110TH CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPORT 110–

UNITED STATES-PERU TRADE PROMOTION AGREEMENT IMPLEMENTATION ACT

NOVEMBER , 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RANGEL, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

_____ VIEWS

[To accompany H.R. 3688]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3688) to implement the United States-Peru Trade Promotion Agreement, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

I. INTRODUCTION

A. PURPOSE AND SUMMARY

H.R. 3688 would implement the agreement establishing a free trade area between the United States and Peru.

B. BACKGROUND

The United States-Peru Trade Promotion Agreement

The United States-Peru Trade Promotion Agreement (hereinafter "Peru FTA"), originally signed in April 2006, was amended in May 2007 to incorporate key aspects of an historic Congressional-Executive accord (the "May 10 Agreement"). As a result of this amendment, the Peru FTA has become the first U.S. free trade agreement to include, in its core text, fully-enforceable commitments by the Parties to adopt, maintain, and enforce basic international labor standards, as stated in the *1988 ILO Declaration on Fundamental Principles and Rights at Work.* It is also the first U.S. free trade agreement to require the Parties to implement and enforce their obligations under certain common multilateral environmental agreements and, further, to require Peru to take major, specific steps to address illegal logging. These changes make the Peru FTA the strongest free trade agreement ever to be considered by the Committee with regard to basic internationally recognized labor standards and basic protections for the environment.

The May 10 Agreement also required other important changes to the Peru FTA, including: (a) modification of the intellectual property chapter to balance promoting access to medicines and protecting pharmaceutical innovation; (b) modification of the government procurement chapter to allow conditioning of contracts on adherence to basic and minimum labor standards; (c) clarification that, where there are national security concerns, the United States can prevent foreign companies from operating U.S. ports; and (d) clarification that the Peru FTA accords Peruvian investors in the United States no greater substantive rights with respect to investment protections than U.S. investors in the United States.

With all of these changes, the Peru FTA reflects a new approach in U.S. trade policy – one that couples traditional market access initiatives with strong, fully enforceable commitments on basic worker rights, international environmental standards, access to medicines, and other key issues. The Committee believes that such an approach is critically important to level the playing field for U.S. workers and business and spread the benefits of globalization more broadly.

Peru has set itself out as an important partner in this approach. In August 2007, during a Committee delegation visit to Peru, President Garcia referred to the Peru FTA as an historic "New Deal" for workers and countries, marking the beginning of a "grand transformation" in how governments should approach world trade. The Committee

believes that this new partnership will broaden and deepen what is already a strong economic and political relationship between the United States and Peru.

Under the new rules of the Peru FTA, nearly 90 percent of current exports by U.S. farmers and ranchers will receive duty-free treatment immediately upon entry into force of the FTA. In addition, 80 percent of U.S. exports of consumer and industrial products to Peru will be duty-free immediately upon entry into force, with remaining tariffs phased out over ten years. Average Peruvian tariffs on imports of goods from the United States were: 5.8% for information technology equipment, 7.1 % for chemicals, 8.8% for metals and ores, 5.9% for infrastructure and machinery, 5.5% for transportation equipment, 7.4% for autos and auto parts, 7.9% for building products, 9.7% for paper and paper products, and 11.1% for consumer goods.

These and the other trade liberalization benefits of the Peru agreement are more likely to be spread broadly in both countries due to the historic provisions on basic international labor standards, multilateral environmental standards, and other issues that will raise standards both in the United States and abroad. This is important for Peru, in its efforts to improve labor standards and environmental conditions and for the development of a strong middle class. It is also important for workers in the United States who do not want to compete with other nations whose entities suppress their workers or negatively affect the environment, and for U.S. companies and workers who depend increasingly on the development of middle class societies abroad to buy the goods and services produced in the United States.

The following are key aspects of the Peru FTA, beginning with those aspects that were amended as a result of the May 10 Agreement:

Labor: Under the May 10 Agreement, the labor chapter of the Peru FTA was substantially revised to include a fully enforceable obligation that the Parties adopt and effectively enforce the five core international labor rights, as stated in the *1998 International Labor Organization Declaration on Fundamental Principles and Rights and Work.* The Peru FTA also requires both countries to enforce laws related to a sixth set of rights – those pertaining to acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health. These obligations are subject to a binding non-derogation provision.

For the first time in any U.S. free trade agreement, the obligations under the labor chapter are subject to the same dispute settlement mechanisms and remedies as all other FTA obligations. A party seeking to challenge violations is required to demonstrate that the failure to adopt or maintain ILO rights has been in a manner affecting <u>either</u> trade <u>or</u> investment between the countries.

Peru has already been bringing its laws, regulations, and practices into compliance with internationally-recognized labor standards. Most recently, in August 2007, Peruvian President Alan Garcia announced his commitment to change Peru's legal framework in a number of key areas to implement obligations under the FTA. President

Garcia has since followed through on his commitment by implementing changes to the legal framework governing: (1) temporary employment contracts; (2) subcontracting/outsourcing contracts; (3) the right of workers to strike; (4) recourse against anti-union discrimination; and (5) workers' right to organize. The Committee applauds the changes made by the Peruvian government. The Committee believes that, with these and other recent changes, and the commitments and mechanisms under the FTA, Peru has in place a framework to ensure compliance with basic international labor standards.

Environment: Under the May 10 agreement, the environmental chapter of the Peru FTA was substantially revised to include a fully enforceable commitment that the Parties will implement and enforce in their laws and regulations, their obligations under certain common major multilateral environmental agreements ("MEAs"), including the Convention on International Trade in Endangered Species ("CITES") and the Montreal Protocol on Ozone Depleting Substances, as well certain other environmental laws. The agreement also includes a fully enforceable, binding commitment that prohibits Peru from lowering environmental standards in the future in a manner affecting trade or investment. Further, the agreement establishes that, in the event of an inconsistency between a covered MEA obligation and an obligation under the Peru FTA, the Peru FTA cannot be used to undermine the MEA obligation.

The Peru FTA is not only the first free trade agreement to include these strong environmental obligations, it is also the first free trade agreement to make them subject to the same dispute settlement mechanisms and remedies that apply for other FTA obligations. The Peru FTA requires a Party challenging a violation to show that the failure to adopt, maintain or implement an MEA or enforce other environmental laws has been in a manner affecting <u>either</u> trade <u>or</u> investment between the countries.

The Peru FTA also includes specific provisions to address the problem of illegal logging in Peru. For many years, leading environmental groups have raised concerns about illegal logging. Some reports have indicated, for example, that much of the mahogany exported from Peru – over 80% of which is exported to the United States – is illegally logged. As a result of the May 10 Agreement, the Peru FTA includes an extensive Forest Sector Governance Annex to address this problem.

Under the Annex, Peru is required to take specific steps to address illegal logging and improve forest sector governance. The Forest Sector Governance Annex also requires additional actions to stop illegal logging of mahogany and all CITES-listed tree species. Further, it establishes innovative new enforcement tools, permitting the United States to investigate illegal logging in-country through audits and verifications, and to stop questionable shipments at the border. Like the environmental commitments on MEAs and other environmental laws, no previous FTA has included such commitments on illegal logging or provided this broad range of enforcement tools.

Intellectual Property Rights and Access to Medicines: Under the Peru FTA, Peru will adopt higher and extended standards for the protection of intellectual property

rights such as copyrights, patents, trademarks and trade secrets. The Peru FTA also provides enhanced means for enforcing those rights. Under the agreement, national treatment must be granted by each partner country to nationals of the other, and all laws, regulations, procedures and final judicial decisions must be in writing and published or made publicly available. The Peru FTA will lengthen terms for copyright protection, covering electronic and digital media, and increase enforcement to go beyond the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS"). Both parties are obliged to provide appropriate civil and criminal remedies for willful violators, and parties must provide legal incentives for service providers to cooperate with rights holders and limitations on liability.

With respect to pharmaceuticals, the Peru FTA was amended in accordance with the May 10 Agreement to balance better the need for access to medicines with promotion of pharmaceutical innovation. The amendments include changes to the "data exclusivity" provision (the period in which a generic manufacturer may not use clinical test data of an innovative drug manufacturer to obtain approval for a generic version of the drug) to allow generics to enter the market more quickly than under the old provision. New provisions also establish a clear exception that the IPR commitments in the FTA do not and should not prevent the Parties from taking any measures to protect public health in accordance with the WTO Doha Declaration or from utilizing the TRIPS/health solution. Similarly, the new text eliminates the requirement that an FTA country extend the term of a patent on a pharmaceutical product for delays in the patent and regulatory approval process. At the same time, the FTA requires each Party to ensure an expeditious patent and regulatory approval process for the benefit of patients and patent applicants. Finally, the new text eliminates the requirement that a drug regulatory agency withhold approval of a generic until it can certify that no patent would be violated if the generic were marketed. Instead of that "linkage" requirement, the new text provides that each Party must adopt procedures and remedies for the expeditious resolution of patent disputes.

Government Procurement: Peru is not a party to the WTO Agreement on Government Procurement, but the Peru FTA provides comparable benefits to U.S. interests. Specifically, U.S. suppliers will be granted non-discriminatory rights to bid on contracts above a certain value from Peruvian government ministries, agencies and departments. The Peru FTA will cover the purchases of most Peruvian central government entities, including key ministries and state-owned enterprises, including Peru's oil company as well as all of its first-tier sub-central entities (comparable to U.S. states). The Peru FTA requires fair and transparent procurement procedures, such as advance notice of purchases and timely and effective bid review procedures.

