peru: Top providers of capital goods for industry, 2005	US$	Share (%)
UNITED STATES	524,067,188	23.59
CHINA	263,297,165	11.85
BRASIL	226,660,366	10.20
GERMANY	177,447,078	7.99
JAPAN	109,434,164	4.93

Source: Peru Customs Office
Prepared by: AmCham Peru

This explains why, even with regular tariffs, Peru has increased its imports from the U.S. in more than 46% in the past 5 years, where only machinery and equipment products account for 45% of the total. Since long ago, the U.S. constitutes the main supplier for capital goods for Peruvian companies, whether they are big corporations or small enterprises.

With the implementation of the PTPA, not only current American companies that trade with Peru will gain from the tariff-free access to the Peruvian market, but also new opportunities will be created for the ones that have not yet expanded their supply outside their local market. Since the good dynamics of Peruvian economy is fostering local investment, the demand for U.S. capital goods products will augment and that opportunity can sure be seized by more American SMEs. Hence, sharing a part of the more than U.S.$1 billion that the U.S. actually exports to Peru in durable goods and thus, creating more jobs for the Americans within United States.

Specifically, the PTPA creates opportunities for American capital goods' manufacturers (yarns, equipment for food processing & packaging, agricultural, construction, mining, oil & gas industry, plastics and resins, chemical materials, etc.) through more trade as well as through better access to Peru' government procurement, similar to the Chile and Singapore's FTA experiences (+30% increase after implementation).

Florida, Texas, Illinois, California, New York, Pennsylvania, along with most the remaining states can certainly give testimony of the benefits it implies for its durable goods local industries, as the tax cut on U.S. goods the PTPA would provide are significant.

Tariffs before and after the PTPA

Without PTPA		Products	With PTPA	
U.S. pays	Peru pays		U.S. pays	Peru pays
12% - 20%	0% - 6%	Processed foods	0%	0%
12%	2.5%	Automobiles	0%	0%
12%	0%	Furniture	0%	0%
12%	0%	Audiovisual products (films and DVDs)	0%	0%
12%	0%	Chemicals, plastics, mineral fuels and coal	0%	0%
12%	0%	Metal products(copper, zinc, gold, silver)	0%	0%
4%	0%	Other transportation equipment	0%	0%
4%	0%	Computers and related parts	0%	0%

Source: Faces of Trade - Small Business Success Stories with Peru. AACCLA, AmCham Peru, TradeRoots, USCC

Also, the PTPA brings enormous opportunities for American agriculture. American exports of agricultural products to Peru account for more than U.S.$250 millions, even with no preferential access and high trade barriers, whereas Peruvian agro exports enter tariff-free into American market. Good news is that the PTPA will immediately level the playing field for more than 2/3 of American crops. Cotton, high-quality beef, wheat, soybeans, apples, cherries, almonds and many other American farm exports may enter duty-free immediately to Peru if the PTPA is approved, most additional tariffs will be removed within 15 years.

According to a study conducted by the North Dakota State university, a free trade agreement with Peru is predicted to increase American exports of wheat, corn, soybeans products, beef, poultry, pork, dairy products, animal fats, cotton, rice and planting seeds, most of them in which Peru's is net importer. In that sense, the liberalization of tariffs for U.S. crops may lead to the positioning of the U.S. as Peru's main provider of these products, since its prices would be lower than those of Peru's other current trade partners in these products.

Some key features of the PTPA that would also have a positive impact in the rise of agricultural trade with Peru are:

i) price-band systems used by Peru have been agreed to be eliminated after implementation of the PTPA.

ii) sanitary and phytosanitary measures will be more transparent and current non technical barriers to trade will be removed.

Many American agricultural organizations, such as the American Farm Bureau Federation and the National Pork Producers Council, strongly support the PTPA. For the latter, with the PTPA U.S. pork exports to Peru's 28 million consumers would raise U.S. live hog prices by 83 cents a head, increasing producers' profits by 7 percent. For AFBF, economic analysis shows that the total increase in U.S. farm exports associated with the PTPA could exceed $705 million per year after full implementation in 2025. Hence, creating more job opportunities in all the American farming sector and agricultural production chain.

The PTPA gives an opportunity to the American textile sector due to rules of origins agreements already negotiated. Peru will be able to sell their apparel products to the American market, as long as the primary inputs used in their manufactures come from either the U.S. or Peru. Therefore, American textile industry will have secure clients in Peruvian apparel exporters, preventing them from buying from Asian providers. As it can be seen, once again both economies are complemented. A win-win result.

U.S. trade in services might as well increase significantly with the PTPA, due to the fact that, if implemented, Peru has agreed to exceed its WTO commitments for services liberalization, creating increased opportunities for American companies. Unlike the WTO services agreement, the PTPA uses a "negative list" approach, meaning that all services are subject to liberalization except those specifically excluded. This allows greater market access in emerging services industries, because new negotiations will not be necessary to liberalize those industries.

Also the PTPA includes significant liberalization in the key financial services sector. With the PTPA, financial services providers will have the right to establish subsidiaries or branches of U.S. banks and the ability to supply insurance on a cross-

border basis. In addition, the agreement improves the transparency of Peru's domestic regulatory regime for financial services.

The PTPA would improve the investment climate in Peru, which directly benefits American companies' subsidiaries already operating in the country. The PTPA consolidates the reforms already carried out in Peru, thus preventing future governments from backsliding. Furthermore, the PTPA:

i) provides a stable framework for the rule of law and its enforcement (which includes key IPR protection);

ii) introduces a dispute settlement resolution mechanism that set high standards of openness and transparency, as well as juridical stability;

iii) eliminates measures that constrained U.S. firms operating in Peru to hire more Americans professionals and to buy inputs locally, rather that on a price-quality basis;

iv) grants non-discriminatory access to bid on contracts for Peruvian government procurement;

v) fosters trade facilitation, improving customs procedures and reducing redtape.

Among other measures that, definitely, secure actual American investment in Peru and also foster new ones as well. This would result in a virtuous circle that will help dinamyze the economy in Peru as a whole, increasing the Peruvian consumption and demand for many of the American products and services (including those produced locally by American companies operating in Peru).

In particular, the PTPA will enforce and improve existing regulations in IPR helping to diminish piracy rates and informality, which involves nearly 60% of the Peruvian economy. Measures included to strengthen the copyright industry are: deterrent criminal penalties and criminal fines, the use of ex officio authority by criminal and customs authorities, deterrent civil fines and expeditious civil ex parte searches. For the pharmaceutical and chemical industries, the PTPA establishes patent recognition and data protection (5 years for medicines, 10 for agrochemicals) for newly developed formulas. Thus, more American laboratories might be able to sell its products directly to Peruvian consumers as well as through government procurement—because their return on investments made in R&D activities will be protected. In addition, the PTPA will foster income levels increase for Peruvians, thus increasing the demand for American patented medicines which nowadays represent only 1.2% of total medicines market share in Peru.

III. Why the PTPA is good for the United States

Besides creating more opportunities for American businesses and securing more jobs and economic welfare across the United States, the PTPA will enforce regional stability in terms of security: better economic results in Peru will diminish social distress within and thus, prevent social crisis and even the advance of nationalist ideologies or the surge of terrorism.

With the PTPA, opportunities would be granted for Peruvian value added agro exports, handcrafts and manufactures, promoting investment within the Peru's Sierra and Jungle region and thus creating more jobs with better wages, generating disincentives for narcotraficking activities. Nowadays and thanks to the ATPDEA, there are a few export projects that have recently been implemented in these regions and that have proved to be a success as alternative sources of income for former illicit coca growers that now sell their licit products to the United States.

Hence, with a PTPA that perpetuates trade preferences granted by the United States, Sierra inhabitants would have the tool to incorporate themselves into the economic development dynamics, experiencing increasing welfare within a democratic political system as well. As a result, incentives for supporting a nationalist front and political scenario would be decreased and democracy values would be accepted by all. Furthermore, people would recognize that economic development cannot be sustained if it is not under a democratic political and social system.

In time, when other countries currently embracing nationalist ideologies may recognize the positive and decentralized impact free trade along a democratic system would have had in the Sierra and Jungle of Peru—just like it has already had in most of the Chilean territory—it is highly probable that those nation leaders may question themselves if protectionism and authoritarism is the right way towards economic development. We should not delay in proving them wrong. The prompt approval of the PTPA will be very useful for that matter and to limit the advance of nationalism within the region.

IV. Why the PTPA is good for Peru

Same as in the United States, the PTPA will imply an opportunity to expand business and create jobs across Peru's more competitive sectors. However, since the Peruvian economy still presents high levels of poverty (51% of total population), the

PTPA constitutes a vital tool to effectively fight this situation and to provide the economic welfare in a decentralized way. Thanks to the trade preferences granted by the U.S. through ATPDEA, Peru has experienced an exports boom that has contributed to the rise in employment levels across Peru's Coast region mainly. Nowadays, nearly over 800,000 Peruvians have jobs that directly depend of the preferences granted by the ATPDEA. It has also had an effect on the number of exporting companies to the U.S., having augmented in over 26% since the ATPDEA was implemented in 2002.

Urban employment growth for firms with 10 or more employees (in %, 2005/2004)					
Arequipa	4.2	Huancayo	3.8	Puno	5.5
Cajamarca	3.6	Ica	16.5	Sullana	23.3
Chiclayo	3.5	Iquitos	9.1	Tacna	2.4
Chimbote	0.4	Pisco	6.1	Talara	18.7
Chincha	15.5	Piura	8.5	Tarapoto	7.3
Cusco	6.4	Pucallpa	2.9	Trujillo	5.6

Source: BCRP

Prepared by: AmCham Peru

If the benefits of the ATPDEA are extended through the PTPA, it is strongly expected that a full decentralized development can be achieved progressively, reaching also to the rural Sierra and Jungle areas, where the biodiversity within the latter provides a huge source of business opportunities related to trade with the U.S. and the rest of the world.

Consequently, the PTPA would effectively fight poverty in Peru, increasing welfare levels for the poorest: reduction of Peru's tariffs on imports of consumer goods and agricultural products from the United States will reduce the prices that Peru's poor families must pay for basic necessities, thus increasing their purchasing power and augmenting their disposable income for expenses such as education, health care, etc.

Also of importance is the improvement in terms of business climate, which will have a multiplier effect in the dynamics of Peruvian economy as well, not only benefited foreign investors, but local too.

In sum, by only reviewing the main features that have been outlined about the United States–Peru Trade Promotion Agreement, it can certainly be concluded that its implementation will definitely be a win-win result for both countries. For that reason, we encourage U.S. Congressmen to approve this agreement and to not to disappoint the many American and Peruvian families whose welfare might be dramatically affected with the passage of the PTPA. The Peruvian Congressmen and Peruvian President Alejandro Toledo have already bet on the many benefits the PTPA will provide for the present and upcoming generations. Trade, when having such provisions negotiated and such fundamentals in each country, is a useful and effective tool to foster economic development. We shouldn't deprive our countries from having such a powerful tool.

Statement of Bacilio A. Amorrortu, Houston, Texas

Mr. Chairman, members of the House Ways and Means Committee, thank you for the opportunity to testify individually before you on this very important issue. This testimony is in memory of my wife Gladys who passed away days ago in Houston, Texas.

I am a petroleum engineer and oilfield services businessman, who became a politician. In 1999, I came, this time, to USA seeking for freedom and justice, as a victim of a cruel political persecution executed by the Peruvian Government. In 2001, the INS United States Department of Justice granted me a political asylum ruling, ratifying that the Peruvian Government executed human rights violations against me. I got freedom. This decision was the result of my 510 pages complaint filed against

the Peruvian Government. The Peruvian Government confiscated my assets. My next step is seeking for justice. In accordance with the U.S. Constitution and law, I am here to file a political and human rights claim before you and the House of Representatives against the Peruvian Government, to get a fair reparation or remedy. Also to request you to suspend the implementation of the United States–Peru Trade Promotion Agreement until the Peruvian Government compromises to comply with this reparation or remedy.

During the 1980s and 1990s, I came to Texas, USA, with my money and monies of my oil company Propetsa and purchased oil rigs, oil equipment, trucks, spare parts and technology. Also, I always understood that the United States Trade Agreements, like this one, are to promote freedom, human rights, democracy and mutual prosperity, and to fight against corruption and poverty as well. Therefore, I consider solving my mentioned political and human rights claim is one of the purposes of this Trade Agreement.

The following laws of the United States support my Political and Human Rights Claim:

The U.S. Constitution Article I., Section 8, Clause 3: The Congress shall power to regulate Commerce with foreign Nations, and the International Covenant on Civil and Political Rights that provides in Part II Article 2.3. Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, (c) To ensure that the competent authorities shall enforce such remedies when granted.

In the 1980s, as a result of having created hundreds of jobs with my company Propetsa, the way I treated my workers, and my social services furnished in my region "Grau," I became an oil businessman and political leader. The terrorist groups threatened me to stop me working for the people and community. Thousands of workers and unemployed Peruvians approached me and told me that they believed I was the right person to head a political party. In 1990, I was the founder and leader of a political party in Peru named "En Accion," and raised the political symbol "the tower" of energy, fighting politically against terrorist group shining path, who collapsed the towers of electricity producing blackouts, killing people, and creating terror to the Peruvians. I raised the message to increase the oil & gas exploration and exploitation to solve the energy problem in Peru. I aired a TV spot saying "the blackouts must no be repeated, join us and raise the tower". Terrorist increased threats against me. This message gained support and thousands of supporters.

In 1992, I filed 230,000 supporter signatures before the Peruvian Electoral Court to participate in the national election for Congress. The Peruvian Government rejected my participation to be in the ballot. I was vetoed. The Peruvian government saw in me a real opposition and a presidency alternative. On the contrary, I read that another political party would had filed fake signatures and that they would had been in the ballot. They were not vetoed. The repressive Peruvian Government increased the political persecution against me. They threatened me and executed an economical torture shutting down my company Propetsa to avoid incomes and confiscated my oil rigs and an important receivable account.

On February 13, 1992, I requested the Peruvian Minister of Energy and Mines to pay my oil company a debt owed by the Peruvian Government oil company, the same way they did with foreign companies. We agreed to audit this claim by the Peruvian State Comptrollership. On May 18, 1992, during the audit, the Peruvian Government sent unilaterally the judicial deposit No. 70880755 to a Civil Judge in favor of my company with a diminutive amount. This was a clear sign of obstruction of justice and a confiscation of my biggest receivable account asset. However, this arbitrary act did not stop the Peruvian Comptrollership to issue a "Special Analysis" ratifying that the Peruvian Government owed to my company a debt in a large amount. This judgment was not fulfilled and the Peruvian Government did not pay me or my company. On the contrary, foreign companies were paid. I filed a lawsuit against the Peruvian Government without success. The 2001 U.S. Department of State human rights report about Peru says: "the judiciary has been subject to interference from the executive and is corrupt and inefficient". In 1992, after receiving a copy of the Comptrollership's "Special analysis" ratifying the debt to Propetsa, I apprised the tax office (Sunat) that both Propetsa and myself were creditors of the State, and that tax liability was to be assessed at zero, since the State literally owed me and my company many, many times any tax debt.

