

**STATEMENT ON HOW  
THE UNITED STATES – PERU TRADE PROMOTION AGREEMENT  
MAKES PROGRESS IN ACHIEVING  
U.S. PURPOSES, POLICIES, OBJECTIVES, AND PRIORITIES**

**A. INTRODUCTION**

The United States – Peru Trade Promotion Agreement (“Agreement”) makes progress in achieving the applicable purposes, policies, objectives, and priorities of the Bipartisan Trade Promotion Authority Act of 2002 (“TPA Act”). In addition, the Agreement reflects the bipartisan consensus on trade achieved in May 2007. This Statement describes how and to what extent the Agreement makes progress in achieving the applicable purposes, policies, objectives, and priorities.

The Agreement marks the beginning of a new chapter in our commercial partnership with Peru. Since 1991, the U.S. commercial relationship with Peru has been driven by the unilateral preferences the United States has provided under the Andean Trade Preference Act. Peru has benefited significantly from this program, which was designed to promote broad-based economic development and provide sustainable economic alternatives to drug-crop production in the Andean region. The Agreement makes preferential access to the U.S. market for Peruvian goods permanent. At the same time, however, it makes trade between the two countries a two-way street.

The Agreement will create significant new opportunities for American workers, farmers, businesses, and consumers by eliminating barriers to trade with Peru. As detailed below, approximately 80 percent of U.S. exports of consumer and industrial goods will become duty-free immediately when the Agreement enters into force. An additional seven percent will be duty-free within five years. All remaining tariffs on consumer and industrial goods will be eliminated within ten years. In particular, trade in all textile and apparel goods meeting the Agreement’s origin requirements will become duty-free immediately, providing new opportunities for U.S. fiber, yarn, fabric, and apparel exporters. Other key sectors that will benefit from duty elimination under the Agreement are information technology products, agricultural, construction and industrial equipment, auto parts, forest products, and medical and scientific equipment.

By value, more than 90 percent of current U.S. farm exports to Peru will become duty-free immediately when the Agreement takes effect. Tariffs on most remaining U.S. farm products will be phased out over 15 years, with all tariffs eliminated within 17 years. U.S. farm products that will benefit from improved market access include pork, beef, wheat, corn, poultry, rice, fruits and vegetables, processed products, and dairy products. The Agreement addresses duty treatment for imports of sensitive products into the United States through transition periods and the use of tariff-rate quotas (TRQs).

Peru will substantially reduce barriers to bilateral trade in services and investment. The Agreement also includes state-of-the-art provisions in such key chapters as intellectual property rights, electronic commerce, customs and trade facilitation, dispute settlement, and labor and environmental protection.

The Agreement forms an integral part of the Administration's larger strategy of opening markets around the world through negotiating and concluding global, regional, and bilateral trade agreements. The Agreement provides the opportunity to strengthen our economic and political ties with the region, and underpins U.S. support for democracy and fundamental values, such as respect for internationally recognized worker rights and the elimination of the worst forms of child labor.

The Agreement makes progress in achieving the applicable purposes, policies, objectives, and priorities that the Congress spelled out in the TPA Act. Accordingly, the President strongly believes that the Congress should approve the Agreement and enact the legislation needed to implement the Agreement.

## **B. OVERALL TRADE NEGOTIATING OBJECTIVES**

The TPA Act sets out a variety of "overall trade negotiating objectives" that call for future U.S. trade agreements to: (1) open markets by eliminating or reducing barriers to and distortions of trade and creating market opportunities, in particular for small businesses; (2) further strengthen international trading disciplines; (3) foster economic growth in the United States and globally; and (4) promote environmental and worker rights policies in the context of trade. The Agreement builds on the foundation of existing trade agreements to make substantial progress in achieving each of these objectives and, in addition, reflects the bipartisan consensus on trade reached in May 2007.

### **1. Market Opening**

The Agreement is comprehensive in scope. Each Party has agreed to liberalize trade in all goods, and to make significant market openings in services and government procurement.

*Consumer/Industrial Goods.* More than 80 percent of U.S. exports of consumer and industrial goods will enter Peru duty-free when the Agreement enters into force. An additional seven percent will be duty-free within five years. All remaining tariffs on consumer and industrial goods will be eliminated within ten years. Average tariffs on these items in Peru currently range from four percent to almost 12 percent, and tariffs on some products of export interest to U.S. firms are as high as 20 percent.