For the United States, the Peru FTA excludes from FTA procurement commitments all procurements by local government entities. The FTA also excludes all procurements by states that have not "opted in" to the agreement (and only 8 states have done so). The FTA also excludes, for federal procurements, the large number of government contracts that fall below the high monetary threshold and under carve-outs (for example, for small and minority business set asides, purchase of goods in 27 broad

Federal Supply Classification categories by the Department of Defense, and for "Berry Amendment" procurements of textiles and machine tools by the Department of Defense).

Like other chapters in the agreement, the Government Procurement Chapter of the FTA was amended pursuant to the May 10 Agreement. As amended, the Peru FTA provides that U.S. federal and state governments may condition government contracts on contractors adhering to the five core labor rights and acceptable conditions of work and minimum wages.

Port Security: Pursuant to the May 10 Agreement, the Peru FTA was amended to clarify that, if there are national security concerns, the United States has full, non-challengeable authority to prevent foreign companies from operating U.S. ports, based on national security concerns.

Agriculture: More than two-thirds of current U.S. farm exports to Peru will become duty-free immediately under the Peru FTA. Tariffs on the remaining U.S. farm products are to be phased out within 17 years. Many Peruvian agricultural products enter the United States duty-free currently under the Andean Trade Preference Act ("ATPA") and other preference programs. The Peru FTA would make the duty-free treatment permanent.

In recognition of Peru's large number of small and subsistence farmers, the Peru FTA includes longer tariff phase-out periods for some products (such as standard quality beef, yellow corn, rice, and processed dairy products), with no tariff cuts required in the initial years of the agreement. The longer phase-outs are intended to provide a period for Peruvian farmers to adjust to import competition. Safeguard measures will also be available for specified products, providing for tariff increases if import quantities increase to specified levels. The possibility of employing safeguards will expire when tariff protection has been phased out.

***Services*:** The agreement will provide broader market access and greater regulatory transparency in most industries. The agreement utilizes the negative list approach for coverage with very few reservations, which means that all services are covered unless specifically excluded.

***Textile and Apparel*:** Under the Peru FTA, textiles and apparel will be duty-free and quota-free immediately if the products meet the agreement's rules of origin. Rules of origin are generally based on the yarn forward standard. The agreement does not make use of tariff preference levels. A "*de minimis*" provision will allow limited amounts of specified third-country content to go into U.S. and Peruvian apparel, giving producers in both countries needed flexibility. The FTA does allow use of "short supply" fabrics (that is, fabrics not made in Peru or the United States that have been determined not to be commercially available in either country). The Parties agreed to 20 short supply fabrics, and the Peru FTA includes a process for adding more.

Customs cooperation commitments between the United States and Peru will allow for verification of claims of origin or preferential treatment, and denial of preferential treatment or entry if claims cannot be verified. A special textile safeguard will provide for temporary tariff relief if imports under the Agreement prove to be damaging to domestic producers.

Investment: The Peru FTA draws from U.S. legal principles and practices to provide U.S. investors in Peru with a basic set of substantive and procedural protections that Peruvian investors currently enjoy under the U.S. legal system. These include due process protections and the right to receive a fair market value for property in the event of an expropriation. The Peru FTA includes recourse to an investor-state dispute settlement mechanism.

The investment rules in the Peru FTA are significantly changed from those originally included in NAFTA's Chapter 11 in response to concerns about overly broad interpretations by some arbitration panels and creative claims brought by some private companies against the governments of Mexico, the United States and Canada. The changes clarified that, except in rare circumstances, legitimate "public welfare" regulations do not constitute regulatory expropriations, required investor-state panels to consider the same factors as those considered in U.S. courts in determining whether there is an expropriation of property, provided guidance regarding the "minimum standard of treatment" obligation, and imposed new transparency requirements.

In addition, pursuant to the May 10 agreement, new language was included in the Peru FTA's Preamble to clarify that foreign investors in the United States are not to be accorded greater substantive rights with respect to investment provisions than U.S. investors under U.S. law.

Dispute Settlement: The Peru FTA sets out detailed procedures for the resolution of disputes over compliance with the obligations under the agreement.

Procedures of the Trade Act of 2002

H.R. 3688 is being considered by Congress under the procedures of the Trade Act of 2002. Pursuant to these requirements, the President is required to provide written notice to Congress of the President's intention to enter into the negotiations. Throughout the negotiating process, and prior to entering into an agreement, the President is required to consult with Congress regarding the ongoing negotiations.

The President must notify Congress of his intent to enter into a trade agreement at least 90 calendar days before the agreement is signed. Within 60 days after entering in the Agreement, the President must submit to Congress a description of those changes to existing laws that the President considers would be required to bring the United States into compliance with the Agreement. After entering into the Agreement, the President must also submit to Congress the formal legal text of the agreement, draft implementing legislation, a statement of administrative action proposed to implement the Agreement,

and other related supporting information as required under section 2105(a) of the Trade Act of 2002.

Following submission of these documents, the implementing bill is introduced, by request, by the Majority Leader and the Minority Leader in each chamber. The House then has up to 60 days to consider implementing legislation for the Agreement (the Senate has up to an additional 30 days). No amendments to the legislation are allowed under the requirements of the Trade Act of 2002.

C. LEGISLATIVE HISTORY

Negotiations for a free trade agreement between the United States and Peru began in May 2004. On January 6, 2006, the United States Trade Representative ("USTR") formally notified the Congress of its intention to enter into a free trade agreement with Peru. Thereafter, 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 United States-Peru Trade Promotion Agreement. The agreement was ratified by the Peruvian Congress in June 2006.

USTR submitted to Congress on June 9, 2006, a description of the changes to existing U.S. laws that would be required to bring the United States into compliance with the Agreement.

On June 24 and 25, 2007, respectively, the United States and Peru signed a Protocol of Amendment, revising the Peru FTA to include key aspects of the May 10 Agreement. The Peruvian Congress approved the amendments to the Peru FTA by a vote of 70-38 on June 27, 2007.

Legislative Hearing

On July 12, 2006, the Committee held a hearing on the implementation of the Peru FTA, as originally negotiated.

Committee Action

On July 20, 2006, the Committee on Ways and Means considered in an informal mark-up session draft legislation to implement the Peru FTA, as originally negotiated, and a Statement of Administrative Action. The Committee approved the draft legislation by a vote of 23 – 13, without amendment. No further action was taken on the draft legislation.

On September 25, 2007, the Committee considered in an informal mark-up session draft legislation to implement the Peru FTA, as re-negotiated pursuant to the May 10 Agreement. The Committee approved the draft legislation, without amendment, by voice vote.

On September 27, 2007, President Bush transmitted the United States-Peru Trade Promotion Agreement, a legislative proposal to implement the agreement, a Statement of Administrative Action and supporting documents to Congress. On the same day, H.R. 3688, a bill to implement the United States—Peru Trade Promotion Agreement, was introduced by Majority Leader Hoyer, by request, for himself and Minority Leader Boehner. H.R. 3688 was then referred to the Committee on Ways and Means.

On October 31, 2007, Committee on Ways and Means formally met to consider H.R. 3688. The Committee ordered H.R. 3688 favorably reported to the House of Representatives by a vote of 39-0, without amendment (under the procedures of the Trade Act of 2002, no amendments are permitted after introduction).

II. SECTION-BY-SECTION SUMMARY

TITLE I: APPROVAL AND GENERAL PROVISIONS

SECTION 101: APPROVAL AND ENTRY INTO FORCE

Present law

No provision.

Explanation of provision

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

Reason for change

Approval of the Peru FTA and the Statement of Administrative Action is required under the procedures of section 2103(b)(3) of the Trade Act of 2002. Section 101 provides for such approval and for entry into force of the Peru FTA.

SECTION 102: RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE LAW

Present law

No provision.

Explanation of provision

Section 102(a) provides that U.S. law prevails in the case of a conflict with the Peru FTA. Section 102(b) provides that only the United States is entitled to bring a court

action challenging a state law as being invalid on grounds of inconsistency with the FTA. Section 102(c) states that there is no private cause of action or defense under the FTA and no person other than the United States may challenge a federal or state law in court as being inconsistent with the FTA.

Reason for change

The provision addresses the issue of the operation of the agreement relative to federal and state law, as well as private remedies. Section 102 is necessary to make clear that no provision of the Peru FTA will be given effect if it is inconsistent with federal law and that entry into force of the agreement creates no new private remedy.

SECTION 103: IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS

Present law

No provision.

Explanation of provision

Section 103(a) provides that, after the date of enactment, the President may proclaim such actions, and other U.S. government officers may issue such regulations, as are necessary to ensure the appropriate implementation of any provision of the legislation that is to take effect on the date of entry into force of the Agreement. The effective date of such actions and regulations may not be earlier than the date of entry into force of the Peru FTA. Where proclaimed actions are not subject to consultation and layover requirements under the Act, proclamations generally may not take effect earlier than 15 days after their publication.