Conclusion

The political persecution has been cruel. I am extremely damaged and we did not have the money at the right time to pay complete medical exams for my wife Glad-

ys, but the Peruvian Government on June 28, 2005, would had sold two of my very expensive oil workover rigs confiscated. I do not know the details. My case as a victim of human rights violations must not be repeated. This House Committee and the House of Representatives should send a strong sign to Peru related to human rights and should suspend the implementation of the United States–Peru Trade Promotion Agreement until the Peruvian government agrees to pay me a political and human rights reparation or remedy claimed.

Statement of Jeffrey Levin, Schmeltzer, Aptaker & Shepard, on behalf of the Association of Food Industries, Inc.

This statement is submitted on behalf of the Association of Food Industries, Inc. (AFI) in response to the request for written statements issued by the House Committee on Ways and Means (Full Committee Advisory No. FC–24, June 27, 2006, as revised July 10, 2006). AFI is a trade association representing the U.S. food importing industry, with approximately 200 member-companies located in the United States, as well as approximately 200 associate member-companies located abroad which supply the U.S. market. AFI members import a wide range of food products from many countries around the world, including Peru (as well as other beneficiary-countries under the Andean Trade Preference Act (ATPA), and its successor, the Andean Trade Promotion and Drug Eradication Act (ATPDEA)). In addition, many AFI associate member-companies are located in Peru (as well as other ATPDEA beneficiary countries).

AFI brings to the table the perspective not just of U.S. food importers but also of U.S. consumers. These are fundamentally important constituencies that are too often overlooked in the course of trade deliberations in food products, particularly in negotiating objectives. Indeed, in reviewing the principal negotiating objectives of the United States with respect to agriculture as defined in section 2102(b)(10) of the Trade Act of 2002, the emphasis on enhancement of export opportunities and the development of overseas markets for U.S. producers of agricultural commodities is manifest. Yet, to as critical extent, the sweeping benefits gained from the imports side of the equation are overlooked. This is unfortunate, because the importing activities of the United States have allowed this country to secure a ready and uninterrupted access to the widest possible range of food products at the lowest possible cost to the American public.

The U.S. food importing industry is a burgeoning sector of the U.S. economy. In large part, this is due to the increasing demands of a growing population that is living longer and becoming more ethnically diverse with each passing year. The share of the total U.S. diet for which imports account has grown considerably in recent years. The most recent data issued by the U.S. Department of Agriculture indicates that imports' share of the total quantity of food consumed in this country increased from 7.8 percent to 11.2 percent over the past twenty years—a relative increase of 44 percent.[1] Import supplies greatly increase the variety of foods available to the American consumer in line with expanding market demands, temper increases in food prices caused by adverse weather conditions and other market disruptions, and stabilize year-round supplies of fruits and vegetables.[2] In other words, imported foods support adequate supplies of both dietary staples and specialty items especially important to an increasingly diverse population, and do so at a counter-inflationary cost to consumers. Among other things, this allows for greater consumer spending on a range of non-agricultural goods and services.

AFI has long been a strong supporter of trade liberalization through the reduction of tariffs and the elimination of non-tariff barriers in the course of multilateral and bilateral negotiations. In recent years, AFI has actively supported the current Administration's free trade agreements (FTAs) program, and has lent its support to the FTAs negotiated and implemented with Chile, Australia, Morocco, and with the nations of the Central American Economic Integration System (CAFTA–DR). In the past few months, AFI has also supported the successful effort to negotiate a trade promotion agreement with Peru (hereafter "Peru TPA").

[1] Jerardo, Outlook Report No. (FAU7901), July 2003, Economic Research Service, USDA.

[2] According to USDA data, total U.S. imports of agricultural products increased from $39 billion in fiscal year 2001 to $57.7 billion in fiscal year 2005, which represents an increase of nearly 50 percent in just a four year period. Current projections are that imports will hit $65 billion in fiscal year 2006. Electronic Outlook Report AES–50 (May 24, 2006), Economic Research Service, USDA.

AFI stands in strong support of the Peru TPA, and urges Congressional approval of the implementing legislation for this important agreement as soon as practical. AFI also urges formal implementation of the Peru TPA at the soonest possible time, which we hope will be January 1, 2007.[3] AFI and its member-companies respectfully submit that the Peru TPA will have tangible and significant economic benefits for both the United States and for Peru.

One of AFI's particular areas of interest in the context of the Peru TPA is imports of fresh and processed asparagus from Peru. Imports of fresh asparagus are classified under two subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): subheading 0709.20.10, HTSUS (fresh or chilled asparagus entered from September 15 to November 15); and subheading 0709.20.90, HTSUS (fresh or chilled asparagus, other).[4] The NTR duty rates applicable to imports in these two subheadings are 5 percent and 21.3 percent *ad valorem,* respectively. Imports of processed asparagus are classified in subheading 2005.60.00, HTSUS, with an NTR rate of 14.9 percent. Under the ATPDEA, imports of fresh and processed asparagus from Peru have been accorded duty-free treatment since 1992.[5] AFI strongly supports the actions of U.S. and Peruvian negotiators to maintain this duty-free treatment for imports of fresh and processed asparagus under the terms of the Peru TPA. The duty-free treatment accorded to imports of fresh and processed asparagus from Peru since 1992 has resulted in pronounced economic benefits to U.S. consumers, U.S. importing companies, U.S. distributors, the many other companies in the domestic commercial chain, the Peruvian economy, and the thousands of people in Peru whose livelihood is dependent on trade with the United States. AFI further submits that this duty-free treatment has also resulted in an economic benefit to U.S. producers and processors of asparagus. The retraction of such treatment—if, for example, the Peru TPA is not approved by Congress, or is implemented sometime after January 1, 2007, and the ATPDEA is not renewed in the interim—will surely result in discernible economic harm to these parties.

In the past two years, U.S. imports of fresh and processed asparagus from Peru had a value of between $110 and $127 million.[6] That is a significant amount of for-

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[3] The ATPDEA is currently scheduled to expire as of January 1, 2007. It is uncertain at this time whether the Peru TPA will be considered, let alone approved, by the U.S. Congress during the current Congressional session. It is even more uncertain whether the Peru TPA will be implemented by January 1, 2007, even if it is approved sometime in the next few months. (In this regard, AFI notes that there is often a lengthy lag between U.S. Congressional approval of the implementing legislation for a particular trade agreement and the effective implementation of that agreement. For example, nearly 18 months elapsed between the time when the implementing legislation for the U.S.–Morocco FTA was approved by Congress and the actual implementation of that agreement on January 1, 2006.) In other words, if the ATPDEA does indeed expire as of December 31 of this year without some form of renewal or extension, there is a substantial likelihood that the U.S. duty rates for imports from ATPDEA beneficiary-countries will revert to "normal trade relations" (NTR) status as of January 1, 2007. This would constitute a drastic change in the trade environment, and will cause significant harm to U.S. importing companies, U.S. consumers, and overseas suppliers. (AFI notes that some, but not all of the imports from ATPDEA beneficiary countries, including Peru, are likewise eligible for duty-free treatment under the Generalized System of Preferences (GSP). In any case, the GSP is currently scheduled to expire concurrently with the ATPDEA.).

On at least two bases, a reversion to an NTR duty structure for imports from the ATPDEA beneficiary-countries could also cause substantial harm to U.S. companies that are not directly involved in importations from ATPDEA beneficiary-countries. First, the currency gained by persons situated in the ATPDEA beneficiary-countries through exports to the U.S. places significant purchasing power in the hands of such persons with which to, among other things, purchase U.S. products and services. Second, a significant percentage of the overall value chain generated by U.S. imports from ATPDEA beneficiary-countries remains in U.S. hands, including air and sea carriers, ports, storage facilities, distributors, wholesalers and retailers.

[4] In this statement, the term "fresh asparagus" is used to encompass both fresh and chilled asparagus, classified in the foregoing HTSUS subheadings.

[5] Imports of fresh and processed asparagus from Peru are not currently subject to duty-free treatment under the Generalized System of Preferences.

[6] In 2004, imports of fresh asparagus from Peru, classified under subheadings 0709.20.1000 and 0709.20.9000, HTSUS, totaled 61,352 net tons with a Customs value of $98.33 million. In 2005, these imports totaled 65,208 net tons with a Customs value of $109.95 million.

In 2004, imports of processed asparagus from Peru, classified under subheading 2005.60.00, HTSUS, totaled 4,672 net tons with a Customs value of $8.6 million. In 2005, these imports totaled 7,955 net tons with a Customs value of $16.88 million.

In 2004, imports of fresh asparagus from Peru accounted for 60 percent, by quantity, of total imports of fresh asparagus, while Mexico accounted for 36.5 percent. Although imports from Peru increased in absolute terms during 2005, its share of total imports declined to 54.6 percent, while Mexico's share of total imports increased to 42.4 percent. Together, these two countries account for more than 95 percent of total U.S. imports of fresh asparagus. In 2004 and 2005, imports of processed asparagus from Peru accounted for more than 75 percent of total imports,

eign exchange earnings for a country with a gross domestic product of only $67.1 billion, and with a per capita GDP of only $2,777 per year.[7] The success of Peru's agroexport industry in general, and the asparagus industry specifically, over the past decade is one of the signal achievements of the ATPDEA in that it has effected the creation of high-value marketable agricultural businesses at the expense of illegal coca cultivation. In its most recent report on the impact of the ATPDEA, this Commission noted that net coca cultivation decreased dramatically, from 115,300 hectacres in 1995 to 27,500 hectacres in 2004.[8] The Commission's report states as follows:

As noted by USTR, the growth in exports to the United States under ATPA has fostered economic development, which is vital to creating employment and alternatives to drug-crop production. As in the past, the asparagus industry continued to be an important source of alternative employment, supporting an estimated 60,000 workers directly in asparagus cultivation and processing in 2004.[9]

When a trading partner of this country, a political and economic ally, garners $127 million worth of export sales to the United States, that represents $127 million worth of purchasing power placed in the hands of Peruvian nationals, money to a burgeoning middle class to, among other things, purchase products exported from the United States. U.S. purchases of Peruvian products serve this country's principal negotiating objective for trade agreements which, as stated in the Trade Act of 2002, is "to expand competitive market opportunities for United States exports."[10]

While the Peruvian asparagus industry has created tangible economic benefits in that country, the U.S. has also derived a significant economic benefit from this trade. We respectfully submit that this benefit will be furthered by implementation of the Peru TPA. As noted by U.S. importer of asparagus from Peru in testimony earlier this year before the U.S. International Trade Commission in that agency's recent investigation of the economic impact of the ATPDEA on the U.S. economy:

The vast majority of the value chain generated by sales of Peruvian asparagus in this market remains in this country. For example, in 2003, the value chain for imports of fresh asparagus from Peru was worth approximately $300 million. Of that total, approximately 70 percent remained in U.S. hands, including air, sea and land carriers, importers, ports, storage facilities, distributors, wholesalers and retailers. In other words, for every dollar spent by a U.S. consumer on fresh asparagus imported from Peru, 70 cents remains in the U.S.

Moreover, even of the 30 percent that reverts back to the country-of-origin, a substantial portion is spent on U.S. inputs such as seeds and fertilizers.[11]

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while China accounted for almost all of the remainder. Together, these two countries account for more than 95 percent of total U.S. imports of processed asparagus.

Source: U.S. International Trade Commission Trade DataWeb.

[7] *See Background Note: Peru,* U.S. Department of State (December 2005), http://www.state.gov/r/pa/ei/bgn/35762.htm (last visited March 22, 2006).

[8] *The Impact of the Andean Trade Preference Act: Eleventh Report 2004,* USITC Pub. 3803 at 4–14.

[9] *Id.* at 4–15.

[10] Trade Act of 2002, Pub. L. No.107–210, 2102, 116 Stat. 994 (2002), *codified at,* 19 U.S.C. § 3802(b)(1)(A).

Of course, the elimination of duties applied by Peru on imports from the United States under the terms of the Peru TPA also serves this principal negotiating objective. As stated by the Office of the U.S. Trade Representative:

This Agreement creates important new markets for U.S. goods. Eighty percent of U.S. consumer and industrial products and more than two-thirds of current U.S. farm exports will enter Peru duty-free immediately.

See http://www.ustr.gov/assets/Document_Library/Fact_Sheets/2005/asset_upload_file96_8619.pdf (last visited March 24, 2006).

In its report on the Peru TPA, the Agricultural Technical Advisory Committee on Trade In Fruits and Vegetables ("F&V ATAC"), opinioned that "the negotiated agreement provides for equity and reciprocity in the reduction and elimination of tariff rates affecting the fruit, nut and vegetable sectors." *http://www.ustr.gov/assets/Trade*_Agreements/Bilateral/Peru_TPA/Reports/asset_upload_file492_8975.pdf (last visited March 24, 2006).

[11] Transcript of hearing before the United States International Trade Commission: *In the Matter of: U.S.–Peru Trade Promotion Agreement: Potential Economywide and Selected Sectoral Effects,* Investigation No. TA–2104–20 (March 15, 2006) at 34–35 (testimony of John-Campbell Barmmer).

For example, in 2003 (the last full year for which the complete set of following data are available), the fob value of Peruvian fresh asparagus exports to the U.S. was approximately $78.5 million. The comparable cif value was $132.7 million. The value that accrued to importers was approximately $20 million, while the value that accrued to wholesalers and retailers was approximately $90 million. In addition, other value-added in the U.S. (*e.g.,* for storage, fumigation,

Continued

As this witness further noted, imports of fresh asparagus from Peru fuel job creation in the United States. Aside from the several hundred persons employed or indirectly involved in the process of importing asparagus from Peru, these imports result directly or indirectly in the creation of at least 5,000U.S.jobs in companies throughout the commercial chain.[12]

Imports of fresh and processed asparagus from Peru also serve a U.S. market demand that cannot be met by domestic growers alone. In the absence of import sources—and principally, imports from Peru—domestic production would be woefully inadequate to meet U.S. consumer demand. This would inevitably lead to a jump in prices, to the detriment of U.S. consumers, and eventually a drop in consumption, to the detriment of U.S. producers.

Another product of concern to AFI and its membership is processed artichokes. Peru is the second largest foreign supplier of processed artichokes to the U.S. market, with U.S. imports of the product totaling 8,888 net tons in 2005, with a Customs value of nearly $17 million.[13] Again, these imports enjoy duty-free treatment under the ATPDEA, but would revert to a 14.9 percent NTR rate if the Peru TPA is not approved and implemented by January 1, 2007, and the ATPDEA is not extended in some form prior to that date.[14] And again, the losers in such a contingency would range from U.S. consumers, importers and other parties in the commercial chain, as well as interests in Peru.

The Peru TPA does not provide any new benefits for imports of products of interest to AFI and its member-companies; it merely preserves the situation that has been in place for nearly 15 years. This situation has well-served a wide range of economic interests here in the United States, as well as in Peru. However, retraction of duty-free treatment for imports of the product would have a discernible deleterious effect across-the-board.

For these reasons, AFI strongly supports the actions of U.S. and Peruvian negotiators, and urges swift approval and implementation of this important agreement.