*Textiles and Apparel.* All trade in textile and apparel goods that satisfy the Agreement's rules of origin will be duty-free immediately.

*Agriculture.* Peru's bound tariffs on agricultural products under their World Trade Organization ("WTO") commitments average over 31 percent. In contrast, the U.S. market is already largely open (through our unilateral preference programs) to agricultural imports from Peru, with close to 90 percent of the value of Peruvian exports entering the United States duty-free. Under the Agreement, almost 90 percent by value of our current agricultural exports to Peru will be duty-free when the Agreement enters into force, including on important export interests such as high quality beef, cotton, wheat, soybeans, soybean meal, and crude soybean oil, apples, peaches, pears, cherries, almonds, and many processed food products including frozen french fries, cookies, and snack foods. Tariffs on most other U.S. goods will be phased out within 15 years. For the most sensitive agricultural goods, tariffs will be eliminated within 17 years. For these goods, liberalization will be achieved through TRQs that will increase over time.

*Services/Financial Services/Telecommunications.* The Agreement provides additional market opening in a broad range of service sectors, including express mail delivery, construction and engineering, computer and related services, advertising, professional services, distribution services, insurance, banking, and other financial services, and telecommunications.

*Government Procurement.* The Agreement opens Peru's government procurement market to U.S. suppliers for the first time and does so on transparent and non-discriminatory terms. Since Peru is not a signatory to the WTO Agreement on Government Procurement, this constitutes a major benefit of the Agreement.

## **2. Stronger International Trade Disciplines**

The Agreement includes state-of-the-art commitments to promote trade in digital products such as software, music, images, videos, and text. It draws from traditional trade principles to fashion customized nondiscrimination rules that will apply specifically to electronic commerce. The Parties will not impose tariffs on digital products that are delivered over the Internet, and will determine the customs value of an imported carrier medium bearing a digital product based on the value of the carrier medium alone, regardless of the value of the digital product stored in the carrier medium.

The Parties recognize that workers and firms can fully realize the Agreement's market-opening potential only if the Agreement builds on the disciplines that proceed from those currently in place through other agreements. Thus, the Agreement sets out rules on intellectual property rights ("IPR") that clarify and build on those in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and provide for implementation of more recent World Intellectual Property Organization ("WIPO") treaties on protection of copyright and rights of performers and producers to strengthen enforcement and enhance IPR rules.

The Agreement also includes detailed rules governing telecommunications services, under which the Parties will apply market-opening disciplines that extend beyond those in effect

under the WTO. In addition, the Agreement contains innovative procedures for settling disputes that may arise under the Agreement, including provisions for monetary assessments to back up dispute panel decisions.

### **3. Foster Economic Growth**

According to the U.S. International Trade Commission (ITC), the agreement will boost U.S. GDP by more than \$2.1 billion (0.02 percent). The ITC estimated that U.S. exports to Peru would increase by \$1.1 billion and to the world by \$640 million. Formal models, such as the ITC model, however, tend to underestimate the benefits of free trade agreements because their scope is limited (*e.g.*, they fail to assess the impact of rules changes such as improved IPR protection and group many industries and products into a limited number of categories for analysis) and because not all the expected effects of the Agreement are necessarily measured (*e.g.*, they fail to estimate or fully estimate dynamic or intermediate growth gains from trade liberalization). The ITC model, specifically, also did not reflect the removal of barriers to trade in services. It is clear, however, that the Agreement will make a positive contribution to U.S. economic welfare and the expansion of global trade

### **4. Labor Rights and Environmental Protection**

Trade agreements can, and should, complement efforts to protect worker rights and enhance environmental protection. Accordingly, the Agreement includes meaningful commitments by each country on labor and environmental protection.

The Parties reaffirm through the Agreement their obligations as members of the International Labor Organization (“ILO”). A provision introduced for the first time in a U.S. free trade agreement requires each Party to adopt and maintain in its statutes and regulations, and practice thereunder, fundamental labor rights, as stated in the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*, including for purposes of the Agreement’s Labor Chapter a prohibition on the worst forms of child labor. To establish a violation of this obligation a Party must demonstrate that the other Party has failed to comply with its terms in a manner affecting bilateral trade or investment. The Agreement also provides that neither Party will waive or derogate from the statutes and regulations that implement this obligation in a manner affecting trade or investment between the Parties.