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

Reason for change

Section 103 provides for the issuance of regulations. The Committee strongly believes that regulations should be issued in a timely manner to provide maximum clarity to parties claiming benefits under the Peru FTA. The Committee, therefore, notes the importance of the one-year period for issuing regulations and, further, that the Statement of Administrative Action commits each agency that will be issuing regulations to provide a report to Congress if it cannot do so within that time. Such reports must be submitted at least 30 days prior to the end of the one-year period.

SECTION 104: CONSULTATION AND LAYOVER FOR PROCLAIMED ACTIONS

Present law

No provision.

Explanation of provision

Section 104 establishes requirements for proclamation of actions that are subject to consultation and layover provisions under the Act. The President may proclaim such action only after: (1) obtaining advice from the U.S. International Trade Commission ("ITC") and the appropriate private sector advisory committees, (2) submitting a report to the Ways and Means and Finance Committees concerning the reasons for the action, and (3) providing for a 60-day layover period (starting after the President has both obtained the required advice and provided the required report). The proposed action cannot take effect until after the expiration of the 60-day period and after the President has consulted with the Ways and Means and Finance Committees regarding the proposed action.

Reason for change

The bill gives the President certain proclamation authority but requires extensive consultation with Congress before such authority may be exercised. The Committee believes that such consultation is an essential component of the delegation of authority to the President and expects that such consultations will be conducted in a thorough and timely manner.

SECTION 105: ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS

Present law

No provision.

Explanation of provision

Section 105 authorizes the President to establish an office within the Department of Commerce responsible for providing administrative assistance to dispute settlement panels that are established under the Peru FTA. The section also authorizes appropriations necessary for the establishment and operation of the office and to pay the U.S. share of expenses of the panels.

Reason for change

Dispute settlement procedures and panels are necessary to ensure that disputes over compliance with FTA provisions can be resolved effectively. The Committee believes that the Commerce Department is the appropriate agency to provide administrative assistance to such panels.

SECTION 106: ARBITRATION OF CLAIMS

Present law

No provision.

Explanation of provision

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

Reason for change

This provision is necessary to meet U.S. obligations under Section B of Chapter 10 of the Peru free trade agreement.

SECTION 107: EFFECTIVE DATES; EFFECT OF TERMINATION

Present law

No provision.

Explanation of provision

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

Reason for change

Section 107 implements provisions of the Peru FTA relating to the effective date and date of termination of the Act.

TITLE II: CUSTOMS PROVISIONS

SECTION 201: TARIFF MODIFICATIONS

Present law

No provision.

Explanation of provision

Section 201(a) provides the President with the authority to proclaim tariff modifications necessary or appropriate to carry out the Agreement and requires the President to terminate Peru's designation as a beneficiary developing country for the purpose of the Generalized System of Preferences program as of the date the Agreement enters into force.

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

Section 201(c) allows the President, for any goods for which the base rate under the Agreement is a specific or compound rate of duty, to substitute for the base rate an ad valorem rate to carry out the tariff modifications in subsections (a) and (b).

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

Reason for change

The provision implements the duty reduction commitments made in the Peru FTA.

SECTION 202: ADDITIONAL DUTIES ON CERTAIN AGRICULTURAL GOODS

Present law

No provision.

Explanation of provision

Section 202 implements the agricultural safeguard provisions of Article 2.18 and Annex 2.18 of the Peru FTA. Section 202(b) directs the Secretary of the Treasury ("Secretary") to assess an additional duty in any year when the volume of imports of a "safeguard good" exceeds 130 percent of the in-quota quantity allocated to Peru for the good in that calendar year as set forth in Annex 2.3 of the Agreement. The additional duty is calculated as a specified percentage of the difference between the Normal Trade Relations ("NTR" or "MFN") rate of duty and the duty set out in the Schedule of the United States to Annex 2.3 of the Agreement. The sum of the duties assessed under the agricultural safeguard and the applicable rate of duty in the U.S. Schedule may not exceed the NTR (MFN) rate of duty. No additional duty may be applied on a good if, at the time of entry, the good is subject to a safeguard measure under the procedures set out in Subtitle A of Title III of the bill or under the safeguard procedures set out in Chapter 1 of Title II of the Trade Act of 1974 (the "Section 201" global safeguard). The additional duties remain in effect only until the end of the calendar year in which they are imposed.

Reason for change

This provision implements commitments made in the Peru FTA relating to agricultural safeguards. Such safeguards provide important temporary relief to farmers in the United States and Peru who face a surge in certain agricultural imports following entry into force of the Peru FTA.

SECTION 203: RULES OF ORIGIN

Present law

No provision.

Explanation of provision

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

Under the rules in Chapter 3, Annex 3-A, Chapter 4, and Annex 4.1 of the Peru FTA, an apparel product must generally meet a tariff shift rule that effectively imposes a "yarn forward" requirement. Thus, to qualify as an originating good imported into the United States from Peru, an apparel product must have been cut (or knit to shape) and sewn or otherwise assembled in Peru, the United States, or both from yarn, or fabric made from yarn that originates in Peru, the United States, or both.

Section 203(o)(2) provides authority for the President to add fabrics or yarns to a list of products that are unavailable in commercial quantities in a timely manner, and such products are treated as if they originate in Peru, regardless of their actual origin, when used as inputs in the production of textile or apparel goods. Section 203(o)(4) provides a process by which the President may modify that list at the request of interested entities, defined as Peru and potential and actual suppliers and purchasers of textile or apparel goods.

The remainder of Section 203 sets forth more detailed rules for determining whether a good meets the FTA's requirements under the second method of qualifying as an originating good. These rules include those pertaining to *de minimis* quantities of non-

originating materials that do not undergo a tariff transformation, transformation by regional content, and alternative methods for calculating regional value-content. Other provisions in section 203 address valuation of materials, determination of the originating or non-originating status of fungible goods and materials, and treatment of accessories, spare parts and tools, packaging materials, indirect materials, and goods put up in sets. Section 203(l) specifies that goods that undergo further production or other operations outside Peru or the United States (with certain exceptions) or do not remain under the control of the customs authorities of such other countries do not qualify as originating goods.

Reason for change

Rules of origin are needed to confine FTA benefits, such as tariff cuts, to Peruvian goods and to prevent third-country goods from being transshipped through Peru and claiming benefits under the FTA. This provision implements the commitments made in the Peru FTA with respect to rules of origin applying to imports from Peru.

SECTION 204: CUSTOMS USER FEES

Present law

No provision.

Explanation of provision

Section 204 of the bill implements the U.S. commitments under Article 2.10.4 of the Peru FTA to eliminate the Merchandise Processing Fee ("MPF") on originating goods. In accordance with U.S. obligations under the General Agreement on Tariffs and Trade 1994, the provision also prohibits use of funds in the Customs User Fee Account to provide services related to entry of originating goods.

Reason for change

As with other free trade agreements, the Peru FTA eliminates the MPF on qualifying goods from Peru. Other customs user fees remain in place. Section 204 is necessary to put the United States in compliance with the user fee elimination provisions of the Peru FTA. The Committee expects that the President, in his yearly budget request, will take into account the need for funds to pay expenses for entries under the Peru FTA given that MPF funds will not be available.

SECTION 205: DISCLOSURE OF INCORRECT INFORMATION; FALSE CERTIFICATIONS OF ORIGIN; DENIAL OF PREFERENTIAL TARIFF TREATMENT

Present law

No provision.

Explanation of provision

Section 205 implements Articles 4.18.5 and 4.19.3 of the Peru FTA. Section 205(a) prohibits the imposition of a penalty upon importers who make an invalid claim for preferential tariff treatment under the agreement if the importer acts promptly and voluntarily to correct the error and pays any duties owed on the good in question. The provision also makes it unlawful for a person to certify falsely, by fraud, gross negligence, or negligence that a good exported from the United States is an originating good. However, the provision prohibits the imposition of a penalty if the exporter or producer promptly and voluntarily provides notice of the incorrect information to every person to whom a certification was issued.

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

Reason for change

This provision is necessary to implement commitments in the Peru FTA relating to application of penalties for submission of false information or certifications by importers, exporters and producers.

SECTION 206: RELIQUIDATION OF ENTRIES

Present law

No provision.

Explanation of provision

Section 206 implements Article 4.19.5 of the Peru FTA and provides authority for the Customs Service to reliquidate an entry to refund any excess duties (including any merchandise processing fees) paid on a good qualifying under the rules of origin for which no claim for preferential tariff treatment was made at the time of importation if the importer so requests, within one year after the date of importation.

Reason for change

Article 4.19.5 of the Peru FTA anticipates that private parties may err in claiming preferential benefits under the agreement and provides a one-year period for parties to make such claims for preferential tariff treatment even if the entry of the goods at issue has already been liquidated, i.e., legally finalized by customs officials. Section 207 is necessary to put the United States into compliance with Article 4.19.5.

SECTION 207: RECORDKEEPING REQUIREMENTS

Present law

No provision.

Explanation of provision

Section 207 of the bill implements Article 4.17 of the Peru FTA. The provision requires any person who completes and issues a certificate of origin under Article 4.15 of the agreement for a good exported from the United States to maintain, for a period of five years after the date of certification, specified documents demonstrating that the good qualifies as originating.