Bayer MaterialScience
Pittsburgh, Pennsylvania 15205
July 18, 2006

The Honorable William M. Thomas, Chairman
The Honorable Charles B. Rangel, Ranking Member
Committee on Ways & Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington D.C., 20515

Dear Mr. Chairman and Ranking Member Rangel:

On behalf of Bayer MaterialScience LLC ("Bayer"), I am writing to express support for the implementation of the United States–Peru Trade Promotion Agreement (PTPA). This agreement has the potential to significantly enhance market access for U.S. exports to Peru, helping U.S. manufacturers to stay competitive with global rivals based in Asia and elsewhere.

In particular, the PTPA would remove tariff barriers that are currently one-sided. While most products from Peru already enter the United States duty-free, Peru's tariffs represent a substantial hurdle to market entry for U.S. exporters. As Peru already has preferential trade arrangements with several major economies, including Brazil, Argentina, and Chile, U.S. exports have been disadvantaged in comparison to those of other foreign chemical producers.

In June 2004, Bayer submitted written comments to the Office of the United States Trade Representative (USTR) outlining the priority of an immediate elimination of Peru's tariff on toluene diisocyanate (TDI) in the context of the U.S.–Peru

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etc.) totaled approximately $15 million. These sub-totals sum to $258 million, which represents the approximate retail value of fresh asparagus imports from Peru sold off the U.S. supermarket shelves. In other words, approximately 30 percent of that end-value ($78.5 million out of $258 million) remains in Peruvian hands, while the remainder ($179.5 million out of $258 million) remains here in the United States.

Sources: Aduanas (National Customs Superintendancy of Peru); U.S. International Trade Commission Trade DataWeb; estimates by APOYO Consultoría, and the Instituto Peruano del Espárrago y Hortalizas (IPEH).

[12] Tr. at 35 (testimony of John-Campbell Barmmer).

[13] Processed artichokes are classified in subheading 2005.90.80, HTSUS.

[14] Processed artichokes from Peru are not currently eligible for duty-free treatment under the GSP.

free trade negotiations. TDI goes into the production of polyurethane foams used in furniture, bedding, automotive seating, insulation, construction and other specialty markets. It is manufactured by a number of U.S. companies in the states of Michigan, Louisiana, Kentucky, West Virginia, and Texas.

We are pleased to note that Peru's 4% tariff on TDI, classified under Harmonized System number 2929.10.10, is scheduled to be eliminated upon implementation of the PTPA. This tariff reduction, along with those on other U.S.-manufactured products, will serve to promote the expansion of Bayer MaterialScience LLC's business in the region and bolster U.S. jobs and manufacturing.

For these reasons, we urge your approval of implementing legislation for the PTPA.

Sincerely,

Tim Chappell

California Table Grape Commission
Fresno, California
July 18, 2006

Congressman Bill Thomas
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Congressman Thomas:

The California Table Grape Commission, on behalf of California's fresh grape farmers, is pleased to provide the following comments regarding the recently signed U.S.–Peru Trade Promotion Agreement (PTPA).

California fresh table grapes entering Peru currently face a 20 percent tariff. This tariff will be eliminated upon implementation of the U.S.–PTPA, making California grapes more affordable for Peruvian consumers and more competitive vis-à-vis other world grape suppliers.

While California table grapes are currently exported to Peru in only limited amounts, the elimination of the 20 percent tariff will provide opportunities for a significant expansion of these exports. The California Table Grape Commission therefore supports the agreement and encourages the House Ways and Means Committee to give it favorable consideration.

The commission would also like to take this opportunity to emphasize the importance of lowering tariffs and improving market access for California grapes throughout the world. California table grape exports have increased significantly over the past ten years due to the implementation of a number of free trade agreements. Improving global market access remains a top priority for the California Table Grape Commission.

Thank you for your consideration of these comments.

Sincerely,

Kathleen Nave
President

Statement of Eric Farnsworth, Council of the Americas

The Council of the Americas ("Council") appreciates the opportunity to submit testimony in support of the United States–Peru Trade Promotion Agreement. The Council is a New York-based organization with offices also in Washington representing approximately 175 companies invested in and doing business throughout the Western Hemisphere. The Council is dedicated to the promotion of open markets, democracy, and the rule of law in the Americas. Founded in 1965, we have been widely recognized throughout the region as the voice of Western Hemisphere business and policy for over 40 years.

A Regional Network of Open Markets

The Council strongly supports efforts to expand trade and investment throughout the Americas, both on the basis of U.S. economic and national security interests and in the belief that open markets and healthy investment flows are critical factors in the search for sustainable, equitable growth in the hemisphere. For that reason, we

are strong advocates for the negotiation of a Free Trade Area of the Americas, as democratically-elected leaders first agreed at the 1994 hemispheric summit in Miami. Such an agreement would provide the very underpinnings of broad, sustained U.S. engagement in the region. As stepping stones to this ultimate goal, we have supported agreements with Mexico, Canada, Chile, Central America and the Dominican Republic, and will continue to support new agreements such as the one with Peru that can contribute to that overall goal of a hemispheric open trade zone. As with the DR–CAFTA, our hope for the Andean region is an agreement that boosts regional integration efforts by uniting our trading partners in the Andes and throughout the Americas in an agreement that applies collectively among all the countries, rather than simply on a bilateral basis between each country and the United States. Therefore, in the broader context of U.S. strategy for economic engagement in the Western Hemisphere, the Council urges policymakers to pursue a path of integration and harmonization among existing and pending free trade agreements. At the very least, the terms of agreements now being negotiated should be conducive to future integration. In this way, the bilateral/sub-regional agenda will be a path toward hemispheric free trade through the Free Trade Area of the Americas, which, despite being delayed, remains our ultimate goal.

U.S.–Peru FTA

As a next step toward this goal, and in direct support of U.S. strategic interests in the critical Andean region, the Council strongly supports the pending agreement between the United States and Peru and urges its rapid advance through the Trade Promotion Authority-mandated process to Congressional approval and timely implementation.

- An Andean Free Trade Agreement is the next logical step in a long-term pattern of economic and political engagement of the region pursued by Republican and Democratic administrations alike. U.S. credibility in the region, as well as with the broader multilateral trade agenda, is an important consideration as Congress looks at this agreement.
- As an agreement with the *potential for regional application,* the Peru FTA sets the stage for an attractive regional market and potentially enhances integration and cooperation among the countries of the Andes—a critical ingredient for long-term, peaceful and democratic stability in the region and for the effective management of the challenge of illicit narcotics.
- The free trade agreement offers *important growth opportunities for U.S. industry and agriculture* by opening a significant market, and putting it on a footing for more rapid growth.
- *The disciplines contained in the agreement* in areas such as services, investment and government procurement *enhance the transparency and accountability of day-to-day governance,* which makes Peru a more attractive place for foreign investment, while reinforcing democratic processes and narrowing opportunities for corruption.
- *As a strategic matter,* for the last 15 years stemming from the 1991 Cartagena Summit, the United States on a bipartisan basis has supported economic growth in the Andean region as a *bulwark against movements inimical to U.S. interests*—primarily illegal narcotics trafficking—by opening its markets unilaterally to Andean countries through the Andean Trade Preferences Act. The ATPA was later extended and expanded by the Andean Trade Partnership and Drug Eradication Act, now set to expire in December 2006. With economic populism reaching across the Andes, the U.S.–Peru trade promotion agreement will move the pre-existing relationship to a reciprocal and sustainable basis for the first time.
- Perhaps most importantly, *the agreement enhances the U.S. relationship with a country and its newly-elected government that is a much-needed ally in a strategic region during a politically-sensitive time.*

The Peru FTA stands on its merits. *On the basis of reciprocity alone, for 15 years of duty-free access under the ATPA/ATPDEA, it should be non-controversial to open the Peruvian market to U.S. goods, as ours is already open to theirs. The foreign policy arguments in favor of this agreement are equally compelling, if not, in fact, even more so.*

The Climate for Investment

The Council's enthusiasm for the U.S.–Peru FTA is the result of long-term engagement with political leaders and policy makers in the United States and Peru. In the past it has been tempered at times by the intractability of certain disputes affecting investors. It is safe to say that, wherever investments are made, investment disputes will inevitably arise. The issue is not whether such disputes exist.

The issue, rather, is whether, when they do arise, investment disputes are promptly, transparently, and effectively resolved, and whether the established patterns of foreign government behavior build momentum and goodwill toward their ultimate resolution, or obstruct this goal.

The Council has long supported an open and rules-based approach to trade. In a global economy, investors will look first to the investment climate as to whether they will increase or reduce their exposure to the countries in question. During the course of the negotiations we emphasized the necessity for Peru to demonstrate both the capacity, and the willingness, to implement and enforce trade and investment related legislation, and to maintain a demonstrated institutional consistency across administrations. We called attention to the vexing nature of investment disputes in Peru and urged the sequential, definitive resolution of disputes, insisting upon a strong, meaningful dispute resolution chapter that would provide the opportunity for adequate redress in cases where disputes may arise.

In this regard, the Toledo Administration has exhibited a strong commitment as part of the FTA process to resolving investment disputes in accordance with the rule of law. Much concrete progress has been made. Though some disputes remain, the trade agreement as negotiated provides cutting edge protections which, when implemented fully by the new Garcia Administration, will give greater confidence to investors thus bringing about, over time, the full benefits promised by an expanded trade relationship. We stand in favor of cementing these efforts through a formalized agreement with Peru.

Conclusion

The Council urges timely and favorable action on the pending agreement with Peru, which we believe will provide a cornerstone for continued democratic and economic growth and development and important new economic opportunities for the United States. As well, the Peru FTA is also an important building block toward the vision of a unified hemispheric market that will enhance U.S. competitiveness and that of its neighbors in an era of unparalleled global competition—and opportunity. The agreement should be passed without delay.

Statement of Emergency Committee for American Trade

These comments are submitted on behalf of the Emergency Committee for American Trade—ECAT—an association of the chief executives of leading U.S. business enterprises with global operations. ECAT was founded more than three decades ago to promote economic growth through expansionary trade and investment policies. Today, ECAT's members represent all the principal sectors of the U.S. economy—agriculture, financial, high technology, manufacturing, merchandising, processing, publishing and services. The combined exports of ECAT companies run into the tens of billions of dollars. The jobs they provide for American men and women—including the jobs accounted for by suppliers, dealers, and subcontractors—are located in every state and cover skills of all levels. Their collective annual worldwide sales total nearly $2.4 trillion, and they employ more than five and one-half million persons. ECAT companies are strong supporters of negotiations to eliminate tariffs, remove non-tariff barriers and promote trade liberalization and investment worldwide.

ECAT is submitting these comments to express its strong support for Congressional approval and implementation of the United States–Peru Trade Promotion Agreement (Peru TPA) that will promote new economic opportunities for both countries and continued economic reform in Peru. This agreement also represents an important tool to foster improved ties and promote broader U.S. interests in the region. With the completion of the Peru TPA, the United States now has the opportunity to implement an agreement that will not only make the relationship permanent and more flexible, but will also substantially open markets in Peru for U.S. farm products, U.S. manufactured exports, and U.S. services.

Major Provisions of U.S.–Peru Trade Promotion Agreement

The United States and Peru signed the U.S.–Peru Trade Promotion Agreement (TPA) on April 12, 2006. The primary provisions of the U.S.–Peru Trade Promotion Agreement include the following:

- *Agriculture:* Provides immediate duty-free treatment for more than two-thirds of U.S. agricultural exports to Peru, including important U.S. exports such as high-quality beef, cotton, wheat, soybeans, soybean meal, crude soybean oil, key fruits and vegetables, and many processed food products. Tariffs on most re-

maining products will be phased out within 15 years, with all tariffs eliminated within 17 years, providing improved access for pork, beef, corn, poultry, rice, fruits and vegetables, processed food and dairy products. The FTA also includes provisions to eliminate sanitary and phytosanitary barriers.

- *Manufactured Goods:* Eighty percentof U.S. consumer and industrial exports will receive immediate duty-free treatment, including key U.S. exports of auto parts, construction equipment, forest products, information technology products and medical and scientific equipment. Remaining tariffs will be eliminated on all products within 10 years. Peru has agreed to allow trade in remanufactured products.
- *Information Technology:* Provides, via a side letter, that Peru will join and become a full participant in the WTO ITA. As a result, Peru will eliminate duties on all high-tech products (e.g., servers, personal computers, printers) covered by the Agreement and allow worldwide exports to enter their markets duty-free. In addition, Peru committed to non-discrimination and national treatment of e-commerce and digital products, and agreed not to impose customs duties on products delivered electronically.
- *Textiles and Apparel:* Expands access to the U.S. market through duty-free treatment for apparel made with U.S. and/or Peruvian fabric and, for a temporary period, a limited amount of apparel made with fabric from third countries.
- *Services:* Liberalizes services trade and investment in Peru through a negative list approach with few exceptions. Investment: Expands investment opportunities and incorporates generally strong protections, including an investor-state mechanism, for U.S. investment.
- *Intellectual Property Rights:* Includes strong protections for trademarks, patents, copyrights, and trade secrets, including stronger penalty requirements, patent term restoration and data exclusivity.
- *Government procurement:* Includes important new anti-corruption, transparency and non-discrimination rules for government contracting.
- *Transparency:* Includes state-of-the-art transparency standards, including in such areas as customs and regulatory rulemaking (i.e., providing, for example, Internet publication of laws and regulations, expedited release procedures, and provisions for express shipments).
- *Labor and environment:* Includes commitments by Peru to enforce effectively its domestic labor and environmental laws. The parties reaffirmed their commitment to International Labor Organization principles and that it is inappropriate to weaken or reduce labor or environmental protections to encourage trade or investment. The parties also agreed to ensure that their environmental laws provide for high levels of environmental protection.
- *Dispute settlement:* Provides that obligations in commercial, labor and environment areas are enforceable through a strong and innovative dispute settlement system allowing for monetary fines and other penalties for the failure to meet commitments.

Opportunities Created

U.S. exports to Peru equaled $2.3 billion in 2005, with significant exports of machinery, fuel, plastics and processed foods. U.S. imports from Peru totaled $5.1 billion in 2005, with major imports of precious stones, fuel, apparel and copper. U.S. foreign direct investment in Peru equaled $3.9 billion in 2004.

Most imports from Peru already receive duty-free treatment under the Andean Trade Promotion and Drug Eradication Act (ATPDEA), which was enacted as part of the Trade Act of 2002. The Peru TPA expands this duty-free treatment and makes it permanent.

The U.S.–Peru TPA will expand opportunities for U.S. producers by opening markets and eliminating key barriers. It will also make important improvements to investment protections, intellectual property rights, digital trade and transparency that will promote the rule of law.

For Peru, the trade agreement will expand opportunities and promote economic growth. This is particularly important given that a high percentage of workers in Peru are already employed in industries connected to the United States.