Each Party also agrees not to fail to effectively enforce its domestic labor laws embodying the fundamental labor rights, providing labor protections for children, and establishing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. All obligations set out in the Labor Chapter are subject to enforcement through the same dispute settlement procedures and remedies as the Agreement’s commercial obligations. The Labor Chapter also creates a labor cooperation and capacity building mechanism through which the Parties will work together to enhance opportunities to improve labor standards and to further advance common commitments regarding labor matters.

Under the Agreement's Environment Chapter each Party commits to strive to ensure that its laws and policies provide for and encourage high levels of environmental protection and to continue to improve those laws and policies. For the first time in a U.S. free trade agreement, the Agreement requires each Party to adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under listed multilateral environmental agreements ("covered agreements") to which both governments are parties. To establish a violation of this obligation a Party must demonstrate that the other Party has failed to comply in a manner affecting bilateral trade or investment.

The Environment Chapter also requires each Party not to fail to effectively enforce its domestic environmental laws and measures to fulfill its obligations under the covered agreements. The Environment Chapter also includes language stating that a Party shall not waive or derogate from its environmental laws in a manner affecting trade or investment between the Parties other than pursuant to the waiver provisions of its environmental laws. Further, the Chapter contains provisions to enhance the mutual supportiveness of trade and environmental policies. For example, the Chapter includes an Annex that specifies concrete steps that the Parties will take to enhance forest sector governance in Peru and promote legal trade in timber products. As is the case for the Agreement's Labor Chapter, all obligations under the Environment Chapter, including the Forest Sector Governance Annex, are subject to enforcement through the same dispute settlement procedures and remedies as those available to enforce the Agreement's commercial obligations. The Parties have also signed a related Environmental Cooperation Agreement to facilitate bilateral cooperation on environmental matters.

## **C. PRINCIPAL TRADE NEGOTIATING OBJECTIVES**

The TPA Act establishes a variety of "principal trade negotiating objectives." The Agreement makes substantial progress toward each of the applicable goals set out in the Act.

### **1. Opening Markets for U.S. Goods**

Under the Agreement, U.S. exporters will enjoy increased market opportunities and greater certainty regarding the terms for access to markets in Peru. For example, in addition to cutting tariffs on agricultural goods, the United States and Peru will work together on sanitary and phytosanitary ("SPS") matters, with a view to facilitating bilateral trade, while appropriately protecting human, animal, and plant life and health. To that end, the Parties have created an SPS Standing Committee to address SPS issues. The Parties will also enhance cooperation on technical regulations, standards, and conformity assessment procedures, which will help to prevent unnecessary technical barriers to trade ("TBT") that hinder U.S. companies from taking advantage of the Peruvian market.

## **2. Opening Markets for U.S. Services**

The Agreement will create new market opportunities in Peru for a range of key U.S. services suppliers and will lock in access in sectors where Peru's services markets are already open. The Agreement includes a market-opening services framework based in substantial part on a trade-liberalizing "negative list" approach. This means that all services sectors are subject to the Agreement's rules unless a country has negotiated a specific exemption in that sector.

The Agreement will either open or lock in existing significant access to Peru's services markets in such priority U.S. services export sectors as financial services, telecommunications, computer and related services, distribution services, professional services, advertising, audiovisual services, education and training, tourism, construction and engineering, energy services, and environmental services. The Agreement's market-opening provisions are complemented by state-of-the-art rules governing regulatory transparency – rules that are especially important given the highly regulated nature of many services industries.

Under the Agreement, Peru will lock in existing levels of access for U.S. suppliers in another key services market – express delivery. The Agreement includes a comprehensive definition of express delivery services that requires Peru to provide national treatment, normal trade relations (most-favored-nation) ("NTR (MFN)") treatment, and additional market access benefits to express delivery services of the United States. The Agreement also addresses the issue of postal monopolies directing revenues derived from monopoly postal services to confer an advantage on express delivery services.

## **3. Opening Markets for U.S. Investment**

Under the Agreement, Peru commits to provide a strong and predictable legal framework for U.S. investors. Investments covered by the Agreement include companies, real estate, intellectual property rights, concessions, permits, and debt instruments in Peru. Except for certain specified exceptions, the Agreement will give U.S. investors the opportunity to establish, acquire, and operate investments in Peru on the same basis as Peru's own investors or other foreign investors. The United States commits to continue to provide Peruvian investors a high level of protection and due process, but, consistent with TPA requirements, it gives Peruvian investors no greater substantive rights than U.S. companies already enjoy in the United States.