Reason for change

Section 207 is necessary to put the United States in compliance with the recordkeeping requirement provisions in the Article 4.17 of the Peru FTA.

SECTION 208: ENFORCEMENT RELATING TO TRADE IN TEXTILE OR APPAREL GOODS

Present law

No provision.

Explanation of provision

Section 208 implements the customs cooperation and verification of origin provisions in Article 3.2 of the Peru FTA. Under Article 3.2, the United States may request the Government of Peru to conduct a verification of whether a claim of origin for a textile or apparel good is accurate or a particular exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods. Section 208(a) provides that the President may direct the Secretary to take "appropriate action" while such a verification is being conducted. "Appropriate action" may include: (i) suspending preferential tariff treatment for textile or apparel goods that the person subject to the verification has produced or exported if the Secretary believes there is insufficient information to sustain a claim for such treatment; (ii) denying preferential tariff treatment to such goods if the Secretary decides that a person has provided incorrect information to support a claim for such treatment; (iii) detaining such goods if the Secretary considers there is not enough information to determine their country of origin; and (iv) denying entry to such goods if the Secretary determines that a person has provided erroneous information on their origin.

Under Section 208(c), the President may also direct the Secretary to take "appropriate action" after a verification has been completed. Such action may include: (i) denying preferential tariff treatment to textile or apparel goods that the person subject

to the verification has exported or produced if the Secretary considers there is insufficient information to support a claim for such treatment or determines that a person has provided incorrect information to support a claim for such treatment; and (ii) denying entry to such goods if the Secretary decides that a person has provided incorrect information regarding their origin or that there is insufficient information to determine their origin. Unless the President sets an earlier date, any such action may remain in place until the Secretary obtains enough information to decide whether the exporter or producer that was subject to the verification is complying with applicable customs rules or whether a claim that the goods qualify for preferential tariff treatment or originate in an FTA country is accurate.

Under Section 208(e), the Secretary may publish the name of a person that the Secretary has determined: (i) is engaged in circumvention of applicable laws, regulations, or procedures affecting trade in textile or apparel goods; or (ii) has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

Reason for change

To avoid textile transshipment, special textile enforcement provisions were included in the Peru FTA. Section 208 is necessary to authorize these enforcement mechanisms for use by U.S. authorities.

SECTION 209: REGULATIONS

Present law

No provision.

Explanation of provision

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

Reason for change

This provision gives the President necessary regulatory authority to carry out the agreement. No such regulation may take effect before the Peru FTA enters into force.

TITLE III: RELIEF FROM IMPORTS

SECTION 301: DEFINITIONS

Present law

No provision.

Explanation of provision

Section 301 defines "Peruvian article" and "Peruvian textile or apparel article," which are key terms for Title III.

Reason for change

This provision clarifies the scope of the provisions in Title III.

SUBTITLE A: RELIEF FROM IMPORTS BENEFITING FROM THE AGREEMENT

SECTIONS 311-316

Present law

No provision.

Explanation of provisions

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

Section 311 provides for the filing of petitions with the ITC and for the ITC to conduct safeguard investigations under Subtitle A. Section 311(a)(1) provides that a petition requesting a safeguard action may be filed by an entity that is "representative of an industry." As under Section 202(a)(1) of the Trade Act of 1974, a trade association, firm, certified or recognized union, or a group of workers can be considered such an entity. Section 311(b) sets out the standard to be used by the ITC in undertaking an investigation and making a determination in Subtitle A safeguard proceedings.

Section 311(c) provides that certain provisions of Section 202 of the Trade Act of 1974 also apply with respect to investigations initiated under Section 311(b), including provisions defining "substantial cause" and listing factors to be taken into account in making safeguard determinations.

Section 311(d) exempts from investigation under the section Peruvian articles with respect to which relief has previously been provided under Subtitle A.

Section 312 requires the ITC to make a determination not later than 120 days after the date on which the Section 311 investigation is initiated. Under Sections 312(b) and (c), if the ITC makes an affirmative determination, it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent serious injury

and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Section 312(d) directs the ITC to submit a report to the President regarding the determination no later than 30 days after the determination is made. Section 312(e) requires the ITC to make this report public and to publish a summary of it in the Federal Register.

Section 313(a) provides that the President, within 30 days of receiving a report from the ITC under Section 312, must provide import relief to the extent that the President determines is necessary to remedy or prevent the injury found by the ITC and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Under Section 313(b), the President is not required to provide import relief if the relief will not provide greater economic and social benefits than costs.

Section 313(c) sets forth the nature of the relief that the President may provide. The President may take action in the form of a suspension of further reductions in the rate of duty to be applied to the articles in question, or an increase in the rate of duty on the articles in question to a level that does not exceed the lesser of the existing NTR (MFN) rate or the NTR (MFN) rate of duty that was imposed on the day before the Peru FTA entered into force. Under Section 313(c)(2), if the relief the President provides has a duration greater than one year, the relief must be subject to progressive liberalization at regular intervals over the course of its application.

Section 313(d) provides that the President may initially provide import relief for up to two years. This period may be extended for an additional two years (to a maximum aggregate period of four years) if, after an investigation by the ITC and receipt of an ITC report, the President determines that import relief continues to be necessary and there is evidence that the industry is making a positive adjustment to import competition. The ITC must conduct an investigation on these issues if, within a specified period before the relief terminates, a concerned industry files a petition requesting an investigation. The ITC must issue a report on its investigation to the President no later than 60 days before the termination of the import relief.

Section 313(e) specifies that on the termination of import relief, the rate of duty for the remainder of the calendar year is the rate that was scheduled to have been in effect one year after the initial provision of import relief. In the calendar year that follows the year of termination of import relief, the President may either apply the rate of duty set out in the relevant U.S. Schedule to the Peru FTA or eliminate the duty in equal annual stages until the end of the scheduled phase-out period.

Section 313(f) exempts from relief any article that is: (i) subject to import relief under the global safeguard provisions in U.S. law (Chapter 1 of Title II of the Trade Act of 1974); (ii) subject to import relief under Subtitle B; or (iii) subject to additional duties as an agricultural good under Section 202(b).

Section 314 provides that no relief may be provided under this subtitle after ten years from the date the Peru FTA enters into force, unless the scheduled phase-out period

for the article under the agreement is greater than ten years, in which case relief may not be provided for that article after the scheduled phase-out period ends.

Section 315 authorizes the President to provide compensation to Peru consistent with Article 8.5 of the Peru FTA if relief is ordered.

Section 316 provides for the treatment of confidential business information.

Reason for change

These provisions establish a mechanism for providing temporary import relief where a U.S. industry experiences injury or threat of injury by reason of increased import competition from Peru resulting from reduction or elimination of a duty under the Peru FTA. The Committee notes that the President is not required to provide relief if the relief will not provide greater economic and social benefits than costs and expects that the President will use this discretion only to the extent consistent with the letter, spirit and purpose of the safeguard provisions. The Committee intends that administration of this safeguard be consistent with U.S. obligations under Section A of Chapter Eight (Trade Remedies) of the Peru FTA.

SUBTITLE B: TEXTILE AND APPAREL SAFEGUARD MEASURES

SECTIONS 321-328

Present law

No provision.

Explanation of provisions

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

Section 321 provides that a request for safeguard relief under this subtitle may be filed with the President by an interested party. The President must review the request and determine whether to commence consideration of the request. Under Section 321(b), if the President determines that the request contains information necessary to warrant consideration on the merits, the President must provide notice stating that the request will be considered and seeking public comments on the request.

Section 322(a) provides that the President shall determine, pursuant to a request by an interested party, whether, as a result of the elimination or reduction of a duty provided under the Peru FTA, a Peruvian textile or apparel article is being imported into

the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. The President must make this determination within 30 days after the completion of consultations held pursuant to Article 3.1.5 of the Agreement.

Section 322(b) sets forth the relief that the President may provide, which is an increase in the rate of duty on the articles in question to a level that does not exceed the lesser of the existing NTR (MFN) rate or the NTR (MFN) rate of duty that was imposed on the day before the Agreement entered into force.

Section 323 of the bill provides that the period of relief shall be no longer than two years. The period may be extended for an additional period not more than one year, if the President determines that continuation is necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry and there is evidence the industry is making a positive adjustment. The aggregate period of relief, including any extension, may not exceed three years.

Section 324 provides that relief may not be granted to an article under this subtitle if relief has previously been granted under this subtitle for that article, or the article is subject to import relief under Subtitle A of Title III of this bill or under Chapter 1 of Title II of the Trade Act of 1974.

Under Section 325, after a safeguard expires, the rate of duty on the article that had been subject to the safeguard shall be the rate that would have been in effect, but for the safeguard action.

Section 326 provides that the authority to provide safeguard relief under this subtitle expires five years after the date on which the Agreement enters into force.

Section 327 authorizes the President to provide compensation to Peru if relief is ordered.

Section 328 provides for the treatment of confidential business information.

Reason for change

This provision implements the commitments under the Peru FTA relating to textile and apparel safeguard measures. The Committee intends that the provisions of subtitle B be administered in a manner that is transparent and that will serve as an example to our trading partners. In addition, the Committee encourages the President promptly to issue regulations on procedures for requesting such safeguard measures, for making determinations under section 322(a), and for providing relief under section 322(b).