Concerns have been expressed that the Peru TPA will undermine economic progress in the region by allowing more competitive U.S. products, particularly agricultural products, to enter the market. These concerns ignore the very positive impact that free trade agreements, including the North American Free Trade Agreement (NAFTA) have had on economic development. An independent and detailed study by the World Bank published at the end of 2003—*Lessons from NAFTA for Latin American and Caribbean (LAC) Countries: A Summary of Research Findings,*

by Daniel Lederman, William Maloney, and Luis Servén—analyzed the effects of NAFTA on the Mexican economy, separating out the effects of the peso crisis. It found that:

- "NAFTA has brought significant economic and social benefits to the Mexican economy."
- "Contrary to some predictions, NAFTA has not had a devastating effect on Mexico's agriculture. In fact, both domestic production and trade in agricultural goods rose during the NAFTA years." The report goes on to explain why, citing factors such as increased demand and productivity.
- "In spite of popular perception, there is little ground for concerns that NAFTA, or FTAs more generally, are likely to have a detrimental effect on the availability and/or quality of jobs. . . . In fact, Mexican firms, as those of the region, more generally, that are exposed to trade tend to pay higher wages, adjusted for skills, are more formal, and invest more in training."

In short, for Peru, this TPA is part of its effort to continue the reform of its economy and promote economic development, growth and opportunity.

Conclusion

ECAT strongly supports Congressional approval and implementation of the U.S.–Peru TPA as soon as possible.

Statement of Exporamerica

This statement is submitted on behalf of EXPORAMERICA, an association of Peruvian apparel companies whose objective is to promote increased trade between Peru and the U.S. Exporamerica presented testimony at the public hearing conducted by the International Trade Commission (ITC) on March 15, 2006 in connection with its investigation regarding the Peru Trade Promotion Agreement (PTPA).

I. U.S.–Peru Trade in Fibers, Yarns, and Apparel—A Mutually Beneficial Relationship

Since the implementation of the Andean Trade and Drug Eradication Act (ATPDEA) in 2002, trade in textiles and apparel between the U.S. and Peru has grown considerably.[1] In Peru's case apparel exports have nearly doubled since 2001 and Peru has surpassed Colombia to become the leading Andean exporter of textiles and apparel to the U.S. Although Peru supplied only 1% of total U.S. apparel imports in 2005, it was the fifth largest source of knit cotton shirts and blouses, with shipments of $644 million (equal to 78% of U.S. textile and apparel imports from Peru) and a 5% marketshare.[2]

Peru's growth has also led to significant benefits for the U.S. as demand in Peru for raw materials has outstripped supplies. As noted by the I.T.C., U.S. cotton for use in the textile and apparel industry is a major export product to Peru,[3] and the provisions of the PTPA are likely to have a significant positive effect on U.S. cotton exports to Peru.[4] In addition, according to the ITC, tariff liberalization under the PTPA will likely result in a large percentage increase in U.S. exports of textiles and apparel to Peru. These exports consist mostly of yarns, fabrics, and garment parts.[5]

Building on the benefits of the ATPDEA (which is set to expire in December of 2006), and its predecessor the ATPA of 1991, the PTPA has been signed by execu-

[1] The ATPA (1991) and the ATPDEA (2002), although used interchangeably at times in this testimony, contain differences of importance to the textile and apparel industry. According to the International Economic Review (published ITC #3571 Nov./Dec. 2002), the ATPDEA "authorizes the extension of duty—free treatment to certain products previously excluded from ATPA preferences, including certain textiles and apparel, footwear, petroleum and petroleum derivatives, watches and watch parts (including cases, bracelets, and straps), and certain tuna in smaller foil or other flexible airtight packages (not cans). However, ATPDEA did not renew the reduced—duty provisions on certain handbags, luggage, flat goods, work gloves, and leather wearing apparel."

[2] United States International Trade Comission, "U.S.–Peru Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects"—USITC Publication 3855, May 2006, p. 3–22.

[3] United States International Trade Commission, "The Impact of the Andean Trade Preference Act"—Eleventh Report 2004, USITC Publication 3803, September 2005, p. 2–38.

[4] United States International Trade Comission, "U.S.–Peru Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects"—USITC Publication 3855, May 2006, p 3–7.

[5] Ibid p. 3–22.

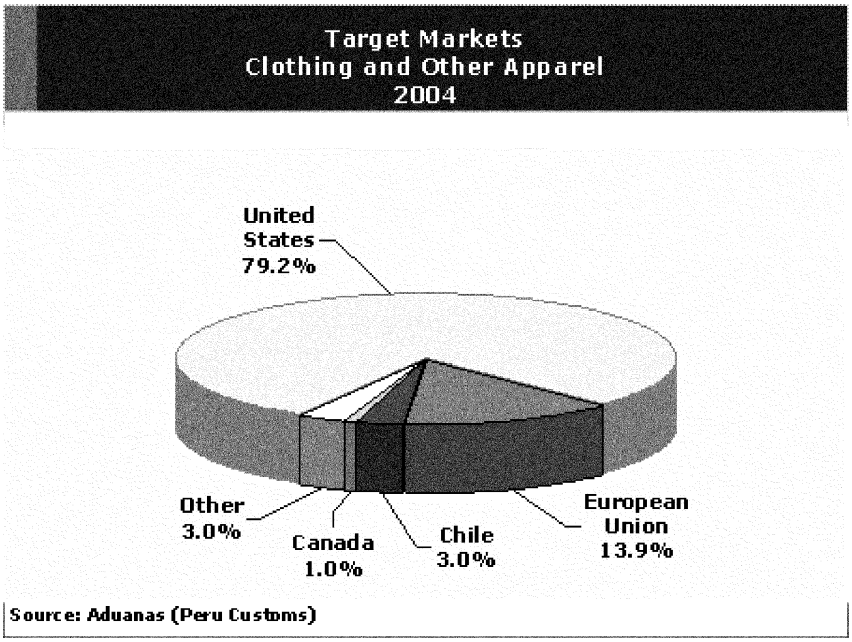
tives of both countries and ratified by the Peruvian Congress, but is still pending approval of the U.S. Congress. *The increasing interconnectedness of the U.S. and Peruvian textile and apparel industries, which is a direct outgrowth of the ATPDEA, is also creating a mutually beneficial trade relationship that will permit industries in both countries to face the stiff competition coming from China and other Asian producers, which largely do not use U.S. inputs in their textile and apparel production.* The PTPA will allow this already thriving relationship to grow.

The emerging "strategic alliance" between textile and apparel industries in both countries is being replicated in other FTAs between the U.S. and its trade partners in the Western Hemisphere. This will help Peru and the U.S. to face the threat presented by Chinese and Asian competition, which in many instances depends on subsidies; artificially low exchange rates to promote exports; and labor that in many cases does not conform with minimum, internationally-recognized, labor standards, none of which occurs in Peru, a country that scrupulously observes the 71 International Labor Organization (I.L.O.) agreements to which it has subscribed.

II. Importance of the Textile and Apparel Industry to Peru's Economy

The textile and apparel manufacturing industry represents around 10% of Peru's total exports. It is one of Peru's leading industries and an estimated source of direct and indirect employment for over 500,000 Peruvians. As such, it accounts for nearly 20% of the country's manufacturing jobs and almost 10% (considering an average family size of 5) of Peru's population of 28 million depends on this industry for its livelihood.

It is also one of Peru's fastest growing export industries. In 2005, Peru exported approximately U.S.$ 1,150 billion worth of textiles and apparels, compared to U.S.$ 664 million in 2001. Approximately 79.2% of Peru's exports were destined to the U.S. market. This industry has become successful in large part thanks to the ATPDEA.



The qualitative importance of apparel exports to Peru becomes evident when considering that 70% of Peru's exports correspond to minerals (gold, copper, lead, silver, zinc, etc.) and fish meal, all of which represent commodities and have little or no value-added. In this regard, it is estimated that an article of clothing multiplies the value of the fiber approximately 12 times. Peru's apparel industry allows for substantial value added because, unlike neighboring Colombia or the Central American nations which are overwhelmingly maquila (cut & sew) oriented, its industry is vertically integrated throughout the productive chain and its niche market is the "full package" product. Approximately 80% of Peru's textile and apparel exports are

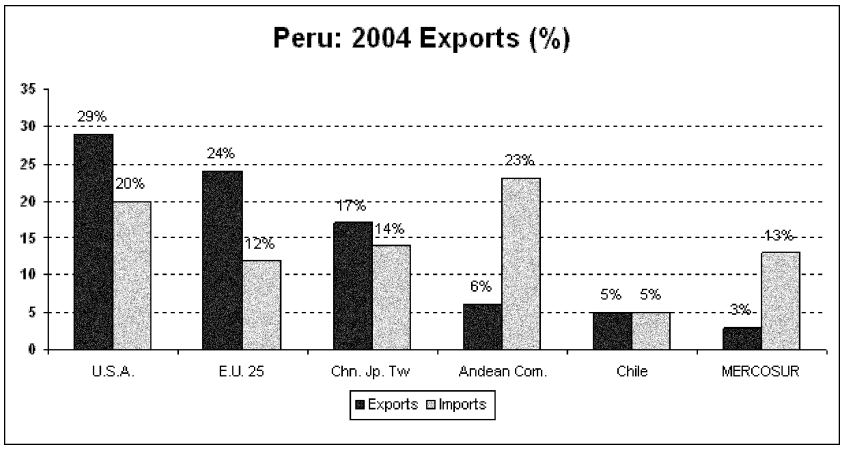
represented by cotton garments and fabrics. Of this amount, about 80% are knit fabrics.

III. Benefits to the U.S. Economy:

A. Cotton

As is shown in the chart below, the U.S. is Peru's primary trade partner and the destination for nearly one third of the country's exports. As indicated earlier, Peru's growing exports also benefit the U.S. In the case of apparel, 95% of Peru's exports are manufactured from cotton fiber. Given that there is a shortfall of cotton production in Peru for use in export garments, the country must import cotton to meet the demand of its textile and apparel sector. According to the ITC, Peru imported an average of 39625 MT of cotton annually from 2000–2005, of which 27,155 MT, or more than two-thirds, were imported from the United States.[6] This growing consumption of U.S. cotton has been spurred by the ATPDEA and will be further encouraged by approval of the PTPA.

It should be noted that, at present, U.S. cotton exports to Peru are currently subject to a 12% import duty on the CIF value. Upon implementation of the PTPA, this import duty will be eliminated immediately. This will further encourage U.S. cotton exports to Peru and in turn make Peruvian apparel more competitive price-wise in the U.S. market. Moreover, Peruvian imports of a variety of synthetic fibers, demand for which has grown on a daily basis, are also likely to increase significantly. However, allowing the ATPDEA to lapse without the PTPA in place would immediately threaten this thriving relationship and hurt Peruvian apparel producers and their U.S. cotton suppliers.



Recognizing the benefits to the U.S. cotton industry of increasing exports of U.S. cotton to the ATPDEA countries, the Memphis, TN-based, National Cotton Council (NCC) passed a resolution supporting the adoption of the PTPA and its strong rule of origin requirements, and informed the U.S.T.R. that the NCC had determined that the agreement will be beneficial for U.S. cotton producers and for U.S. textile and apparel manufacturers.[7] The chart below shows the growth in U.S. cotton exports to Peru over the last five years.

[6] ITC May 2006 report, p. 3–8.

[7] "Cotton's Week" (NCC Newsletter), February 17, 2006, referring to letter from John Maguire, NCC senior vice president, Washington Operations to Ambassador Portman.

U.S. Cotton Exports to Peru (including U.S. Pima and U.S. Upland)

YEAR	VOLUME M.T. FIBER	CIF VALUE IN U.S. $	TOTAL IMPORTS %
2001	22,141.82	30,461,312	60.33
2002	32,910.34	38,909,099	77.00
2003	34,374.10	50,018,140	86.03
2004	23,774.70	43,311,251	66.87
2005	34,672.84	48,484,849	74.57

B. Yarns and Fabrics

The rules of origin agreed to under ATPDEA, and the PTPA, are designed to foster the use of inputs produced in member countries (the use of yarn or fabrics from third parties—as is the case in some of the countries that participate in the CAFTA—is not allowed in PTPA except in specific cases). Once the PTPA is in place *Peru is expected to increasingly meet its unsatisfied demand for yarn and fabrics with products manufactured in the U.S., because this is the only way in which apparel will qualify for duty free treatment in the U.S. under the rules of origin.*

As the ITC notes, U.S. textile firms generally support the rules of origin for textiles and apparel under the PTPA because the rules ensure that the agreement benefits both parties and will further regional integration goals.[8] Under the agreement, *yarns and fabrics produced in the U.S. will enter Peru duty free immediately upon implementation.* This will boost imports from the U.S., which will have an advantage vis-&-vis yarn and fabric suppliers that pay a 25% customs tariff to enter Peru. Again, expiration of the ATPDEA, without the PTPA in place, will interrupt this flow and will threaten the growth in trade between both countries that would otherwise be expected from a smoother transition from the ATPDEA to the PTPA.[9]

C. The Apparel Value Chain in the U.S. and Other Considerations

In addition to the direct benefits to the U.S. cotton and textile industries noted above, growing apparel imports from Peru under the ATPDEA have generated benefits to the U.S. economy across the entire transportation, distribution, and retail chain. In this regard, if for example a clothing garment has a FOB Callao-Peru value of U.S.$ 6.00, the price at which the same garment is sold in the U.S. generally ranges from U.S.$ 40 to 50. This price differential indicates that a greater portion of the value chain involved in Peruvian apparel exports remains in U.S. hands. These considerable benefits are distributed among U.S. sea, air, and land transporters; couriers; ports; warehouses and distribution facilities; and finally retailers. *It is also safe to say that the Peruvian apparel industry supports thousands of U.S. jobs along the value chain associated with this trade.* Finally, the last link of this value chain is, of course, the U.S. consumer who as a result of the ATPDEA has had access at more competitive prices to high-quality apparel containing in many instances cotton and animal fibers unique to Peru.

In this regard, it is important to mention that Peruvian apparel exports include those manufactured with wools from species in the camelid family such as the alpaca, llama, and vicuña. This uniquely Peruvian production has grown rapidly in recent years, does not compete with U.S.-produced apparel, and has resulted in concrete conservation and environmental benefits in Peru.[10]

Under both the ATPA, and its successor the ATPDEA, Peru's growing apparel industry, its capacity to generate employment, and its need for imported and domestically grown cotton and other inputs, has also contributed to Peru's success in reducing illegal coca-leaf cultivation and providing alternative, legal, employment for tens

[8] United States International Trade Comission, "U.S.–Peru Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects"—USITC Publication 3855, May 2006, p. 3–23.

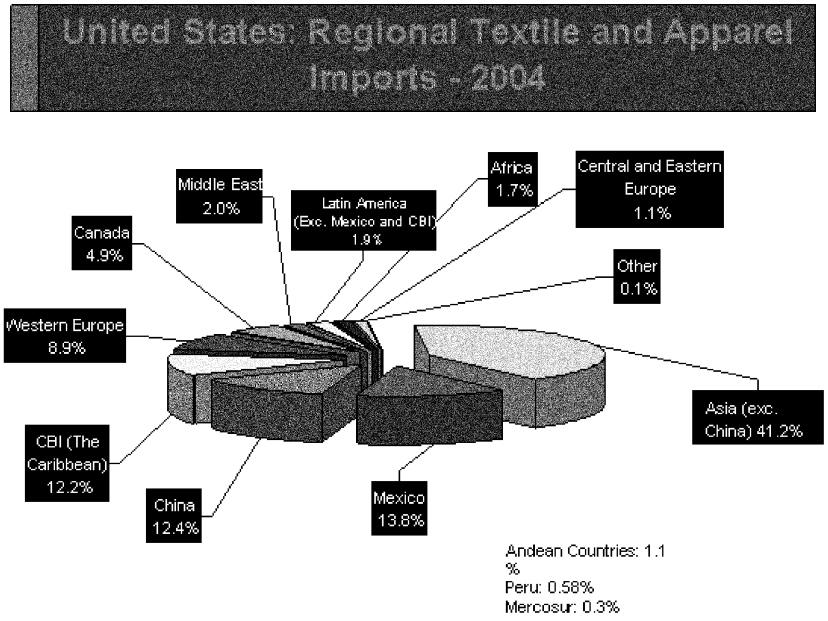
[9] The National Council of Textile Organizations (NCTO), another major U.S. association based in Gastonia, NC, which represents numerous yarn and fabric producers throughout the U.S., but who are mostly concentrated in North Carolina, South Carolina, and Georgia, is also pleased that the PTPA addresses all the major negotiating objectives, which significantly enhances the hemispheric supply chain and makes these improvements permanent. The structure and rules of the PTPA will benefit textile and apparel producers in both countries.