Under the Agreement, Peru will provide U.S. investors substantive protections and due process rights that are consistent with U.S. legal principles and practice. For example, the Agreement includes protection against denials of justice in accordance with the principle of due process embodied in the principal legal systems of the world. The expropriation provisions of the Agreement draw heavily from principles developed in U.S. takings law under the Fifth Amendment of the U.S. Constitution. Peru may expropriate an investment only for a public purpose and only if it acts in a non-discriminatory manner, affords an affected investor due process, and pays prompt, adequate, and effective compensation. The Agreement also clarifies that expropriations are limited to property rights and property interests, not other types of

interests, and incorporates tests used by the U.S. Supreme Court to determine whether a regulatory taking has occurred. The expropriation provisions also recognize that, as has been the case in U.S. practice, nondiscriminatory regulatory actions designed and applied to protect legitimate public welfare objectives only rarely constitute an expropriation.

Peru also commits not to burden U.S. investors with protectionist “performance requirements” – such as rules requiring investors to buy local products – and ensures that Peru will allow U.S. investors to transfer funds related to their investments into and out of Peru.

The Agreement provides a dispute settlement mechanism for an investor of a Party to pursue a damages claim against the other Party. The investor may assert that the Party has breached a substantive obligation of the Investment Chapter or that the Party has breached an investment agreement with, or an investment authorization granted to, the investor or its investment. Key provisions afford public access to information on investor-State dispute settlement proceedings. For example, the Agreement requires the Parties to make key documents available to the public and to conduct hearings open to the public, with limited exceptions for business and other legally confidential information, and authorizes tribunals to accept *amicus* submissions from the public. The Agreement also includes provisions, based on those used in U.S. courts, to quickly dispose of frivolous claims.

Finally, the Agreement calls on the Parties, within three years after the Agreement enters into force, to consider whether to establish an appellate body or similar mechanism to review arbitral awards rendered by tribunals under the Investment Chapter.

#### **4. Intellectual Property Rights**

The Agreement clarifies and builds on existing international standards for the protection and enforcement of intellectual property rights, with an emphasis on new and emerging technologies. The Agreement ensures that Peru will provide a high level of IPR protection, similar to that provided under U.S. law. Key provisions of the Agreement, such as those on preventing circumvention of anti-piracy devices and establishing the scope of liability for copying works on the Internet, are modeled on U.S. statutes.

The Agreement includes state-of-the-art protection for trademarks and copyrights as well as expanded protection for patents and undisclosed information.

The Agreement requires Peru to accede to certain international Internet treaties and to extend its term of protection for copyrighted works. Under the Agreement, Peru will ensure that copyright owners maintain rights to temporary copies of their works, which is vital for protecting copyrighted music, videos, software, and text from widespread unauthorized sharing over the Internet. Each Party must require that its government agencies use only legitimate computer software, thus setting a positive example for private users. To prevent piracy of satellite television broadcasts, the Agreement will also require Peru to protect encrypted satellite signals as well as the programming those signals carry.

Under the Agreement, Peru commits to make patent rights available, with certain exceptions, for inventions. Peru also commits to make best efforts to process patent applications and marketing approval applications expeditiously. With respect to most products, Peru must provide adjustments to the patent term to compensate for unreasonable delays that occur while granting a patent; Peru may also make such adjustments available with respect to pharmaceutical products that are subject to unreasonable delays in the issuance of a patent or in the granting of marketing approval. In addition, Peru commits to protect test data and other information that pharmaceutical and agricultural chemical companies submit to government regulators in order to secure regulatory approval for their patented products. Peru will normally protect information generated in connection with pharmaceutical and agricultural chemical product approvals for five and ten years, respectively. Under some circumstances, the period of protection for test data that Peru relies on to approve a pharmaceutical product will be counted from the date of approval of that product in the United States.

These standards are made more meaningful through requirements for tough enforcement measures and remedies to combat piracy and counterfeiting, including procedures in civil cases for seizure and destruction of pirated and counterfeit products, and the equipment used to produce these products. Peru also commits to ensure that its criminal law enforcement authorities are empowered to seize, forfeit, and destroy counterfeit and pirated goods and, at least with respect to cases of willful piracy, the equipment used to produce pirated goods. Peru must also authorize its enforcement officials to act on their own against counterfeit and pirated goods, either by stopping them at the border or initiating criminal cases, without receiving a formal complaint, thus providing more effective enforcement against these products.