SUBTITLE C: CASES UNDER TITLE II OF THE TRADE ACT OF 1974

SECTION 331: FINDINGS AND ACTION ON GOODS FROM PERU

Present law

No provision.

Explanation of provision

Section 331(a) provides that if the ITC makes an affirmative determination, or a determination that the President may consider to be an affirmative determination, in a global safeguard investigation under Section 202(b) of the Trade Act of 1974, the ITC must find and report to the President whether Peruvian imports of the article that qualify as originating goods under the Peru FTA are a substantial cause of serious injury or threat thereof. Under Section 331(b), if the ITC makes a negative finding under Section 331(a), the President may exclude any imports that are covered by the ITC's finding from the global safeguard action.

Reason for change

This provision implements commitments under the Peru FTA relating to treatment of Peruvian imports in global safeguard investigations under Section 202(b) of the Trade Act of 1974.

TITLE IV: PROCUREMENT

SECTION 401: GOVERNMENT PROCUREMENT

Present law

No provision.

Explanation of provision

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

Reason for change

This provision implements U.S. commitments under Chapter 9 of the Peru FTA (Government Procurement).

TITLE V: TRADE IN TIMBER PRODUCTS OF PERU

SECTIONS 501-502

Present law

No provision.

Explanation of provision

Sections 501-502 implement obligations set out in Annex 18.3.4 to the Peru FTA (Annex on Forest Sector Governance). Section 501(a) provides that, within 90 days of entry into force of the agreement, the President shall establish an interagency committee responsible for overseeing the implementation of the Annex on Forest Sector Governance.

Section 501(b) authorizes the interagency committee to request the Government of Peru to conduct an audit to determine whether a particular producer or exporter in Peru is complying with all applicable Peruvian laws, regulations and measures governing the harvest of, and trade in, timber products.

Section 501(c) also authorizes the interagency committee to request the Government of Peru to conduct a verification with respect to a particular shipment of timber products from Peru to the United States, to determine whether the exporter or producer of the products has complied with the applicable Peruvian laws, regulations and measures governing the harvest of, and trade in, timber products. The interagency committee may request that officials of an agency represented on the committee participate in a verification visit conducted by the Government of Peru. While a verification is pending, the interagency committee may direct U.S. Customs and Border Protection to detain the shipment that is the subject of the verification. If the Government of Peru has denied a request that a U.S. government official participate in a verification visit, the interagency committee may also direct U.S. Customs and Border Protection to deny entry to the shipment that is the subject of the verification.

Upon receipt of a report of the results of a verification from the Government of Peru, the interagency committee shall determine whether it is appropriate to take any action with respect to the shipment that was the subject of the verification, or the products of the relevant producer or exporter. Under paragraph 7 of Section 501(c), appropriate actions may include: (1) directing U.S. Customs and Border Protection to deny entry to the shipment, (2) directing U.S Customs and Border Protection to deny entry to any products of the producer or exporter derived from any tree species listed in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora in those cases in which a producer or exporter is found to have knowingly provided false information to Peruvian or U.S. officials regarding a shipment, and (3) any other action the interagency committee determines to be appropriate. In determining the appropriate action to take, and duration thereof, the interagency committee must consider any

relevant information available to it, including the verification report from the Government of Peru and any information obtained by U.S. officials during a verification visit. Any appropriate action is to terminate no later than the date notified by the interagency committee to the Government of Peru or, if the Government of Peru conducts an audit and concludes that the subject of the audit has come into compliance with all applicable laws, regulations, and other measures of Peru governing the harvest of, and trade in, timber products, within 15 days after the Government of Peru submits the results of such an audit to the United States.

If the Government of Peru fails to provide a verification report, the interagency committee may take such action with respect to the relevant exporter's timber products as the committee considers appropriate, including any action described in paragraph 7 of Section 501(c).

Section 501(d) provides for confidential treatment of documents or information received in the course of an audit under Section 501(b) or a verification under Section 501(c). Section 501(e) directs the interagency committee to make publicly available in a timely manner any information on bilateral trade in timber products exchanged with Peru under paragraph 17 of Annex 18.3.4 of the Peru FTA.

Section 501(f) addresses coordination with other laws, including with respect to the authority of various administering agencies and the effect on proceedings and determinations under other laws.

Section 501(g) directs the Secretary of Agriculture, the Secretary of Homeland Security, the Secretary of the Interior, and the Secretary of the Treasury, in consultation with the interagency committee, to prescribe such regulations as are necessary to carry out Section 501. In addition, Section 501(h) provides that, within 90 days of entry into force of the Peru FTA, the President shall consult with the Ways and Means and Finance Committees on the resources, including staffing, needed to implement Annex 18.3.4 of the Agreement.

Section 502 directs the USTR, in consultation with the appropriate agencies, to report to the Ways and Means and Finance Committees regarding implementation of Annex 18.3.4 of the Peru FTA and activities related to forest sector governance carried out under the Environmental Cooperation Agreement entered into between the United States and Peru on July 24, 2006. Reports are to be provided by the end of each of the first and second years following entry into force of the Peru FTA and periodically thereafter.

Reason for change

These provisions implement obligations under Annex 18.3.4 to the Peru FTA (Annex on Forest Sector Governance). As noted above, this Annex, negotiated as a result of the May 10 Agreement, addresses the problem of illegal logging in Peru. Peru lies at the heart of the Tropical Andes and is one of the most biologically rich and diverse eco-

regions in world. Illegal logging poses a severe threat to Peru's irreplaceable plant and animal communities. The Committee notes the critical importance of stopping this practice of illegal logging. The Annex on Forest Sector Governance and Sections 501-502 of this Act provide groundbreaking new tools for the United States to use in that fight. The Committee expects that the President and the interagency committee will make the fullest possible use of these tools to ensure that the commitments under the Annex on Forest Sector Governance are being faithfully implemented and enforced and that any violation of the applicable Peruvian laws, regulations and measures governing the harvest of, and trade in, timber products is addressed.

The Committee also notes the requirement under Section 502 for the USTR to report to the Ways and Means and Finance Committees regarding implementation of obligations under the Annex on Forest Sector Governance. Given the critical importance of addressing the problem of illegal logging, the Committee expects that the USTR will provide timely, frequent and thorough reports regarding implementation of the obligations both of Peru and the United States (for example, regarding the work of the interagency committee, regulations to implement the obligations under the agreement, cases considered by the interagency committee and the Peruvian authorities and their resolution, audits and verifications conducted, and other related matters).

TITLE VI: OFFSETS

SECTION 601: CUSTOMS USER FEES

Present Law

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") authorized the Secretary of the Treasury to collect certain service fees. Section 412 of the Homeland Security Act of 2002 authorized the Secretary of the Treasury to delegate such authority to the Secretary of Homeland Security. Provided for under 19 U.S.C. 58c, these fees include: processing fees for air and sea passengers, commercial trucks, rail cars, private aircraft and vessels, commercial vessels, dutiable mail packages, barges and bulk carriers, merchandise, and Customs broker permits. COBRA was amended on several occasions. The current authorization for the collection of the passenger and conveyance processing fees is through September 30, 2014. The current authorization for the collection of the merchandise processing fees is through October 21, 2014.

Description of Proposal

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

Reason for Change

The Committee believes it is appropriate to extend the passenger and conveyance processing fees and the merchandise processing fees authorized under COBRA.

SECTION 602: TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES

Present Law

In general, corporations are required to make quarterly estimated tax payments of their income tax liability. For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15.

Under present law, in the case of a corporation with assets of at least $1 billion, the payments due in July, August, and September, 2012, shall be increased to 115 percent of the payment otherwise due and the next required payment shall be reduced accordingly.

Explanation of Provision

The provision increases the percentage by 0.75 of a percentage point, from 115 percent to 115.75 percent.

Reason for Change

The Committee believes it is appropriate to adjust the corporate estimated tax payments.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the vote of the Committee on Ways and Means in its consideration of the bill H.R. 3688.

MOTION TO REPORT THE BILL

The bill, H.R. 3688, was ordered favorably reported by a roll call vote of 39 yeas to 0 nays (with a quorum being present). The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. RANGEL.....	x			Mr. MCCRERY.....	x		
Mr. STARK.....	x			Mr. HERGER.....	x		
Mr. LEVIN.....	x			Mr. CAMP.....	x		
Mr. MCDERMOTT...	x			Mr. RAMSTAD.....	x		

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. LEWIS (GA)...	x			Mr. JOHNSON.....	x		
Mr. NEAL.....	x			Mr. ENGLISH.....	x		
Mr. MCNULTY.....	x			Mr. WELLER.....			
Mr. TANNER.....	x			Mr. HULSHOF.....	x		
Mr. BECERRA.....	x			Mr. LEWIS (KY)...	x		
Mr. DOGGETT.....	x			Mr. BRADY.....	x		
Mr. POMEROY.....	x			Mr. REYNOLDS....	x		
Ms. TUBBS JONES...	x			Mr. RYAN.....	x		
Mr. THOMPSON.....	x			Mr. CANTOR.....	x		
Mr. LARSON.....	x			Mr. LINDER.....	x		
Mr. EMANUEL.....	x			Mr. NUNES.....	x		
Mr. BLUMENAUER.	x			Mr. TIBERI.....	x		
Mr. KIND.....	x			Mr. PORTER.....	x		
Mr. PASCRELL	x						
Ms. BERKLEY							
Mr. CROWLEY	x						
Mr. VAN HOLLEN	x						
Mr. MEEK	x						
Ms. SCHWARTZ	x						
Mr. DAVIS	x						

IV. BUDGET EFFECTS

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d)(2) of the rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of this bill, H.R. 3688, as reported: The Committee agrees with the estimate prepared by the Congressional Budget Office ("CBO") which is included below.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with subdivision 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the provisions of H.R. 3688 would reduce customs duty receipts due to lower tariffs imposed on goods from Peru.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by CBO, the following report prepared by CBO is provided.