[10] Once endangered wild vicuña herds, which have some of the finest fibers in the animal kingdom, are making a comeback in the impoverished Andean highlands thanks to export markets created in the last 15 years for apparel made with their wool.

of thousands of Peruvians. This is an important U.S. strategic objective in the war on drugs, the struggle against narcotics trafficking towards the U.S., and keeping illegal drugs out of U.S. communities and neighborhoods. This is also a key reason for approval of the PTPA.

Figures from the ITCnoted that net coca cultivation decreased dramatically from 115,300 hectares in 1995 to 27,500 hectares in 2004.[11] Although coca cultivation has risen slightly in Peru in the last two years, it is important to note that since 2000, coca cultivation in the Andean region as a whole has declined by nearly 30% to 158,000 hectares, according to the United Nations Office on Drugs and Crime (UNODC).[12] Given that the ATPDEA has been in place since 1991, it is clear that this program has been an invaluable tool in reducing coca cultivation by spurring the growth of the apparel and other export-driven industries in Peru.

In observing the overall picture, it is also important to note that Andean apparel exports to the U.S. do not even reach 1.1% of total U.S. imports. Therefore, there is no risk of displacement or damage to the U.S. from Peruvian apparel imports.



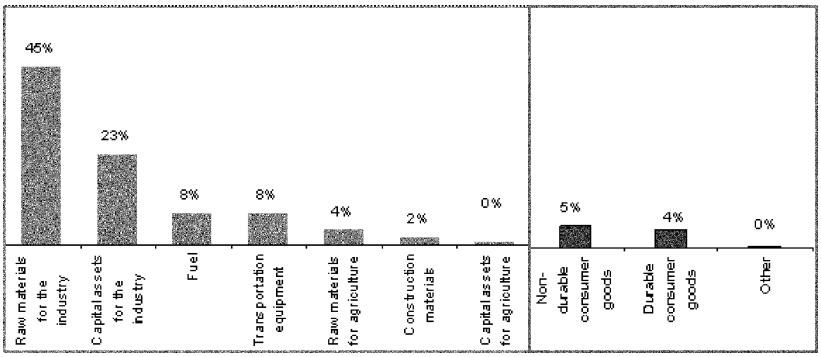
It should be considered that, as shown in the chart below, Peruvian and U.S. economies are complementary in many aspects and barely compete against each other, and therefore, a bilateral agreement generates a win-win situation for both countries.

In this regard, it is estimated that *for every dollar exported by the ATPDEA beneficiary countries to the U.S., 94 cents worth of U.S. goods are in turn imported by the ATPDEA countries,* whereas by way of comparison the Asian countries only buy 14 cents out of every dollar exported to the U.S.[13]

[11] United States International Trade Commission, "The Impact of the Andean Trade Preference Act"—Eleventh Report 2004, USITC Publication 3803, September 2005, p. 4–14.

[12] UN Office on Drugs and Crime, "Coca Cultivation in the Andean Region: A Survey of Bolivia, Colombia and Peru," June 2006, Preface.

[13] The ATPDEA beneficiary countries are Bolivia, Colombia, Ecuador and Peru.



Peru TPA and Labor

The growth of globalized, export-based industries in Peru has been such that in parts of the country such as Ica and La Libertad there is full-employment year round and extreme poverty has been reduced by an astounding 36% comparable to levels experienced nationwide by countries such as Chile. The cotton, textile and apparel industries located in these regions have helped to contribute to these successes. Moreover, workers in these industries earn good wages by Peruvian standards which is helping to reduce Peru's extreme poverty levels. Just recently, for example, the Peruvian Prime Minister Pedro Pablo Kuczynski annouced that extreme poverty has been reduced from 24% to 18% between 2001 and 2005.

In terms of its committment to global labor standards, Peru has ratified 71 ILO conventions, including the eight "core conventions." It has been praised multiple times by the ILO for its progress in improving labor laws. In addition to all of the ILO's Core Labor Rights Conventions, the PTPA's labor standards exceed those of five other previously-ratified trade agreements: Jordan, Chile/Singapore, CAFTA, Bahrain and even the ATPDEA, which does not make ILO or national standards mandatory.

The PTPA goes beyond many other free trade agreements in the enforcement of worker rights and dispute resolution. The PTPA-created Labor Affairs Council develops public participation in reporting and funding to ensure implementation of the agreement and improved cooperation and capacity-building mechanisms. Additionally, the PTPA holds member countries accountable to effectively enforce existing labor laws, under penalty of fines, which are used by the PTPA commission to fund projects improving labor right protections. Noncompliance results in the formation of an arbitral panel, which may fine violating parties up to $15 million per year and suspend tariff benefits to the party complained against if necessary to cover the assessment.[14]

V. Investment and Dispute Resolution

The PTPA's Investment Chapter will facilitate transactions for U.S. industries and banks, as well as commercial and service companies, among others, that have investments or are interested in investing in Peru. U.S. investors will be treated equally as local institutions. Moreover, they will have full freedom to remit investments and profits. Therefore, it is possible that U.S. textile companies will install industrial plants and trading companies in Peru, which will use supplies produced in the United States, such as state-of-the-art fibers, yarns and fabrics.

It should also be pointed out that the PTPA contemplates a dispute settlement mechanism, designed to provide security to U.S. investors in Peru given that any controversy will be resolved on a fair and equitable basis, without the intervention of political or other considerations in the settlement of disputes.

VI. Concluding Remarks

The Peruvian economy, as shown in the chart below, is clearly very small in comparison to U.S. economy. However, an emerging strategic alliance between the textile and apparel industries of both countries, and more broadly between the countries themselves, which has been made possible by the ATPA/ATPDEA, and will be enshrined by the PTPA will provide stability to the hemisphere based on the com-

[14] Peru Trade Promotion Agreement, Chapter Twenty-One: Dispute Settlement.

mon principles shared by the U.S. and Peru, such as freedom and democracy, upon which fair and prosperous societies are based.

The ATPA/ATPDEA has brought significant benefits to the United States—progress in the "war on drugs," benefits to U.S. consumers of imports from Peru and segments of the U.S. economy from distribution and manufacturing—as well as to Peruvian economy in general and to the apparel sector in particular. If the ATPDEA is allowed to lapse after December 31, 2006 with the PTPA in its place, the benefits that currently flow to both the Peruvian and U.S. economies from this program would lapse as well.

Exporamerica is pleased that the United States has negotiated a free trade agreement with Peru that subject to the rules of origin would provide duty-free treatment to imports from Peru. However, it is not at all clear whether this agreement will be fully implemented until January 1, 2007. For this reason, Exporamerica urges prompt consideration and approval by the U.S. Congress of the PTPA, and looks forward to working with this body to achieve this objective.

The U.S. is the world's largest market
(Peru's economy is comparable to Utah's in relation to the entire U.S.)

Source: Brigham Young U.

In terms of GDP

Statement of Albert Gavalis, New York, New York

My interest as an individual public witness rests in my 17+ years of marriage to my Peruvian-born wife (whose birthday was recently at the end of June)—happy birthday honey! I have NO "direct" clients, persons, and/or organizations on whose behalf I appear as witness OTHER-THAN my wife, Luz Lorena Paredes-Melgarejo-Valenzuela-Gavalis and her INDIRECT-LINEAGE, and "tangential" FAMILIAL-ASSOCIATION which REGIONALLY dates-back 10,000+ years(!).

I am currently a tax-attorney with Graf Repetti & Co., LLP—Certified Public Accountants and Business Advisors located in the Grace-building, NYC. I have a BA in Fine Arts *Magna Cum Laude,* University of Maryland, an MBA in accounting and finance, Fordham University, and a JD in law and postmodern jurisprudence, Brooklyn Law School. I am an actively licensed CPA in Maryland and a licensed attorney in New York State.

DYNASTIC v. FREE MARKET ECONOMICS—Peru & U.S. Trade

A market system has not worked in terms of poor people," investor and now philanthropist Warren Buffett said in his Monday night, June 26, 2006 interview on the PBS Charlie Rose show. As he gave-away $30+Billion to the Bill & Melinda Gates Foundation, he also expressed general disagreement with a system of **"Dynastic" wealth,** where wealth is passed on through heirs instead of merit or need.

Peru, a country with extremes of wealth and poverty, is a country still entrenched in a **system of Dynastic economics** including "ruling-families" such as Paredes (pa-ray-days), Miroquesadas (mee-row-kay-saa-daas), and others—where from the poorest to the wealthiest, **one's "named" association with a particular ruling family establishes an economic and political enclave of survival.**

The existing and continued efforts by the U.S. in this area will produce positive results in the ongoing and continued process of a free market economy in peru—overcoming centuries-old recidivistic dynastic rein. Continued access to and exchange between the individuous economies of U.S. and Peru will open Adam Smith's "invisible-hand" to correct economic, and oftentimes politically related, injustices in that region.

Buffett [has also previously] pointed out that the World Bank and others force countries to accept market reforms, while European and North American (and Japan, Australia, . . .) countries maintain huge agricultural subsidies. Furthermore, multinational agribusinesses have used what could charitably be described as questionable practices to obtain land and operational rights in many developing countries. As a consequence, people who should be able to both feed themselves and export their crops for cash are unable to do either. They end up as single crop cultivators getting by on subsistence payments. Because the markets are rigged against them and they don't have the power to change that fact.[1]

The truly poor are not poor because market economies don't work; they are poor because their governments don't support rule of law, property rights, and free markets.[2]

With the advent of the proposals today, Peru will be assisted in overcoming political and economic injustices to be a **stronger government able to continue to support a free market** countervailing recidivistic and collusionistic Dynastic-based economics.

Statement of Barry E. Johnson, Greater Miami Chamber of Commerce, Miami, Florida

On behalf of the Greater Miami Chamber of Commerce, I would like to state our organization's support for implementation of the U.S.–PERU TRADE PROMOTION AGREEMENT (PTPA) by way of submitting this document as written testimony to the hearing record for the House Committee on Ways and Means.

In terms of background, with close to 2,000 South Florida businesses and nearly 5,000 members the Greater Miami Chamber of Commerce (GMCC) is organized to create economic progress for the entire region. GMCC is the largest regional chamber of commerce in Florida and one of the largest metropolitan chambers in the United States. We actively work to strengthen Greater Miami's competitive position as the Gateway to the Americas.

For nearly one hundred years, the Greater Miami Chamber of Commerce has championed international business and trade throughout the State of Florida. Being keenly interested in the economic issues which affect our community, we view the ratification of PTPA as a generator of economic opportunities through increased trade flows and jobs, while supporting the U.S. foreign policy objectives of strengthening democracy in the Americas.

Peru is a significant market for the State of Florida, accounting for $1,366.8 million in total bilateral merchandise trade for 2005 of which $879.9 million is in exports. The PTPA will create significant new opportunities for U.S. exports by adjusting our trade relationship with Peru from one based on unilateral trade preferences to one with reciprocal market access.

The Greater Miami Chamber of Commerce appreciates this opportunity to share our strong support for PTPA. We believe that free trade is essential for continued U.S. economic growth and success. We thank you for your thoughtful consideration of this letter and of this important issue.

Statement of Grocery Manufacturers Association

The Grocery Manufacturers Association (GMA) appreciates the opportunity to provide the following testimony before the Committee on Ways and Means in support of the U.S.–Peru Trade Promotion Agreement (PTPA). GMA is the world's largest association of food, beverage and consumer product companies. With U.S. sales of more than $680 billion dollars, GMA member companies employ more than 2.5 million workers in all 50 states.

GMA strongly supports the PTPA and urges swift approval of the agreement by Congress. Peru's economy is one of the most vibrant in Latin America, with strong

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[1] http://www.freakonomics.com/blog/2006/06/27/warren-buffet-swats-the-invisible-hand/#comments"anonymous"#10.mathking

[2] *Id.* at "anonymous"#14.bozo

[3] Freakonomics website www.freakonomics.com of Steven D. Levitt and co-author Stephen J. Dubner of the book ***Freakonomics—A Rogue Economist Explores the Hidden Side of Everything***

GDP growth fueled by mining and construction. According to USDA, Lima is a major market for consumer oriented foods. Supermarkets are expanding, creating new opportunities for U.S. exports of snack foods, cheese and juices. The PTPA will enhance these opportunities by eliminating tariff and non-tariff barriers that currently hamper exports of U.S. food and consumer products to Peru.

Export Opportunities

Food, beverage and consumer products currently face an average import tariff ranging from twelve and twenty five percent. In addition, certain processed food products like cheese face an additional variable levy or price band on top of the 25 percent tariff. Under the terms of the PTPA, more than two-thirds of food and agricultural products and eighty percent of consumer products will receive immediate duty free treatment. This includes key export categories like cookies, breakfast cereals and pasta. In addition, Peru has agreed to use transitional tariff-rate quotas as a means to phase out their price band system.

Import Opportunities

GMA is pleased that the PTPA is a comprehensive agreement with market access commitments for all sectors. We commend the Administration for making permanent the Andean Trade Preference Act benefits for Peru. Many GMA members benefit from these commitments through access to duty-free imports of seasonal vegetables.

GMA is also pleased that sugar was included in the agreement. We are disappointed, however, that sugar was again singled out for special treatment in the FTA. Sugar is the only commodity where the prohibitive over quota duty will not be reduced, and the amount of sugar access provided barely exceeds the minimum boat load. In addition, the Administration again included the ill-conceived "sugar compensation mechanism" in the agreement. This provision actually authorizes the U.S. government to pay Peruvian sugar growers not to ship sugar into the United States should imports be perceived as destabilizing the U.S. sugar program. GMA questions whether USTR would accept such provisions were they to be applied against U.S. exports, such as rice or beef in the Korean-U.S. FTA. The compensation mechanism is antithetical to the notion of open trade and should be excluded from future agreements.

Additional Benefits of the FTA

As important as the market access provisions of the PTPA are to the U.S. food and consumer products industry, the real, long-term benefits of the FTA will come from the adoption of new rules that will lead to a stronger, more predictable business climate in the region. Enhanced intellectual property and investor protections will lead to better protections for trademarks and a more secure business environment that are essential to increased sales of branded products.