The text of the Agreement includes an understanding regarding public health and reaffirms that the commitment of the Parties to the Doha Declaration on the TRIPS Agreement and Public Health.

## **5. Transparency**

The Parties recognize that without a high standard of regulatory transparency, the benefits of market-opening trade commitments can be lost through arbitrary or unfair government regulations. Accordingly, the Agreement includes provisions that will ensure that Peru observes fundamental transparency principles. Those provisions are set out in a specific Chapter of the Agreement dealing with regulatory transparency as well as in provisions of the Agreement addressing customs administration, TBT, government procurement, investment, cross-border trade in services, financial services, telecommunications, and dispute settlement. The Agreement's principal transparency rules are based on U.S. practice under the Administrative Procedures Act.

Increased transparency is an effective tool in addressing government corruption in international trade. The Agreement contains innovative provisions on combating bribery and corruption. Under the Agreement, Peru must adopt or maintain prohibitions on bribery in



matters affecting international trade and investment, including bribery of foreign officials, and establish criminal penalties for such offenses. In addition, Peru must strive to adopt appropriate measures to protect those who, in good faith, report acts of bribery. Furthermore, under the Agreement the United States and Peru affirm their commitment to prevent and combat corruption in international trade and agree to work jointly to support appropriate initiatives in international fora.

## **6. Regulatory Practices**

The Agreement addresses regulatory issues directly linked to the Agreement's market-opening provisions. This includes specific provisions in almost all Chapters, including those on customs administration, SPS, TBT, government procurement, cross-border trade in services, and telecommunications. In addition, the Agreement includes commitments on transparency, rights of appeal of administrative decisions, and access to information.

## **7. Electronic Commerce**

Under the Agreement, the Parties must apply the principles of national treatment and NTR (MFN) treatment to trade in electronically transmitted digital products (*e.g.*, computer programs, video, images, and sound recordings). The Agreement includes rules prohibiting duties on electronically transmitted digital products and limiting duties on digital products stored on a carrier medium to a duty based on the value of the carrier medium alone. In so doing, the Agreement creates a strong foundation for wider efforts to bar duties and discriminatory treatment of digital products. The Agreement also includes provisions relating to the authentication of electronic transactions, online consumer protection, and paperless trade administration.

## **8. Trade in Agricultural Products**

The Agreement includes several provisions designed to eliminate barriers to trade in agricultural products, while providing reasonable adjustment periods, TRQs, and other mechanisms for producers of import-sensitive agricultural goods. In addition, the Agreement commits the United States and Peru to work together toward a multilateral agreement in the WTO to eliminate agricultural export subsidies and prevent their reintroduction in any form.

Under the Agreement, each Party will eliminate export subsidies on agricultural goods destined for the other Party. If a third country subsidizes exports to a Party, the other Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party.

The Agreement also includes a safeguard procedure for certain agricultural goods to aid domestic industries that face imports above a specified quantitative threshold for such goods.

## **9. Labor Rights and Environmental Protection**

As described earlier, for the first time in a U.S. free trade agreement the Agreement includes a commitment by each Party to implement in its law and practice the fundamental labor rights as stated in the ILO Declaration, reflecting a key element of the May 2007 bipartisan trade consensus. Moreover, a key element of the Agreement's Labor Chapter is a commitment by each country not to fail to effectively enforce its labor laws, including its laws embodying fundamental labor rights as stated in the ILO Declaration, through a sustained or recurring course of action or inaction in a manner affecting bilateral trade or investment. In addition, all of the Agreement's labor obligations can be enforced through the same dispute settlement procedures and remedies that apply to the Agreement's commercial obligations. The United States and Peru also commit to cooperate on labor issues, in part through the Labor Cooperation and Capacity Building Mechanism described in an annex to the Labor Chapter.

Also for the first time in a U.S. free trade agreement, the Agreement calls for each Party to adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under specified multilateral environmental agreements (MEAs) to which both governments are parties. Similar to a provision in the Agreement's labor chapter, a key component of the Agreement's environmental provisions is a commitment by each Party that it will not fail to effectively enforce its domestic environmental laws and its measures to fulfill its obligations under the specified MEAs through a sustained or recurring course of action or inaction in a manner affecting bilateral trade or investment. The Agreement also prohibits each Party from waiving or otherwise derogating from its domestic environmental laws in a manner affecting bilateral trade or investment other than pursuant to the waiver provisions of the Party's environmental laws. Each of the obligations set out in the Agreement's Environment Chapter can be enforced through the same dispute settlement procedures and remedies as those available to enforce the Agreement's commercial obligations.