[INSERT CBO LETTER]

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee, based on public hearing testimony and information from the Administration, concluded that it is appropriate and timely to consider H.R. 3688 as reported.

B. SUMMARY OF FINDINGS AND RECOMMENDATIONS OF THE GOVERNMENT REFORM AND OVERSIGHT COMMITTEE

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of the part of this legislation that authorizes funding are for (a) the payment of the U.S. share of the expenses incurred in dispute settlement proceedings established under Chapter 21 of the Peru FTA and (b) the establishment and operation of an office within the Department of Commerce responsible for providing assistance to the panels in such proceedings.

C. CONSTITUTIONAL AUTHORITY STATEMENT

With respect to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, relating to Constitutional Authority, the Committee states that the Committee's action in reporting the bill is derived from Article 1 of the Constitution, Section 8 ('The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and to provide for * * * the general Welfare of the United States.')

D. INFORMATION RELATION TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4) ("UMRA"). The Committee has determined that the non-tax provisions of the bill do impose federal mandates on the private sector by extending the customs user fees and by enforcing new record-keeping requirements on exporters of goods to Peru. The aggregate costs of those mandates will exceed the annual threshold established in UMRA for private-sector mandates ($131 million in 2007, adjusted annually for inflation) in 2015.

CONGRESSIONAL BUDGET OFFICE
U.S. Congress
Washington, DC 20515

Peter R. Orszag, Director

November 2, 2007

Honorable Charles B. Rangel
Chairman
Committee on Ways and Means
US House of Representatives
Washington, DC 20510

Dear Mr. Chairman:

The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3688, the United States-Peru Trade Promotion Agreement Implementation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Zachary Epstein, who can be reached at 226-2680.

Sincerely,

for Peter R. Orszag

Enclosure

cc: Honorable Jim McCrery
Ranking Member

CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

November 2, 2007

H.R. 3688

United States-Peru Trade Promotion Agreement Implementation Act

As ordered reported by the House Committee on Ways and Means on October 31, 2007

SUMMARY

H.R. 3688 would approve the free trade agreement between the government of the United States and the government of Peru that was entered into on April 12, 2006. It would provide for tariff reductions and other changes in law related to implementation of the agreement. It also would shift some corporate income tax payments between fiscal years.

The Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) estimate that enacting the legislation would reduce revenues by $20 million in 2008, increase revenues by $292 million over the 2008-2012 period, and reduce revenues by $423 million over the 2008-2017 period. CBO estimates that enacting H.R. 3688 also would increase direct spending by $4 million in 2008 and by $27 million over the 2008-2012 period, and reduce direct spending by $443 million over the 2008-2017 period. Further, CBO estimates that implementing the legislation would result in new discretionary spending of less than $500,000 per year, assuming the availability of appropriated funds.

CBO and JCT have determined that the bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO has determined that the non-tax provisions of the bill contain private-sector mandates with costs that would greatly exceed the annual threshold established in UMRA for private-sector mandates ($131 million in 2007, adjusted annually for inflation) in fiscal year 2015. JCT has determined that the tax provision of the bill (section 602) contains no private-sector mandate as defined in UMRA.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of the legislation over the 2008-2017 period is shown in the following table. The cost of this legislation falls within budget function 750 (administration of justice).

	By Fiscal Year, in Millions of Dollars											
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2008-2012	2008-2017
CHANGES IN REVENUES												
Free Trade Agreement	-20	-35	-37	-39	-41	-44	-47	-50	-53	-56	-173	-423
Payment of Corporate Estimated Tax	0	0	0	0	465	-465	0	0	0	0	465	0
Total Changes in Revenues	-20	-35	-37	-39	424	-509	-47	-50	-53	-56	292	-423
CHANGES IN DIRECT SPENDING												
Customs User Fees												
Estimated Budget Authority	4	5	6	6	6	7	7	-484	0	0	27	-443
Estimated Outlays	4	5	6	6	6	7	7	-484	0	0	27	-443

Sources: Congressional Budget Office and Joint Committee on Taxation.

BASIS OF ESTIMATE

Revenues

Under the United States-Peru agreement, tariffs on U.S. imports from Peru would be phased out over time. The tariffs would be phased out for individual products at varying rates according to one of several different timetables ranging from immediate elimination on the date the agreement enters into force to gradual elimination over 10 years.

According to the U.S. International Trade Commission, the United States collected about $5 million in customs duties in 2006 on $6 billion of imports from Peru. However, since 1991, imports to the United States from Peru have been subject to reduced tariff rates in accordance

with the Andean Trade Preference Act (ATPA), which was expanded in legislation enacted in 2002, and is currently scheduled to expire on February 29, 2008. The ATPA overlaps to a large extent with the free trade agreement that would be implemented by this bill. As a result, enacting the bill would effectively extend the ATPA for Peru after February 29, 2008, while also lowering tariff rates not covered by the ATPA. Based on expected imports from Peru, CBO estimates that implementing the tariff schedule outlined in the U.S.-Peru agreement would reduce revenues by $20 million in 2008, by $173 million over the 2008-2012 period, and by $423 million over the 2008-2017 period, net of income and payroll tax offsets.

This estimate includes the effects of increased imports from Peru that would result from the reduced prices of imported products in the United States, reflecting the lower tariff rates. It is likely that some of the increase in U.S. imports from Peru would displace imports from other countries. In the absence of specific data on the extent of this substitution effect, CBO assumes that an amount equal to one-half of the increase in U.S. imports from Peru would displace imports from other countries.

H.R. 3688 would also shift payments of corporate estimated taxes between 2012 and 2013. For corporations with at least $1 billion in assets, the bill would increase the portion of corporate estimated payments due from July through September of 2012. JCT estimates that this change would increase revenues by $465 billion in 2012 and decrease revenues by $465 billion in 2013.

Direct Spending

Under current law, customs user fees will expire either after October 7, 2014 (for COBRA fees) or after October 21, 2014 (for merchandise processing fees). Such fees are recorded in the budget as offsetting receipts (a credit against direct spending). H.R. 3688 would extend both COBRA fees and merchandise processing fees through December 13, 2014. CBO estimates that this provision would increase offsetting receipts by $485 million in fiscal year 2015.

In addition, the bill would exempt certain goods imported from Peru from merchandise processing fees. Based on the value of goods imported from Peru in 2007, CBO estimates that implementing this provision would reduce fee collections by about $4 million in fiscal year 2008 and by about $42 million over the 2008-2015 period. There would be no effects after December 13, 2014, because fees expire after that date.

Spending Subject to Appropriation

Title I of the bill would authorize the appropriation of necessary funds for the Department of Commerce to pay the United States' share of the costs of the dispute settlement procedures established by the agreement. Based on information from the agency, CBO estimates that implementing this provision would cost less than $500,000 per year, subject to the availability of appropriated funds.

Title III would authorize the International Trade Commission (ITC) to conduct investigations, if petitioned, into whether Peruvian imports might threaten or cause serious injury to domestic competitors. The ITC would report to the President on its findings and determinations, and if necessary, recommend the appropriate amount of import relief. Based on information from the agency, CBO estimates that implementing these provisions would cost less than $500,000 per year, subject to the availability of appropriated funds.

Title V would require the United States Trade Representative to prepare a report for Congress regarding activities carried out to promote legal trade in timber products as stipulated in the agreement. CBO estimates that complying with this reporting requirement also would cost less than $500,000 per year.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

CBO and JCT have determined that the provisions of H.R. 3688 contain no intergovernmental mandates as defined in UMRA.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

CBO has determined that the non-tax provisions of H.R. 3688 would impose private-sector mandates, as defined in UMRA, by extending the customs user fees and by enforcing new record-keeping requirements on exporters of goods to Peru. The aggregate costs of those mandates would greatly exceed the annual threshold established in UMRA for private-sector mandates ($131 million in 2007, adjusted annually for inflation) in 2015. JCT has determined that the tax provision of the bill (section 602) contains no private-sector mandate as defined in UMRA.

Customs User Fees

The bill would extend through December 13, 2014 the customs user fees that are scheduled to expire on October 7, 2014 or October 21, 2014. These fees are used to fund the processing costs of the U.S. Customs Service. CBO estimates that the aggregate cost to the private sector to comply with this mandate relative to the case where the mandate is allowed to expire would be about $485 million in fiscal year 2015.

Record-Keeping Requirement

The bill also would require any person exporting goods to Peru who is required to complete a certificate of origin to keep all documents that relate to the origin of goods being certified for at least five years after the date of certification. CBO estimates that the cost of that record-keeping requirement for the private sector would be minimal.