In the area of intellectual property rights, the agreement goes beyond current protections for trademarks to apply the principle of "first-in-time, first-in-right" to all products, including those that may contain a place (geographical) name. This means that the first company to file for a trademark is granted the exclusive right to that name, phrase or geographical place name. This agreement sets an important precedent that GMA hopes to replicate regionally and globally in order to fight the European Union's approach to geographical indications. Under EU law geographical indications (Parmesan, cheddar, pilsner) are given priority to trademarks and may cancel protections for brands. GMA is fighting this approach in the World Trade Organization and believes that the U.S.–PTPA establishes an important legal precedent that could serve as a model in these discussions.

Conclusion

GMA strongly supports the free trade agreement with Peru. We expect that U.S. food and consumer product companies will realize significant gains from the export and import opportunities provided by the agreement. We are hopeful that this agreement will represent the first step towards a fully integrated Hemisphere that will allow for economies of scale and rationalization of production throughout North and South America.

GMA thanks the Committee for the opportunity to present our views at this hearing.

Statement of National Pork Producers Council

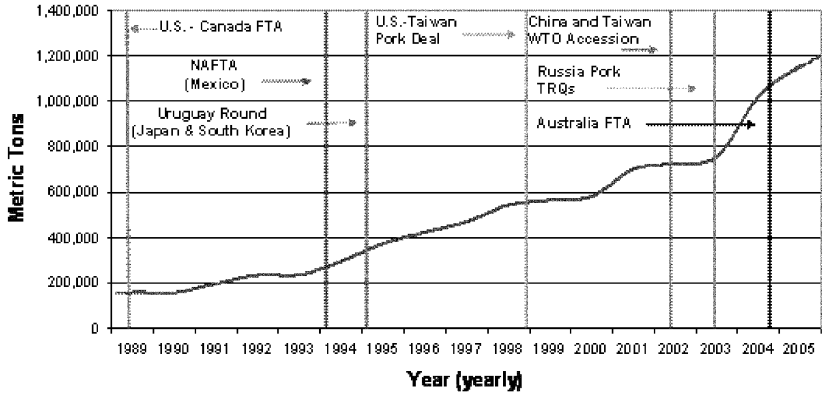
Mr. Chairman, Mr. Ranking Member and Members of the Committee:

The National Pork Producers Council is a national association representing 44 affiliated states that annually generate approximately $14.35 billion in farm gate sales. The U.S. pork industry supports an estimated 566,000 domestic jobs and generates more than $84 billion annually in total U.S. economic activity.

Pork is the world's meat of choice. Pork represents 43 percent of total world meat consumption. (Beef and poultry each represent less than 30 percent of daily global meat protein intake.) As the world moves from grain based diets to meat based diets, U.S. exports of safe, high-quality and affordable pork will increase because economic and environmental factors dictate that pork be produced largely in grain surplus areas and, for the most part, imported in grain deficit areas. However, the extent of the increase in global pork trade—and the lower consumer prices in importing nations and the higher quality products associated with such trade—will depend substantially on continued agricultural trade liberalization.

PORK PRODUCERS ARE BENEFITING FROM PAST TRADE AGREEMENTS

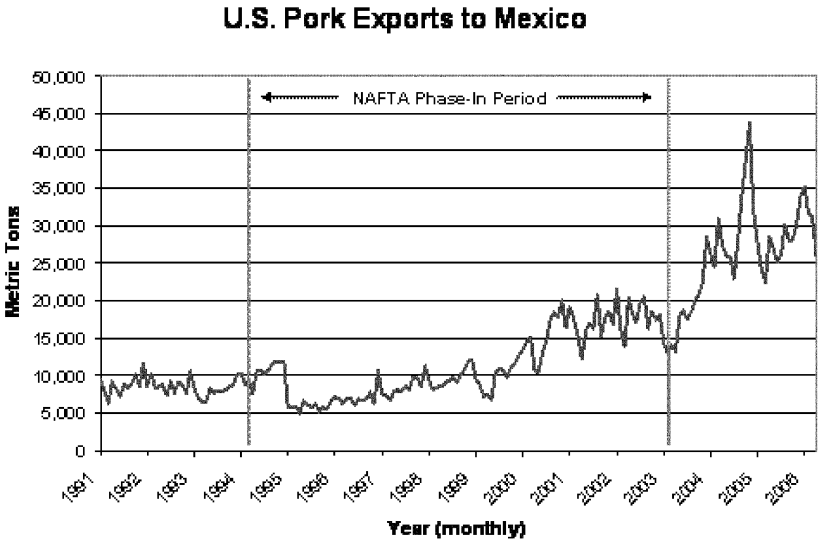
In 2005 U.S. pork exports set another record. Pork exports totaled 1,157,689 Metric Tons valued at $2.6 billion, an increase of 13 percent by volume and 18 percent by value over 2004 exports. U.S. exports of pork and pork products have increased by more than 389 percent in volume terms and more than 361 percent in value terms since the implementation of the NAFTA in 1994 and the Uruguay Round Agreement in 1995. Total exports increased every year in this period and set a record in 2005 for the 15th straight year.



The following 8 export markets in 2005 are all markets in which pork exports have soared because of recent trade agreements.

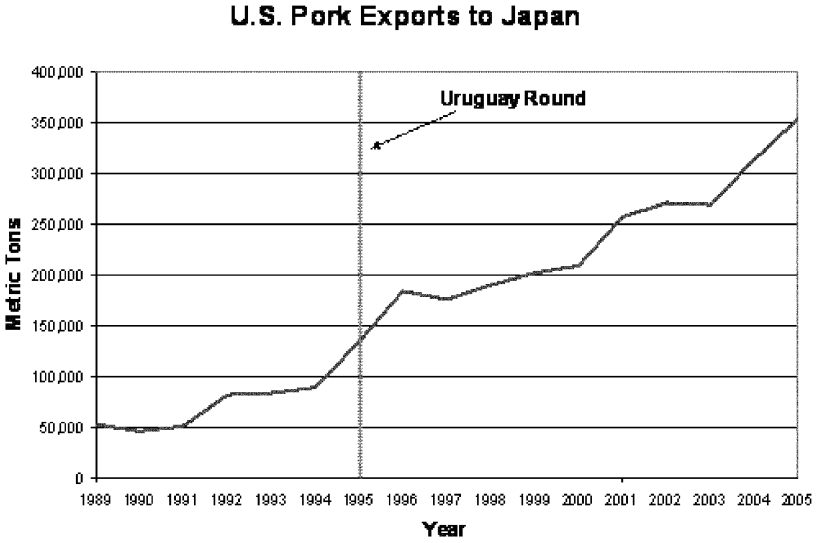
Mexico

In 2005 U.S. pork exports to Mexico totaled 331,488 metric tons valued at $514 million. Without the NAFTA, there is no way that U.S. exports of pork and pork products to Mexico could have reached such heights. In 2005, Mexico was the number two market for U.S. pork exports by volume and value. U.S. pork exports have increased by 248 percent in volume terms and 358 percent in value terms since the implementation of the NAFTA growing from 1993 (the last year before the NAFTA was implemented), when exports to Mexico totaled 95,345 metric tons valued at $112 million.



Japan

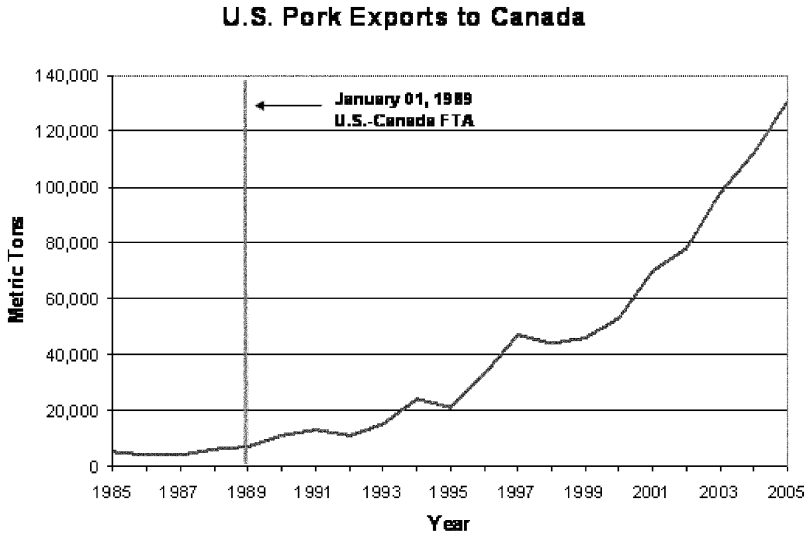
Thanks to a bilateral agreement with Japan on pork that became part of the Uruguay Round, U.S. pork exports to Japan have soared. In 2005, U.S. pork exports to Japan reached 353,928 metric tons valued at just over $1 billion. Japan remains the top value foreign market for U.S. pork. U.S. pork exports to Japan have increased by 322 percent in volume terms and by 191 percent in value terms since the implementation of the Uruguay Round.



Canada

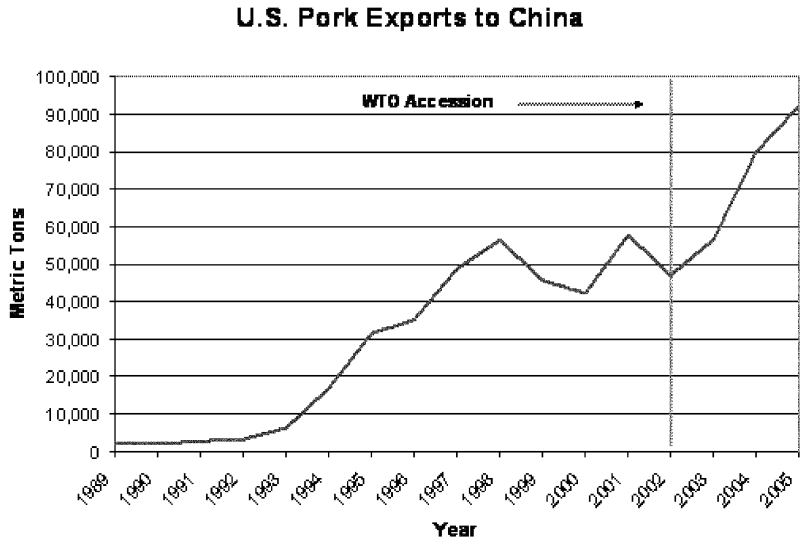
U.S. pork exports to Canada have increased by 1,816 percent in volume terms and by 2,422 percent in value terms since the implementation of the U.S.–Canada Free

Trade Agreement in 1989. In 2005 U.S. pork exports to Canada increased to 130,581 metric tons valued at $396 million.



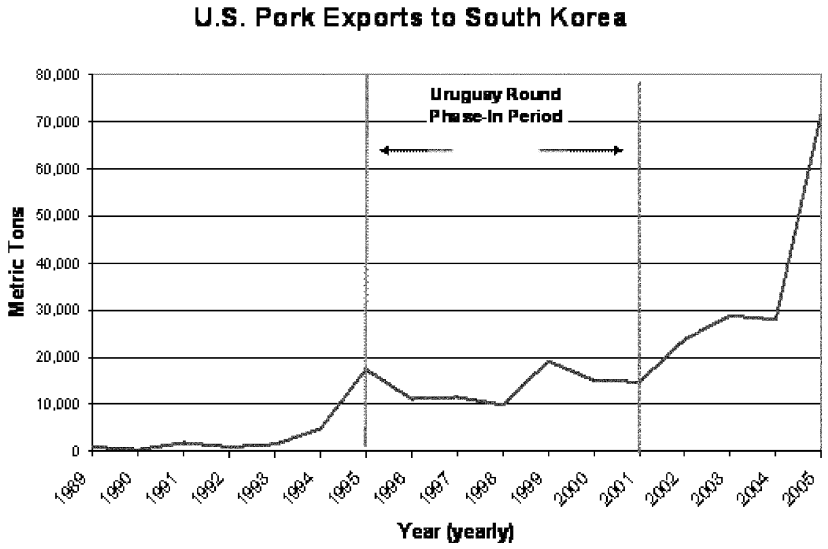
China

U.S. exports of pork and pork products to China increased 22 percent in value terms and 16 percent in volume terms in 2005 versus 2004, totaling $111 million and 92,255 metric tons. U.S. pork exports have exploded because of the increased access resulting from China's accession to the World Trade Organization. Since China implemented its WTO commitments on pork, U.S. pork exports have increased 60 percent in volume terms and 67 percent in value terms.



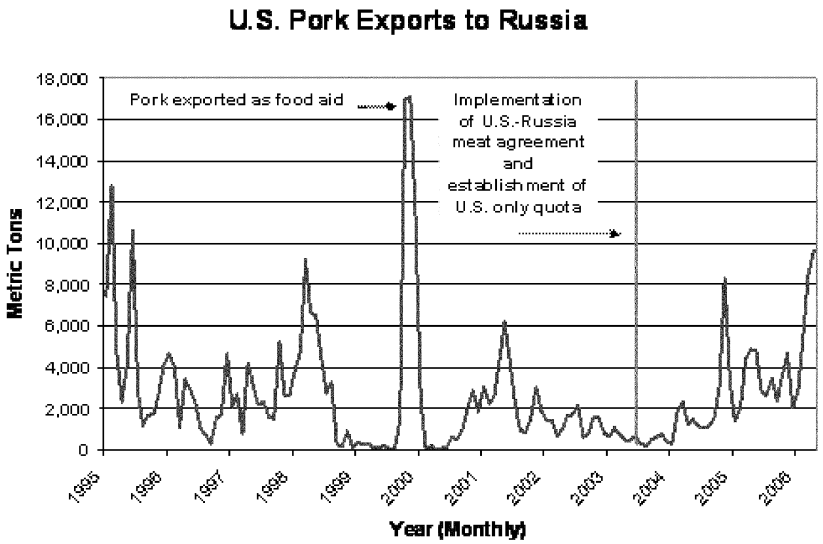
Republic of Korea

U.S. pork exports to Korea have increased as a result of concessions made by Korea in the Uruguay Round. In 2005 exports climbed to 71,856 metric tons valued at $155 million, an increase of 1,425 percent by volume and 1,705 percent by value since implementation of the Uruguay Round.



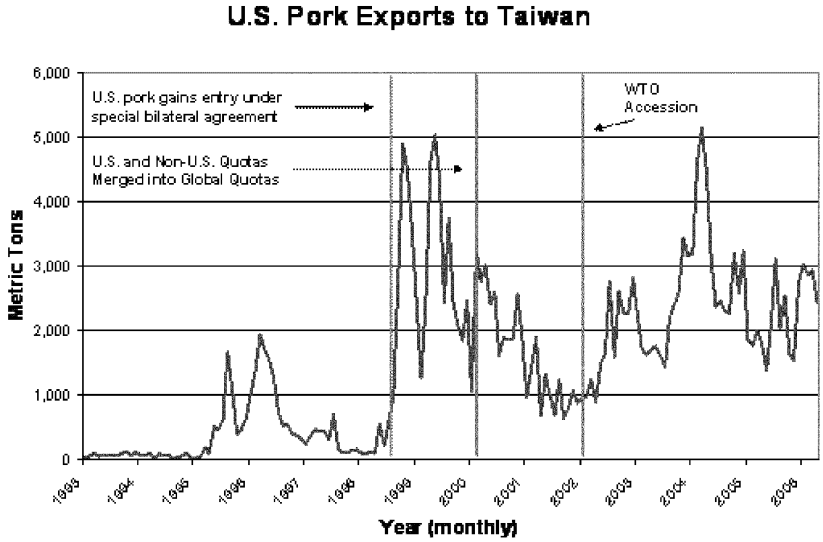
Russia

U.S. exports of pork and pork products to Russia increased 48 percent in volume terms and 71 percent in value terms in 2005 versus 2004, totaling 40,315 metric tons valued at $72 million. U.S. pork exports to Russia have increased largely due to the establishment of U.S.-only pork quotas established by Russia as part of its preparation to join the World Trade Organization. The spike in U.S. pork export to Russia in the late 1990s was due to pork shipped as food aid.