In addition, the Agreement includes a public submissions mechanism that allows persons of a Party to raise concerns about a Party's enforcement of its environmental laws. The Parties will designate an independent secretariat to receive and consider such concerns and, in appropriate cases, the secretariat will develop a factual record related to the submission for consideration by the Agreement's Environmental Affairs Council. The Agreement also recognizes that the Parties negotiated an Environmental Cooperation Agreement under which they will engage in priority cooperation activities.

## **10. Dispute Settlement**

The Agreement includes detailed procedures for settling disputes that may arise between the Parties over its implementation. The Agreement makes available the same dispute settlement remedies and procedures for all of the Agreement's enforceable obligations, with no distinction between the Agreement's commercial, environmental, and labor provisions.

The Agreement's dispute settlement procedures rely principally on consultations and compliance rather than on imposition of trade sanctions or penalties. The procedures set high standards of openness and transparency. The Agreement calls for dispute settlement proceedings to be open to the public, for the disputing Parties to release their legal briefs and other filings to the public (except for confidential information), and for dispute settlement panels to have the authority to receive submissions from interested non-governmental groups.

Where a Party is found to be in violation of an obligation under the Agreement, the Parties must seek to agree on a resolution to the dispute. If the Parties cannot agree on a resolution, they must try to agree on acceptable trade compensation. If they cannot agree on compensation, or if the complaining Party believes the defending Party has failed to implement an agreed resolution, the complaining Party may provide notice that it intends to suspend trade benefits equivalent in effect to those it considers were impaired, or may be impaired, as a result of the disputed measure. The complaining Party cannot suspend benefits, however, if the defending Party provides notice that it will pay an annual monetary assessment to the other Party. The Parties must seek to agree on the amount of the assessment. If they cannot, the assessment will be set at 50 percent of the level of trade concessions the complaining Party is authorized to suspend. This mechanism meets the objectives of encouraging the provision of trade-expanding compensation as well as the imposition of penalties to encourage compliance.

## **11. Trade Remedies**

The Agreement includes a safeguard procedure, similar to the procedures in other U.S. free trade agreements, which will be available to aid domestic industries, in the unlikely event that an industry sustains or is threatened with serious injury due to increased imports resulting from the reduction or elimination of U.S. import duties under the Agreement. The Agreement also includes a special safeguard mechanism to address the possibility that duty reduction or elimination under the Agreement could result in damaging levels of textile or apparel imports.

The Agreement does not affect U.S. rights to take safeguard actions under section 201 of the Trade Act of 1974, which implements the WTO Safeguards Agreement and the General Agreement on Tariffs and Trade ("GATT") 1994. Under the Agreement, the President may, but is not required to, exempt imports of goods from Peru from a WTO safeguard measure, if the goods are not a substantial cause of serious injury or threat thereof.

The Agreement provides that each country retains its rights and obligations under the WTO agreements relating to antidumping and countervailing duties. Thus, the Agreement does

not affect U.S. rights and obligations regarding these trade remedies as they currently exist under the WTO. In addition, the Agreement provides that nothing in it shall be construed to impose any rights or obligations on the Parties with respect to antidumping and countervailing duty measures.

## **D. PRIORITIES FOR MAINTAINING GLOBAL COMPETITIVENESS**

The TPA Act also calls for the President to promote certain priorities to address and maintain U.S. competitiveness in the global economy. The Agreement makes progress in promoting each of these priorities.

### **1. Labor Cooperation**

The United States and Peru are members of the ILO and have a longstanding cooperative relationship on labor issues. During the negotiations, government labor experts from the two countries consulted on their labor laws and how their respective systems operate. The Agreement includes a labor cooperation and capacity building mechanism to enhance opportunities to improve labor standards, including the principles embodied in the ILO *Declaration on Fundamental Principles and Rights at Work and its Follow-up* and ILO *Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*. The Agreement establishes a framework for the labor cooperation and capacity building mechanism and lists a range of possible labor cooperation activities. Officials of the U.S. Department of Labor and Peru's labor ministry and other appropriate agencies will serve as contact points under the Agreement and participate in this mechanism.