PREVIOUS CBO ESTIMATE

On October 24, 2007, CBO transmitted a cost estimate of S. 2113, an identically titled bill ordered reported by the Senate Committee on Finance on October 4, 2007. The provisions of S. 2113 and H.R. 3688 are identical, as are CBO's estimates.

ESTIMATE PREPARED BY:

Federal Revenues: Andrew Langan (226-2680), Zachary Epstein (226-2680)
Direct Spending: Mark Grabowicz (226-2860)
Spending Subject to Appropriation: Susan Willie (226-2860), Sunita D'Monte (226-2840)
Impact on State, Local, and Tribal Governments: Neil Hood (226-3220)
Impact on the Private Sector: Jacob Kuipers (226-2940)

ESTIMATE APPROVED BY:

G. Thomas Woodward
Assistant Director for Tax Analysis

Theresa Gullo
Deputy Assistant Director for Budget Analysis

The Committee has determined that the bill does not impose a federal intergovernmental mandate on State, local, or tribal governments.

E. LIMITED TAX BENEFITS

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Ways and Means Committee has determined that the bill as reported contains no congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of that Rule.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

[INSERT RAMSEYER REPORT]

VII. VIEWS

[INSERT ADDITIONAL VIEWS]

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 13031 OF THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) * * *

(b) LIMITATIONS ON FEES.—(1) * * *

* * * * * * *

(18) No fee may be charged under subsection (a) (9) or (10) with respect to goods that qualify as originating goods under section 203 of the United States-Peru Trade Promotion Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

* * * * * * *

(j) EFFECTIVE DATES.—(1) * * *

* * * * * * *

(3)(A) Fees may not be charged under paragraphs (9) and (10) of subsection (a) after [October 21, 2014] *December 13, 2014.*

(B)(i) Subject to clause (ii), Fees may not be charged under paragraphs (1) through (8) of subsection (a) after [October 7, 2014] *December 13, 2014.*

* * * * * * *

TARIFF ACT OF 1930

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SEC. 508. RECORDKEEPING.

(a) * * *

* * * * * * *

(h) CERTIFICATIONS OF ORIGIN FOR GOODS EXPORTED UNDER THE UNITED STATES-PERU TRADE PROMOTION AGREEMENT.—

(1) DEFINITIONS.—In this subsection:

(A) RECORDS AND SUPPORTING DOCUMENTS.—The term "records and supporting documents" means, with respect to an exported good under paragraph (2), records and documents related to the origin of the good, including—

(i) the purchase, cost, and value of, and payment for, the good;

(ii) the purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

(iii) the production of the good in the form in which it was exported.

(B) PTPA CERTIFICATION OF ORIGIN.—The term "PTPA certification of origin" means the certification established under article 4.15 of the United States-Peru Trade Promotion Agreement that a good qualifies as an originating good under such Agreement.

(2) EXPORTS TO PERU.—Any person who completes and issues a PTPA certification of origin for a good exported from the United States shall make, keep, and, pursuant to rules and regulations promulgated by the Secretary of the Treasury, render for examination and inspection all records and supporting documents related to the origin of the good (including the certification or copies thereof).

(3) RETENTION PERIOD.—The person who issues a PTPA certification of origin shall keep the records and supporting documents relating to that certification of origin for a period of at least 5 years after the date on which the certification is issued.

[(h)] *(i)* PENALTIES.—Any person who fails to retain records and supporting documents required by subsection [(f) or (g)] *(f), (g), or (h)* or the regulations issued to implement [either such subsection] *any such subsection* shall be liable for the greater of—

(1) * * *

* * * * * * *

SEC. 514. PROTEST AGAINST DECISIONS OF THE CUSTOMS SERVICE.

(a) * * *

* * * * * * *

(i) DENIAL OF PREFERENTIAL TARIFF TREATMENT UNDER THE UNITED STATES-PERU TRADE PROMOTION AGREEMENT.—If U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement of the Department of Homeland Security finds indications of a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the rules of origin provided for in section 203 of the United States-Peru Trade Promotion Agreement Implementation Act, U.S. Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may suspend preferential tariff treatment under the United States-Peru Trade Promotion Agreement to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until U.S. Customs and Border Protection determines that representations of that person are in conformity with such section 203.

* * * * * * *

SEC. 520. REFUNDS AND ERRORS.

(a) * * *

* * * * * * *

(d) GOODS QUALIFYING UNDER FREE TRADE AGREEMENT RULES OF ORIGIN.—Notwithstanding the fact that a valid protest was not filed, the Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to refund any excess duties (including any merchandise processing fees) paid on a good

qualifying under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act, section 202 of the United States-Chile Free Trade Agreement Implementation Act, section 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, [or] section 202 of the United States-Oman Free Trade Agreement Implementation Act [for which], *or section 203 of the United States-Peru Trade Promotion Agreement Implementation Act for which* no claim for preferential tariff treatment was made at the time of importation if the importer, within 1 year after the date of importation, files, in accordance with those regulations, a claim that includes—

(1) * * *

* * * * * * *

SEC. 592. PENALTIES FOR FRAUD, GROSS NEGLIGENCE, AND NEGLIGENCE.

(a) * * *

* * * * * * *

(c) MAXIMUM PENALTIES.—

(1) * * *

* * * * * * *

(10) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE UNITED STATES–PERU TRADE PROMOTION AGREEMENT.—An importer shall not be subject to penalties under subsection (a) for making an incorrect claim that a good qualifies as an originating good under section 203 of the United States-Peru Trade Promotion Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, promptly and voluntarily makes a corrected declaration and pays any duties owing with respect to that good.

[(10)] *(11)* SEIZURE.—If the Secretary has reasonable cause to believe that a person has violated the provisions of subsection (a) and that such person is insolvent or beyond the jurisdiction of the United States or that seizure is otherwise essential to protect the revenue of the United States or to prevent the introduction of prohibited or restricted merchandise into the customs territory of the United States, then such merchandise may be seized and, upon assessment of a monetary penalty, forfeited unless the monetary penalty is paid within the time specified by law. Within a reasonable time after any such seizure is made, the Secretary shall issue to the person concerned a written statement containing the reasons for the seizure. After seizure of merchandise under this subsection, the Secretary may, in the case of restricted merchandise, and shall, in the case of any other merchandise (other than prohibited merchandise), return such merchandise upon the deposit of security not to exceed the maximum monetary penalty which may be assessed under subsection (c).

* * * * * * *

(i) FALSE CERTIFICATIONS OF ORIGIN UNDER THE UNITED STATES-PERU TRADE PROMOTION AGREEMENT.—

(1) IN GENERAL.—Subject to paragraph (2), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a PTPA certification of origin (as defined in section 508(h)(1)(B) of this Act) that a good exported from the United States qualifies as an originating good under the rules of origin provided for in section 203 of the United States-Peru Trade Promotion Agreement Implementation Act. The procedures and penalties of this section that apply to a violation of subsection (a) also apply to a violation of this subsection.

(2) PROMPT AND VOLUNTARY DISCLOSURE OF INCORRECT INFORMATION.—No penalty shall be imposed under this subsection if, promptly after an exporter or producer that issued a PTPA certification of origin has reason to believe that such certification contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certification was issued.

(3) EXCEPTION.—A person shall not be considered to have violated paragraph (1) if—

(A) the information was correct at the time it was provided in a PTPA certification of origin but was later rendered incorrect due to a change in circumstances; and

(B) the person promptly and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certification.

* * * * * * *

SECTION 202 OF THE TRADE ACT OF 1974

SEC. 202. INVESTIGATIONS, DETERMINATIONS, AND RECOMMENDATIONS BY COMMISSION.

(a) PETITIONS AND ADJUSTMENT PLANS.—

(1) * * *

* * * * * * *

(8) The procedures concerning the release of confidential business information set forth in section 332(g) of the Tariff Act of 1930 shall apply with respect to information received by the Commission in the course of investigations conducted under this chapter, part 1 of title III of the North American Free Trade Agreement Implementation Act, title II of the United States-Jordan Free Trade Area Implementation Act, title III of the United States-Chile Free Trade Agreement Implementation Act, title III of the United States-Singapore Free Trade Agreement Implementation Act, title III of the United States-Australia Free Trade Agreement Implementation Act, title III of the United States-Morocco Free Trade Agreement Implementation Act, title III of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, title III of the United States-Bahrain Free Trade Agreement Implementation Act, [and] title III of the United States-Oman Free Trade Agreement Implementation Act, *and title III of the United States-Peru Trade Promotion Agreement Implementation Act*. The Commission may request that parties

providing confidential business information furnish nonconfidential summaries thereof or, if such parties indicate that the information in the submission cannot be summarized, the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

* * * * * * *

SECTION 308 OF THE TRADE AGREEMENTS ACT OF 1979

SEC. 308. DEFINITIONS.