Taiwan

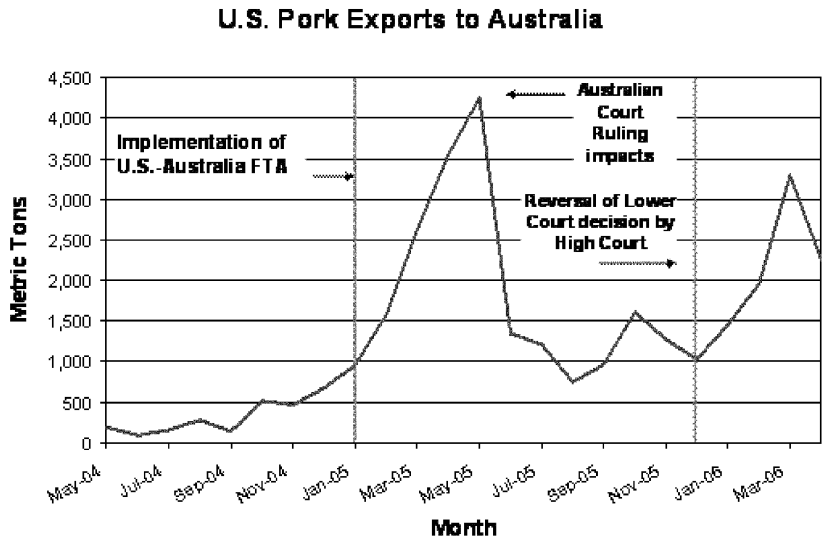
In 2005, U.S. exports of pork and pork products to Taiwan increased to 24,555 metric tons valued at $41 million. U.S. pork exports to Taiwan have grown sharply because of the increased access resulting from Taiwan's accession to the World Trade Organization. Since Taiwan implemented its WTO commitments on pork, U.S. pork exports have increased 94 percent in volume terms and 132 percent in value terms.



Australia

The U.S. pork industry did not gain access to Australia until recently, thanks to the U.S.–Australia FTA. U.S. pork exports to Australia exploded in 2005 making

Australia one of the top export destinations for U.S. pork. Even with the disruption caused by a legal case over Australia's risk assessment of pork imports, U.S. pork exports to Australia in 2005 totaled $60 million—a 463 percent increase over 2004 exports.



Impact of Pork Exports on Prices

The Center for Agriculture and Rural Development (CARD) at Iowa State University has calculated that in 2004, U.S. pork prices were $33.60 per hog higher than they would have been in the absence of exports.

Impact of Pork Exports on Jobs

The USDA has reported that U.S. meat exports have generated 200,000 additional jobs and that this number has increased by 20,000 to 30,000 jobs per year as exports have grown.

Impact of Pork Exports on Economy

The U.S. Bureau of Economic Analysis (BEA) has calculated that for every $1 of income or output in the U.S. pork industry, an additional $3.113 is generated in the rest of the economy. The USDA has reported that the income multiplier from meat exports is 54% greater than the income multiplier from bulk grain exports.

Impact of Pork Exports on Feed Grain and Soybean Industries

Pork production is a major user of U.S. feed grains and oilseeds. U.S. hog slaughter in 2005 consisted of 100.807 million head of U.S.-fed pigs and 2.774 million head of pigs fed in Canada and imported into the U.S. for slaughter. The U.S.-fed pigs consumed an estimated 1.062 billion bushels of corn, 105.8 million bushels of other feed grains such as barley, grain sorghum and wheat and the soybean meal from 418 million bushels of soybeans.

U.S. pork exports in 2005 accounted for 12.5% of total U.S. pork production. This implies that 136.3 million bushels of corn and the soybean meal from 52.2 million bushels of soybean were exported in the form of pork from U.S.-fed pigs.

CONGRESS NEEDS TO PASS PTPA

The Peru Trade Promotion Agreement, when implemented, will create important new opportunities for U.S. pork producers. U.S. pork exports to Peru currently are restricted by duties as high as 25 percent. However, PTPA, if implemented, will establish immediate tariff reductions on all pork products. Some pork products will receive unlimited duty free access upon implementation of the agreement. Tariffs on most pork items will be phased out within five years. All pork tariffs will be completely phased out in ten years.

In addition to the favorable market access provisions, significant sanitary and technical issues have been resolved. By a letter dated January 5, 2006 the Peruvian government confirmed that it shall recognize the meat inspection system of the United States as equivalent to its own meat inspection system. The aggressive market access provisions coupled with the agreement on equivalence make the Peru agreement a state of the art agreement for pork producers to which all future FTAs will be compared.

Live hog prices are positively impacted by the introduction of new export markets. Recent price strength in U.S. pork markets is directly related to increased U.S. pork exports. Mexico continues to be a strong and growing export market for U.S. pork. The same competitive advantage that has resulted in expanded U.S. pork exports to Mexico will also facilitate an expansion of U.S. pork exports to 28 million new consumers in Peru.

The most important impact of this agreement is the income growth that accompanies free trade. Most consumers in Peru currently are at an income level that does not allow them to consume meat on a regular basis. Prosperity created by a free trade agreement will create millions of new customers for U.S. meat and other agricultural products.

According to Iowa State University economist Dermot Hayes, the Peru agreement, when fully implemented, will cause hog prices to be 83 cents higher than would otherwise have been the case. That means that the profits of the average U.S. pork producer will expand by 7 percent.

Much of the growth in U.S. pork exports is directly attributable to new and expanded market access. However, as the benefits from the Uruguay Round and NAFTA begin to diminish due to the fact that benefits from these agreements are now fully phased-in, the creation of new export opportunities becomes increasingly important. PTPA is an important part of this process and will bring real benefits to U.S. pork producers.

Written Statement on Behalf of Peruvian Asparagus Importers Association, Drexel Hill, Pennsylvania

This statement is submitted on behalf of the Peruvian Asparagus Importers Association (PAIA). PAIA is a not-for-profit association of 24 U.S. companies that earn a living by importing fresh asparagus from Peru.[1] PAIA presented testimony at the public hearing conducted by the International Trade Commission (ITC) on March 15, 2006 in connection with its investigation regarding the Peru Trade Promotion Agreement (PTPA).

I. The Peru TPA would continue favorable economic trends begun under the ATPA for both the United States and Peru

PAIA's particular area of interest in the context of trade between the U.S. and Peru is imports of fresh asparagus from Peru. Under the ATPA and its successor, the Andean Trade Promotion and Drug Eradication Act (ATPDEA), imports of fresh asparagus from Peru have been accorded duty-free treatment since 1992.[2] PAIA strongly supports the actions of U.S. and Peruvian negotiators to maintain this duty-free treatment for imports of fresh asparagus under the terms of the PTPA. The duty-free treatment accorded to imports of fresh asparagus from Peru since 1992 has resulted in pronounced economic benefits to U.S. consumers, U.S. importing companies, U.S. distributors, U.S. transportation companies, the many other companies in the domestic commercial chain, the Peruvian economy, and the thousands of people in Peru whose livelihood is dependent on trade with the United States. However, if the PTPA is not approved by Congress, or is implemented sometime after January 1, 2007, and the ATPDEA is not renewed in the interim, this

[1] The member-companies of PAIA are: Altar Produce Inc.; Alpine Fresh; AYCO Farms Inc.; Chestnut Hills Farm—Bounty Fresh; CarbAmericas Inc.; Central American Produce Inc.; Crystal Valley Foods; Dole Fresh Vegetables Inc.; Fru-Veg Marketing Inc.; Globalex Inc.; Gourmet Trading Company; Growers Express LLC; Jacobs Malcolm & Burtt; North Bay Produce; Pro-Act LLC; Rosemont Farms Corporation; Southern Specialties; Team Produce International; Triton International; United Fresh International; AL–FLEX Exterminators; Customized Brokers; Hellmann Perishable Logistics; The Perishable Specialist, Inc.; and YesFresh, LLC.

[2] The ATPDEA is currently scheduled to expire as of December 31, 2006. Imports of fresh or chilled asparagus from Peru are not currently subject to duty-free treatment under the Generalized System of Preferences.

will surely result in discernible economic harm to both the United States and Peruvian economies.

Peru is the world's largest exporter of asparagus,[3] and that crop stands squarely at the heart of a dynamic agroexport sector in Peru.[4] As the ITC has noted in prior reports, asparagus is a perennial crop that requires substantial long-term investment. Peru's exceptional climate conditions, its favorable geographic location, and the advances made by Peru in its management of water supply for irrigation, has enabled the country to achieve the highest asparagus crop yields in the world.[5] "Peru is one of only a few countries whose favorable climate enables it to produce asparagus year round."[6] In turn, the asparagus-growing industry in Peru is estimated to employ nearly 60,000 people,[7] and has enabled regions of the country—such as Ica and La Libertad—to become models of economic development and engines of job creation. Of these sixty thousand jobs, roughly half are held by women, the primary breadwinners in many Peruvian households. The trickle down effects of this industry on tens of thousands of Peruvians and their families are helping to reduce poverty and raise living standards. The Asociación de Gremios Productores y Agroexportadores del Perú (AGAP) (the umbrella organization for Peru's agricultural producers and exporters) estimates that the Peruvian agroexport chain as a whole has generated 600,000 jobs, three times more than were generated in traditional agriculture sectors.[8]

According to U.S. Customs, in the past two years, U.S. imports of fresh asparagus from Peru had a value of between $100 and $110 million. That is a significant amount of foreign exchange earnings for a country with a gross domestic product of only $67.1 billion, and with a per capita GDP of only $2,777 per year.[9] Under the ATPA, asparagus imports grew by about five times from $31 million to $232 million between 1990 and 2005. The success of Peru's agroexport industry in general, and the asparagus industry specifically, over the past decade is one of the signal achievements of the ATPA in that it has effected the creation of high-value marketable agricultural businesses at the expense of illegal coca cultivation. In its most recent report on the impact of the ATPA, the ITC noted that net coca cultivation decreased dramatically, from 115,300 hectares in 1995 to 27,500 hectares in 2004.[10]

II. Economic Benefits of the U.S.–Peru Trade in Asparagus

While the Peruvian asparagus industry has created tangible economic benefits in that country, the U.S. has also derived a significant economic benefit from this trade. The vast majority of the value chain generated by sales of Peruvian asparagus in this market remains in this country. For example, in 2003, the value chain for imports of fresh asparagus from Peru was worth approximately $300 million. Of that total, approximately 70 percent remained in U.S. hands, including air, sea and land carriers, importers, ports, storage facilities, distributors, wholesalers and retailers. In other words, for every dollar spent by a U.S. consumer on fresh asparagus

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[3] *World Horticultural Trade & U.S. Export Opportunities: World Asparagus Situation & Outlook,* Foreign Agricultural Service, U.S. Department of Agriculture (August 2005) at 1 (data provided for 2004). The United States "is Peru's top market, accounting for 75 percent of Peru's fresh asparagus exports in 2004." *Id.* at 3

[4] *World Horticultural Trade & U.S. Export Opportunities: World Asparagus Situation & Outlook,* Foreign Agricultural Service, U.S. Department of Agriculture (July 2004) at 2 ("In 2003, asparagus became Peru's leading agricultural export, valued at a record $206 million, bumping coffee to second place.").

[5] *The Impact of the Andean Trade Preference Act: Eleventh Report 2004,* Inv. No. 332–352, USITC Pub. 3803 (September 2005) at 2–20.

[6] *Id.*

[7] *Id.* at 3–14.

[8] *See Improving Competitiveness and Market Access for Agricultural Exports Through the Development and Application of Food Safety and Quality Standards: The Example of Peruvian Asparagus,* A Report by the Agricultural Health and Food Safety Program of the Inter-American Institute for Cooperation on Agriculture (IICA), Tim M. O'Brien and Alejandra Díaz Rodríguez (July 2004) at 4–5.

AGAP discussed this finding in a report that it presented earlier this year to the Technical Working Group for the PTPA from the Congressional Agricultural Commission in Peru. AGAP's president, Felipe Llona Málaga, explained that the high level of employment generated in the agroexport sector is concentrated in crops including asparagus, artichokes, paprika, onions, grapes, and garlic, particularly in the provinces of Lima, Ica, Piura, La Libertad, and others.

[9] *See Background Note: Peru,* U.S. Department of State (December 2005), http://www.state.gov/r/pa/ei/bgn/35762.htm (last visited March 22, 2006). Peru's asparagus exports are forecast to increase by an additional 3 percent in 2006. *World Horticultural Trade & U.S. Export Opportunities: World Asparagus Situation & Outlook,* Foreign Agricultural Service, U.S. Department of Agriculture (August 2005) at 3

[10] *The Impact of the Andean Trade Preference Act: Eleventh Report 2004,* USITC Pub. 3803 at 4–14.

imported from Peru, 70 cents remains in the U.S. Moreover, even of the 30 percent that reverts back to the country-of-origin, a substantial portion is spent on U.S. inputs such as seeds and fertilizers.[11]

In addition, imports of fresh asparagus from Peru fuel job creation in the United States. PAIA estimates that aside from the several hundred persons employed or indirectly involved in the process of importing fresh asparagus imports from Peru, these imports result directly or indirectly in the creation of at least 5,000U.S.jobs in companies throughout the commercial chain.

III. Peruvian Asparagus Imports are Counterseasonal to U.S. Asparagus Production

Imports of fresh asparagus from Peru also serve a U.S. market demand that cannot be met by domestic growers alone. The most important factor here is that imports of fresh asparagus from Peru are largely counter-seasonal to the U.S. crop. As the ITC has noted, historically, the season for U.S. production has differed somewhat from that of most imports from ATPA countries, with the bulk of fresh asparagus imports from ATPA countries entered during July through the following January when overall U.S. production is low.[12]

According to official U.S. import statistics for 2005, 85 percent of total fresh asparagus imports from Peru entered the United States during the months of July through January; only 15 percent entered during the remainder of the year (February through June). In contrast, the peak production period for U.S.-grown fresh asparagus is February through June; therefore, all or nearly all U.S. production occurs during a period when the level of imports from Peru is minimal.

This is not to say that there are no imports of fresh asparagus from Peru present in the U.S. market during the peak production period for the U.S. crop; as referenced above, imports of Peru during the February—June period represent 15 percent of total annual imports from that country, or approximately 9,794 net tons (2005 data). However, even in this period, imports from Peru largely complement, rather than supplant, the U.S. crop. The vast majority of fresh asparagus imports from Peru enter the United States through the Port of Miami,[13] and are sold primarily in East Coast markets. Because of the distances involved and the high costs for transportation, most of the fresh asparagus produced in California and Washington are sold in West Coast and Southwest markets.