### **2. Domestic Policy Objectives**

The Agreement fully takes into account critical U.S. domestic policy objectives, such as the need to maintain flexibility in addressing U.S. national security and public health, safety, and consumer interests. The Agreement includes a broad set of general policy exceptions for measures governing trade in both goods and services to ensure that the United States remains fully free to safeguard the national and public interest, including specific exceptions for national security, public health and morals, conservation, taxation, and protection of confidential information. The Agreement also avoids disturbing existing state and local governmental measures by including "grandfather" clauses that exempt those measures from challenge under the Agreement.

### **3. Relationship between Covered MEAs and the Agreement**

As noted in the Administration's environmental review of the Agreement, the environment and sustainable development are important concerns for both the United States and Peru. The Agreement's Environment Chapter obligates each Party to adopt and maintain laws, regulations, and all other measures to fulfill its obligations under specified MEAs to which the

United States and Peru are both parties. In addition, the Parties expressly recognize that MEAs to which they are both party play an important role in protecting the environment and that the Environment Chapter and the parallel Environmental Cooperation Agreement can contribute to realizing the objectives of those MEAs. The Agreement, therefore, commits the Parties to continue to seek means to enhance the mutual supportiveness of MEAs and trade agreements to which they are both party. In the event of any inconsistency between a Party's obligations under the Agreement and one of the MEAs listed in the Environment Chapter to which both governments are parties, the Agreement provides that the Party shall seek to balance its obligations under both agreements, but this will not preclude the Party from taking a measure to comply with the MEA as long as the measure's primary purpose is not to impose a disguised restriction on trade. In addition, the Chapter provides that when an issue relating to a Party's obligations under a covered MEA arises in a dispute settlement proceeding, the panel hearing the matter must consult with any entity authorized under the MEA to address the issue and defer to the extent appropriate in light of its nature and status to any interpretive guidance under the MEA regarding the issue.

#### **4. Currency and Exchange Rate Manipulation**

Section 2102(c)(12) of the TPA Act states that “[i]n order to address and maintain United States competitiveness in the global economy, the President shall ... seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether a foreign government engaged in a pattern of manipulating its currency to promote a competitive advantage in international trade.”

The Investment, Cross-Border Trade in Services, and Financial Services chapters of the Agreement promote and protect the freer international movement of capital and consequently make it more difficult to manipulate exchange rates to achieve levels inconsistent with levels set by market forces.

The currency movements mentioned in section 2102(c)(12) can arise from many conditions, particularly from macroeconomic developments, macroeconomic policy changes or the appearance of new information on fundamental economic conditions. The determination of whether any such movement reflects currency manipulation to promote a competitive advantage in international trade must therefore take into account a broad range of issues, institutions and market developments which will require a review mechanism with a larger scope than any specific trade agreement.

The Secretary of the Treasury, under the Omnibus Trade and Competitiveness Act of 1988, analyzes on a semi-annual basis the exchange rate policies of foreign countries, in consultation with the International Monetary Fund (“IMF”), and considers whether countries manipulate the rate of exchange between their currency and the United States dollar for purposes of preventing effective balance of payments adjustments or gaining an unfair competitive advantage in international trade. Each member of the IMF is obligated, under Article IV of the

IMF Articles of Agreement, to avoid manipulation of exchange rates for such purposes.

In its analysis of exchange rate policies of foreign countries and in consultations with the IMF concerning these policies, the Department of the Treasury will ensure that currency movements mentioned in section 2102(c)(12) are examined. The Department of the Treasury will seek to resolve problems of currencies that are considered to be manipulated in the sense of 2102(c)(12) through discussions with the foreign authorities responsible for foreign exchange rate policies.

## **5. Reporting Requirements**

As required under the TPA Act, the Administration has provided a report to the Congress describing Peru's laws governing exploitative child labor. In addition, the Administration has reported to the appropriate Congressional committees as required under the TPA Act on: (1) the Administration's environmental review of the Agreement; and (2) its review of the Agreement's impact on U.S. employment. The Administration has also provided a labor rights report on Peru, which will be made available to the public. Finally, the Administration has reported, as specified in the TPA Act, on U.S. efforts to establish consultative mechanisms to strengthen Peru's capacity to promote respect for core labor standards and to develop and implement standards for the protection of the environment and human health based on sound science.