As used in this title—

(1) * * *

* * * * * * *

(4) ELIGIBLE PRODUCTS.—

(A) IN GENERAL.—The term "eligible product" means, with respect to any foreign country or instrumentality that is—

(i) * * *

* * * * * * *

(v) a party to a free trade agreement that entered into force with respect to the United States after December 31, 2005, and before July 2, 2006, a product or service of that country or instrumentality which is covered under the free trade agreement for procurement by the United States; **[or]**

(vi) a party to the United States-Oman Free Trade Agreement, a product or service of that country or instrumentality which is covered under that Agreement for procurement by the United States**[.]***; or*

(vii) a party to the United States-Peru Trade Promotion Agreement, a product or service of that country or instrumentality which is covered under that agreement for procurement by the United States.

* * * * * * *

SECTION 401 OF THE TAX INCREASE PREVENTION AND RECONCILIATION ACT OF 2005

SEC. 401. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

Notwithstanding section 6655 of the Internal Revenue Code of 1986—

(1) in the case of a corporation with assets of not less than $1,000,000,000 (determined as of the end of the preceding taxable year)—

(A) * * *

(B) the amount of any required installment of corporate estimated tax which is otherwise due in July, Au-

gust, or September of 2012 shall be [115 percent] *115.75 percent* of such amount,

* * * * * * *

ADDITIONAL VIEWS ON H.R. 3688, THE "UNITED STATES-PERU TRADE PROMOTION AGREEMENT IMPLEMENTATION ACT"

A. Introduction

We are pleased to join with our colleagues across the aisle to support the Peru Trade Promotion Agreement (PTPA). We write these additional views to: (1) put the debate on the United States-Peru Trade Promotion Agreement (PTPA) in the context of our complete trade agenda; (2) highlight some of the commercial benefits of the PTPA for American businesses, workers, farmers, ranchers, and consumers; and (3) explain why the PTPA and the other pending Free Trade Agreements (FTA) with Colombia and Panama are so important for promoting stability and economic development in these countries and in Latin America, not to mention the importance of the pending FTA with our 7th largest trading partner, Korea.

B. Peru and the Entire U.S. Trade Agenda

On May 10, 2007, Congressional Republicans and the Administration agreed to a "bipartisan trade deal" with Congressional Democrats to consider trade agreements on a bipartisan basis and improve our trading partners' standards for labor, environmental, intellectual property rights, port security, and investment. We believe that agreement is a good and fair compromise that takes into account the concerns of all parties. The breakthrough addresses concerns about labor, the environment, and other issues without compromising American sovereignty or jeopardizing future trade agreements. It will improve our trading partners' standards on labor, environmental regulation, intellectual property, port security, and investment. In short, this agreement balances long-standing concerns of Democrats and Republicans with a continuing bipartisan commitment to free trade, which has improved the economy and raised standards of living here in the United States and around the world. The text of the agreement is now reflected in all of our pending free trade agreements (Peru, Colombia, Panama, and Korea). We strongly believe that this agreement should pave the way for moving forward on all of the pending free trade agreements without delay.

In June 2007, Peru's legislature overwhelmingly approved a Protocol of Amendment to the PTPA reflecting the terms of the May 10th deal; Peru had already approved the original PTPA last year. Over the last few months, Peru has been implementing all of the required labor obligations described below in the PTPA, despite the unprecedented demand by Congressional Democrats that a U.S. FTA partner do so before Congressional consideration.

As amended by the May 10th deal, the PTPA will do the following:

- The PTPA requires the parties to comply with internationally recognized core labor standards, as defined by the 1998 ILO Declaration on Fundamental

Principles and Rights at Work, to which the United States is already in compliance. Peru, under the leadership of President Garcia and former President Toledo, has consistently been making massive strides in the last several years to improve its labor conditions, and the PTPA reaffirms Peru's commitment and cements these improvements within the context of the agreement. At the same time, U.S. federal and state laws are protected.

- The PTPA will improve environmental enforcement in Peru with no new obligations for the United States. The United States and Peru commit to enforce their own domestic environmental laws and also seven multilateral environment agreements to which the United States is already a party in full compliance. The PTPA also establishes a process to prevent the imports of illegally harvested mahogany from Peru.
- The PTPA balances the interest in access to medicines in Peru with need to encourage development and sales of innovative medicines.
- The PTPA allows the United States to prevent an investor from providing port security services if the U.S. essential security is threatened.
- The PTPA recognizes that foreign investors in the United States will not be accorded greater investment protections than U.S. investors in the United States.

C. New Market Opportunities for American Businesses and Workers

The PTPA promises to provide significant economic benefits to American businesses, workers, farmers, ranchers, and consumers. The United States already provides duty-free access to almost all imports from Peru under the Andean Trade Preferences and Drug Eradication Act. However, Peru continues to maintain significant tariffs and other barriers to U.S. exports of goods and services.

U.S. exports to Peru currently face an average tariff of 8% and many exports face tariffs of up to 70 percent. Additionally, U.S. service sector firms are subject to employment and investment restrictions in Peru. The PTPA will remedy the unequal treatment faced by U.S. exporters. Immediately upon implementation the average tariff faced by U.S. exports will decline by 72%. The U.S. International Trade Commission estimates that the market access provisions of the PTPA alone will increase U.S. exports by $1.1 billion. Because the PTPA also improves access for U.S. services exports and investment, the actual increase in U.S. exports should be much larger. Indeed, U.S. exports to every country with which the United States has implemented a free trade agreement under Trade Promotion Authority has exceeded the ITC's estimate.

The PTPA will benefit small and medium sized American businesses that rely on Peru as an important export market. While small and medium size businesses account for 29% of total U.S. exports, they account for 38% of U.S. exports to Peru. The PTPA will benefit America's farmers and ranchers, as more than two-thirds of Peru's tariffs on U.S. agriculture exports are removed immediately.

The PTPA will also improve the position of U.S. businesses competing in Peru against imports from third-countries. Peru maintains preferential trading programs with several of its South American neighbors. The PTPA turns this disadvantage into an advantage, as U.S. firms will receive even better market access. For example, U.S. exporters of wheat and white corn currently pay a 17% tariff in Peru, while Argentina pays only 3.4% and controls two-thirds of Peru's market. The PTPA will eliminate the 17% tariff on U.S. exports, while Argentina will still be subject to the 3.4% duty.

The implementation of PTPA will further the positive economic impact of free trade agreements on U.S. businesses and workers. The U.S. trade balance with the twelve countries with which free trade agreements were implemented under TPA have improved by 162 percent, swinging from a deficit to a surplus of $13.9 billion. The implantation of the PTPA, and the free trade agreements with Colombia, Panama, and Korea, will continue to increase U.S. exports and improve the U.S. trade balance.

D. Promoting Stability and Economic Development in Peru and Latin America

Peru has resisted the efforts of Venezuela's authoritarian President Hugo Chavez to wage a war of words and ideas in Latin America against the United States. Chavez has promoted restricting free markets and increasing the role of the state in the economy, and his demagogic actions ultimately harm the people he purports to help by eliminating investment and job creation. His troubling and short-sighted economic policies would leave Latin American economies in ruins and condemn the people to a generation of poverty. Peru's market-oriented policies under former President Toledo and current President Garcia have made that country one of the world's fastest-growing emerging economies.

Chavez blatantly tried to intervene in Peru's democratic elections, espousing sentiments against the United States and the principles for which America stands—democracy, free markets, liberty. On June 4, 2006, Peruvian voters decisively rejected Chavez's candidate in Peru, Ollanta Humala, and instead chose Alan Garcia to be their next President. The election was a clear sign of support from the people of Peru that they reject Chavez's fiery populism and instead support continuing Peru's current policies of economic engagement with the United States and market reform.

On June 28, 2006, Peru's legislature followed the direction set by its electorate and overwhelmingly approved the PTPA by a vote of 79-14, with the full support of members of then President-elect Garcia's political party. On June 27, 2007, Peru's legislature voted to approve a Protocol of Amendment to the PTPA, reflecting the May 10th bipartisan trade deal, by a vote of 70 to 38. It is past time for the U.S. Congress to respond positively to these strong Peruvian actions by immediately passing the PTPA by a strong bipartisan vote.

The PTPA and the pending FTAs with Panama and Colombia are an important part of promoting democracy and economic stability in Latin America. Congressional passage and implementation of all three of these FTAs will help these countries continue

to provide a positive alternative to the efforts by Venezuelan President Hugo Chavez to restrict free markets and increase the role of the state in Latin America. Not giving these FTAs the broad, bipartisan, and immediate support they deserve from the U.S. Congress would only strengthen the hand of Chavez, support radical policies in neighboring Bolivia and Ecuador, and undermine U.S. foreign policy in the region.

E. Conclusion

We are glad that, more than five and a half months after Congressional Democrats agreed to the May 10th "bipartisan trade deal" with the Administration and Congressional Republicans, we are finally moving the PTPA to the House floor. But we would note that the Majority has made no commitments on the other three pending FTAs with Colombia, Panama, and Korea. It is time for us to act on these FTAs as well. Each day we fail to do so delays the ability of our businesses, workers, farmers, ranchers, and consumers to begin to reap the same types of commercial benefits and legal protections that they will vis-à-vis Peru.

Signed:

Jim McCrery
Wally Herger
Jim Ramstad
Jerry Weller
Kenny Hulshof
Ron Lewis
Kevin Brady
Paul Ryan
Eric Cantor
Pat Tiberi
Jon Porter

H.R. 3688, the "United States-Peru Trade Promotion Agreement Implementation Act"
Additional Republican Views

Jim McCrery

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