Therefore, even to the extent that there is some degree of overlap between the U.S. production period and imports from Peru, direct competition between these sources is reduced. Most of the imports from Peru that enter the United States during the February through June period are marketed in the East Coast and southeast United States regions. Indeed, the advent of year-round availability of fresh asparagus from Peru has allowed U.S. consumers in large geographic portions of the country to gain access to this product at times when supply would simply not exist from U.S. growers. This is one reason why per capita consumption of asparagus in the United States has doubled in the last decade alone, exceeding the rate of growth exhibited by nearly all other fruits and vegetables. As the ITC recently stated, the impact of ATPA on U.S. consumers has been significant in that imports of Peruvian fresh-market asparagus, together with Mexican exports and U.S. production, have resulted in greater availability of fresh asparagus throughout the year. This ex-

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[11] Transcript of hearing before the United States International Trade Commission: *In the Matter of: U.S.–Peru Trade Promotion Agreement: Potential Economywide and Selected Sectoral Effects,* Investigation No. TA–2104–20 (March 15, 2006) at 33–35 (hereafter "Tr. at ———") (testimony of John-Campbell Barmmer).

For example, in 2003 (the last full year for which the complete set of following data are available), the fob value of Peruvian fresh asparagus exports to the U.S. was approximately $78.5 million. The comparable cif value was $132.7 million. The value that accrued to importers was approximately $20 million, while the value that accrued to wholesalers and retailers was approximately $90 million. In addition, other value-added in the U.S. (*e.g.,* for storage, fumigation, etc.) totaled approximately $15 million. These sub-totals sum to $258 million, which represents the approximate retail value of fresh asparagus imports from Peru sold off the U.S. supermarket shelves. In other words, approximately 30 percent of that end-value ($78.5 million out of $258 million) remains in Peruvian hands, while the remainder ($179.5 million out of $258 million) remains here in the United States.

Sources: Aduanas (National Customs Superintendancy of Peru); U.S. International Trade Commission Trade DataWeb; estimates by APOYO Consultoría, and the Instituto Peruano del Esp1rrago y Hortalizas (IPEH).

[12] *The Impact of the Andean Trade Preference Act: Eleventh Report 2004,* USITC Pub. 3803 at 3–12.

[13] In 2005, 89 percent of imports of fresh asparagus from Peru entered the U.S. through the Port of Miami. Source: U.S. International Trade Commission Trade DataWeb (subheadings 0709.20.1000 and 0709.20.9000, HTSUS), by quantity.

tended availability of fresh-market asparagus, together with the overall consumer awareness of, and preference for, healthy foods, may be partly responsible for higher per capita annual consumption of fresh asparagus in recent years.[14]

Notwithstanding the seasonality and regionality aspects of supply and consumption discussed above, the fundamental fact is that since at least 1998, U.S. consumption of fresh asparagus has outpaced U.S. supply.[15] Imports are *necessary* to meet demand in the United States. In the absence of import sources—meaning, specifically, imports from Peru and Mexico—domestic production would be woefully inadequate to meet U.S. consumer demand. This would inevitably lead to a jump in prices, to the detriment of U.S. consumers, and eventually a drop in consumption, to the detriment of U.S. producers. While domestic production of fresh asparagus may have declined in recent years,[16] the decline would surely accelerate in coming years in the absence of reliable import supply.

IV. Asparagus and Other Agroexports as a Weapon Against Narcoterrorism

The intention of the ATPA was to spur the development of alternative industries to assist Peru and other Andean countries in the "War Against Drugs" and the struggle against guerrillas and terrorist organizations dependent on the illegal coca trade for funding. In this regard, the program has succeeded. Thanks to the ATPA and the vision of U.S. policymakers, the Peruvian asparagus and a number of other industries were able to blossom starting in the early 1990's. These industries have helped Peru to sustain some of the highest growth rates in Latin America, have provided employment for hundreds of thousands of Peruvians, and have helped reduce poverty levels. Just recently, for example, the Peruvian Prime Minister, Pedro Pablo Kuczynski announced that extreme poverty has been reduced from 24% to 18% between 2001 and 2005. It is estimated that nearly 1 million jobs in Peru are dependent on trade with the United States, most of which is covered by the ATPA program.

As stated earlier the Peruvian agro-export chain has generated approximately 600,000 jobs. 10%, or 60,000 of these jobs are held by workers in Peru's asparagus industry. The Peruvian Asparagus and Vegetables Institute (IPEH) estimates that nearly 40% of the workers in the asparagus industry come from areas that formerly supplied workers to illegal coca cultivation. Asparagus has been a model for other agroexport industries and their growth is having a multiplier effect in terms of their impact on trade, job creation in both countries, reduced illegal coca cultivation, and reduction of poverty in Peru. Peru's paprika industry, for example, has enjoyed export growth of 88% from 2004 to 2005, making Peru now the top world exporter of paprika, an industry which employs 15,000 Peruvians. Another successful example is the Peruvian artichoke industry, which has increased exports by 100% from 2004 to 2005, and also employs about 15,000 workers.

It is clear, therefore, that the ATPA spurred industries such as asparagus have had a positive impact in the war against drugs in Peru. As noted earlier, coinciding with the rise of asparagus and other agroexport industries, from 1995 to 2004, the ITC reported that coca cultivation has decreased dramatically, from 115,300 hectares to 27,500 ha in 2004. This has helped to reduce the presence of drugs in U.S. communities. In a related event, Peru successfully confronted and nearly eliminated the terrorist threat constituted by the radical Shining Path narcoterrorist organization during the 1990's, a group largely funded by illegal coca production. The PTPA will help consolidate these gains against the scourge that the illegal drug trade has represented for both countries.

V. Peru TPA and Labor Standards

In addition to Peru's compliance with ILO's core labor standards and the labor rights provided by the country's constitution, the asparagus and vegetables industry has implemented best labor practice programs (Buenas Prácticas Laborales—BPL)

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[14] *The Impact of the Andean Trade Preference Act: Eleventh Report 2004,* USITC Pub. 3803 at 3–12–14.

[15] Total imports accounted for approximately 60 percent of the U.S. market for fresh asparagus in 2004. U.S. imports from Peru accounted for approximately 60 percent of total imports in 2004, as well. *See also* U.S. Department of Agriculture FATUS data (http://www.fas.usda.gov/ustrade/). Consequently, Peru's share of the U.S. market was about 36 percent (compared to about 40 percent accounted for by domestic production).

Indeed, the quantity of domestic production in 2004 was approximately 87,000 net tons, which exceeded the volume of imports from Peru that year (61,123 net tons) by 42 percent. About one-fourth of domestic production, or approximately 22,000 net tons, was exported.

[16] According to the Commission's most recent report on the impact of the ATPA, domestic production of fresh asparagus declined 4 percent from 2003 to 2004, from 119.4 million pounds to 115 million pounds. However, the value of domestic production increased by 10 percent over that period, from $136.7 million to 150.4 million. *The Impact of the Andean Trade Preference Act: Eleventh Report 2004,* USITC Pub. 3803 at 3–12.

to ensure that the industry is engaged the creation of a healthy and safe work environment. The Peruvian asparagus and vegetables industry is also committed to help build schools and health facilities that will contribute to improved living standards for their workers, their families, and the rural communities where they live.

The growth of agroexports in Peru has been such that in parts of Peru such as Ica and La Libertad there is full-employment year round and extreme poverty has been reduced by an astounding 36% comparable to levels experienced nationwide by countries such as Chile. Workers in these industries make wages of between $5 and $7 per day which is considered a good salary by Peruvian standards.

Peru has ratified 71 ILO conventions, including the eight "core conventions." It has been praised multiple times by the ILO for its progress in improving labor laws. In addition to all of the ILO's Core Labor Rights Conventions, the PTPA's labor standards exceed those of five other previously-ratified trade agreements: Jordan, Chile/Singapore, CAFTA, Bahrain and even the ATPDEA, which does not make ILO or national standards mandatory.

The PTPA goes beyond many other free trade agreements in the enforcement of worker rights and dispute resolution. The PTPA-created Labor Affairs Council develops public participation in reporting and funding to ensure implementation of the agreement and improved cooperation and capacity-building mechanisms. Additionally, the PTPA holds member countries accountable to effectively enforce existing labor laws, under penalty of fines, which are used by the PTPA commission to fund projects improving labor right protections. Noncompliance results in the formation of an arbitral panel, which may fine violating parties up to $15 million per year, and suspend tariff benefits to the party complained against if necessary to cover the assessment.[17]

VI. Peruvian Asparagus and Environmental Concerns

Since asparagus cultivation is undertaken almost entirely on irrigated desert lands along Peru's coast, the environmental impacts of this industry on existing habitats is negligible. In fact, by contributing to the successful reduction of coca leaf production in biologically sensitive rain forest habitats, the growth of the asparagus industry along Peru's arid coast has had, in an indirect manner, highly beneficial environmental impacts.

The growth of the asparagus industry has created a business that is a global player and as a result has adopted rigorous international standards on environmental management practices and labor standards to comply with import requirements in the U.S., the European Union, and elsewhere. The Peruvian asparagus industry complies with very exacting practices of EUREPGAP and GAP (Good Agricultural Practices) to maintain consumer confidence in the quality and safety of its product.

VII. Conclusion

The duty-free treatment for imports of asparagus from Peru provided for in the proposed PTPA will serve a wide range of economic interests both in the United States and in Peru. In the United States, a steady, year-round demand supply of asparagus enters the U.S. and satisfies the increased demand for asparagus in the U.S that domestic production cannot meet. Asparagus also accounts for about 5,000 U.S. jobs in transportation and distribution.

In Peru, the asparagus industry, thanks to the duty-free access to the U.S. market, has been able to fight extreme poverty by employing at higher wages than other Peruvian jobs. Asparagus in Peru has also indirectly fought coca production and narcoterrorism by providing an alternative source of well-paying employment.

These great changes could not have been possible without the duty-free access afforded to Peru in the ATPA and ATPDEA. PTPA is now an excellent opportunity to ensure the continued prosperity of these industries, and by extension raise living standards in Peru. It is for this and the above reasons we urge prompt consideration and approval of the PTPA by the Committee, the Full House, and the Congress.

Statement of Retail Industry Leaders Association

The Retail Industry Leaders Association (RILA) welcomes the opportunity to submit written comments for the record of this hearing on the U.S.–Peru Trade Promotion Agreement (PTPA). RILA strongly supports the PTAPA and urges rapid passage of U.S. implementing legislation.

[17] Peru Trade Promotion Agreement, Chapter Twenty-One: Dispute Settlement.

RILA and the Retail Sector

RILA represents the nation's most successful and innovative retailer and supplier companies—the leaders of the retail industry. Retail is the second largest sector in the U.S. economy, employing 12% of the nation's workforce and conducting $3.8 trillion in annual sales. RILA's retail and supplier companies operate 100,000 stores, manufacturing facilities and distribution centers in every congressional district in every state, as well as internationally. They pay billions of dollars in federal, state and local taxes and collect and remit billions more in sales taxes. They are also leading corporate citizens with some of the nation's most far-reaching community outreach and corporate social responsibility initiatives.

The retail sector, along with the suppliers and customers that it serves, is an essential part of the U.S. economy. Retailers provide good jobs with good benefits, creating opportunities for entry-level employment, part-time work, jobs for non-skilled workers, and management training. Retailers serve the consumer goods market, an essential driver of the U.S. economy; they also serve the global market for consumer goods and bring U.S. products to the foreign markets where they operate.

Virtually all of RILA's members, both retailers and suppliers, rely on international trade to conduct their businesses. Our members depend on imports of both finished consumer products and production inputs for merchandise that will eventually be sold at retail. They also seek opportunities to expand retail outlets in countries that are open to U.S. investment and expand market access for American products.

Benefits of the PTPA

The PTPA merits strong support and rapid implementation by the United States. Putting this agreement into effect will benefit the U.S. economy, strengthen freedom and security in our Hemisphere, and promote opportunities and efficiencies in the retail/distribution sectors.

The PTPA will benefit the U.S. economy—producers and consumers alike. The PTPA liberalizes conditions for two-way trade between the United States and Peru that already exceeds $7 billion annually. U.S. exports of farm products, manufactures, and services will all benefit significantly. Peru will accord immediate duty-free treatment on 80% of its imports of U.S consumer and industrial products and more than two-thirds of its current imports of U.S. farm products. Additional market-opening, gradually eliminating all tariffs on U.S. exports to Peru, will be phased in subsequently. The Agreement will also provide significant market access for U.S. service suppliers, protect U.S. firms' intellectual property rights, and establish a more secure and predictable legal framework for U.S. investors in Peru.

The PTPA's impact on U.S. imports from Peru is good news as well. Many Peruvian products already enter the United States duty-free under the Andean Trade Preferences Program. The preference scheme is scheduled to expire in December 2006, however, and in any event enshrining this treatment in an international agreement with reciprocal obligations will provide added commercial security as well as a firmer legal basis under WTO rules. To the extent the FTA liberalizes trade on the U.S. side, improving access beyond what has been granted unilaterally in the past, this is good news for U.S. consumers—a tax cut aimed where it is needed most.

The PTPA will bolster freedom and security in our Hemisphere. Within recent memory, conditions in the Andean region have featured chaos, dictators, and armed insurgencies. Today, the region is home to fragile democracies that need U.S. support. Elected leaders are embracing freedom and economic reform, fighting corruption, and supporting U.S. anti-narcotics and anti-terrorism efforts.

But this positive momentum cannot be taken for granted. Opponents of reform in the region remain strong. We believe Chairman Thomas was right to emphasize, in announcing this hearing, that the PTPA "builds on our past efforts of granting trade benefits to alleviate poverty and eradicate drugs in the region" and that "Peru's President-elect Garcia is standing up to Cuban President Castro and Venezuelan President Chavez in supporting the agreement."

By implementing the PTPA, the United States can demonstrate its support for freedom, democracy, the rule of law, and economic reform in the region, and at the same time can bolster U.S. security. Among other things, new economic opportunities will reduce the pressures that help produce illegal narcotics activity and illegal immigration.

The PTPA offers opportunities and efficiencies in the provision of retail/distribution services. Commitments accepted by Peru in various services sectors, notably including retail/distribution, go beyond WTO commitments and promise to dismantle significant barriers. RILA anticipates both new opportunities for U.S.-

based retailers, and more efficient distribution for U.S. companies and products in Peru's market.

Improvements Over Time

No trade agreement is perfect, and as with other agreements, experience under the PTPA may reveal opportunities for useful adjustments in areas like rules of origin, accelerated tariff phase-out, *etc.* Some improvements may require Peru's approval; others may be of the type the United States can make unilaterally. The implementing legislation should establish a flexible and streamlined framework for making such adjustments over time, using available tools such as proclamation authority and consultation/layover.

Conclusion

RILA congratulates the Committee for turning its attention to this important agreement, and stands ready to assist as the implementation process moves forward. If RILA can be of any assistance to the Committee, please contact Lori Denham, Executive Vice President—Public Affairs or Allen Thompson, Vice President—Global Supply Chain Policy.

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