

February 1, 2006

The Honorable Rob Portman
United States Trade Representative
Executive Office of the President
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Portman:

Pursuant to Section 2104 (e) of the Trade Act of 2002 and Section 135 (e) of the Trade Act of 1974, as amended, we are pleased to transmit the report of the Industry Trade Advisory Committee for Information and Communications Technologies, Services and Electronic Commerce (ITAC 8) on the U.S.-Peru Trade Promotion Agreement. This report reflects the consensus opinion of ITAC 8 members on the proposed Agreement.

Sincerely,

Steven W. Stewart
Chair, ITAC 8

The U.S.-Peru Trade Promotion Agreement

Report of the
Industry Trade Advisory Committee for Information and
Communications Technologies, Services and Electronic
Commerce (ITAC 8)

February 1, 2006

November 15, 2005

**Industry Trade Advisory Committee for Information and Communications
Technologies, Services and Electronic Commerce (ITAC 8)**

**Report to the President, the Congress and the United States Trade Representative
on the U.S.-Peru Trade Promotion Agreement**

I. Purpose of the Committee Report

Section 2104 (e) of the Trade Act of 2002 requires that advisory committees provide the President, the U.S. Trade Representative, and Congress with reports required under Section 135 (e)(1) of the Trade Act of 1974, as amended, not later than 30 days after the President notifies Congress of his intent to enter into an agreement.

Under Section 135 (e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee must include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principle negotiating objectives set forth in the Trade Act of 2002.

The report of the appropriate sectoral or functional committee must also include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sectoral or functional area.

Pursuant to these requirements, the Industry Trade Advisory Committee for Information and Communications Technologies, Services and Electronic Commerce (ITAC 8) hereby submits the following report.

II. Executive Summary of the Committee Report

ITAC 8 views the provisions of the U.S.-Peru Trade Promotion Agreement (TPA) that fall under the scope of the Industry Trade Advisory Committee as consistent with the negotiating objectives the committee has established for U.S. trade agreements. ITAC 8 believes the relevant provisions contained in this agreement promote the economic interests of the United States and provide equity and reciprocity for information and communications technology and services firms, and electronic commerce firms.

The U.S.-Peru Trade Promotion Agreement achieves services liberalization beyond that to which Peru is committed in the WTO General Agreement on Trade in Services (GATS)

by adopting a comprehensive negative list approach where all sectors are covered except where specific exceptions are made.

The Telecommunications Chapter includes important commitments that will ensure nondiscriminatory access for U.S. companies to Peru's public telecommunications network. In another sector of interest to ITAC 8 members, computer and related services, Peru has made no commitments in the WTO, so Peru's commitments for full market and national treatment in this Agreement provide an important advantage for U.S. information technology service providers.

In the area of electronic commerce, ITAC 8 applauds the USTR's continued emphasis on the concept of digital products in terms of trade. Our assessment of the e-commerce provisions in the Agreement indicates that it meets our negotiating objectives.

The Government Procurement Chapter reflects strong commitments, and this is especially important since Peru is not yet a member of the WTO Government Procurement Agreement. In many countries, particularly developing countries, government is a key purchaser of IT and communications products and services. Therefore, this Committee views the Government Procurement Chapter as critically important to ensuring access to the government procurement market in Peru.

In an area of growing concern for the U.S. high-tech industry, the Technical Barriers to Trade Chapter of the Agreement contains provisions that emphasize the importance of the WTO Agreement on Technical Barriers to Trade (TBT) and consistently reinforces the TBT provisions.

Tariff elimination for information technology products and medical and scientific equipment remains a top priority for this Committee. Peru has agreed to become a full participant in the WTO Information Technology Agreement (ITA) no later than December 31, 2007, so customs duties on many IT products will be set to zero in Peru as a result of this Agreement. In addition, Peru committed to eliminate many other tariffs immediately upon entry into force of the Agreement, phasing out other tariffs, with all products gaining duty-free access to Peru over a period of ten years.

III. Brief Description of the Mandate of the ITAC 8

The Industry Trade Advisory Committee for Information and Communications Technologies, Services and Electronic Commerce (ITAC 8) was established as part of a restructuring of the industry trade advisory committee system by the U.S. Department of Commerce and the United States Trade Representative (USTR). The restructuring was undertaken in order to better reflect today's U.S. economy and to better position industry to provide the private sector and civil society the opportunity to advise the Administration on trade issues and objectives. ITAC 8 combines the former ISAC 5 (Industry Sector Advisory Committee on Electronics and Instrumentation for Trade

Policy Matters), IFAC 4 (Industry Functional Advisory Committee on Electronic Commerce), and the Computer and Related Services and Telecommunications Services areas of ISAC 13 (Industry Sector Advisory Committee on Services for Trade Policy Matters).

ITAC 8 performs such functions and duties and prepares reports, as required by Section 135 of the Trade Act of 1974, as amended, with respect to information and communications technologies, services and electronic commerce. ITAC 8 provides detailed policy and technical advice, information, and recommendations to the Secretary of Commerce and the U.S. Trade Representative regarding trade barriers and implementation of trade agreements.

IV. **Negotiating Objectives and Priorities of the ITAC 8**

ITAC 8 supports an ambitious trade agenda that addresses the following issues through all available trade negotiating forums, including multilateral (WTO), regional (e.g., FTAA), plurilateral (e.g., CAFTA) and bilateral agreements. ITAC 8 also emphasizes the need for prompt implementation and effective enforcement of free trade obligations once agreements are concluded.

A. Goods Issues

1. Eliminate tariffs on all information technology products (hardware and software) and components, infrastructure equipment, medical equipment and scientific instruments.
 - Within the WTO, seek to gain new signatories to the Information Technology Agreement (ITA), expedite the phaseout of tariffs under the ITA, ensure that as products covered by the ITA evolve technologically they retain zero duty treatment, and seek to expand the product coverage under the ITA.
 - Alternatively, as part of the Doha Round Non-Agricultural Market Access (NAMA) negotiations, countries should agree on sectoral tariff elimination that would apply to IT products, including those products not currently covered by the ITA.
2. Eliminate discriminatory taxes that create barriers to trade.
3. Support global, market-led, voluntary standards developed through an open and transparent process. Ensure that standards do not create unnecessary barriers to trade.
4. Reduce technical barriers to trade. Ensure that product testing, licensing and certification requirements, certificate of origin mandates and customs procedures

are fair, transparent and streamlined. Eliminate those procedures that are duplicative, increase costs to users and delay the availability of products to market.

5. Where product regulations are deemed necessary they must be nondiscriminatory, based on sound and widely accepted scientific principles and available technical information, and should not impede the effective functioning of the market. Consistent with existing WTO rules, regulations should be the least trade restrictive possible.

B. Services Issues

1. Increase the number of countries with obligations in telecommunication services, and increase the range of services covered in country schedules. Ensure that telecommunication services are liberalized on a technology-neutral basis. Promote independent regulatory authorities and transparency in the regulatory process. Ensure nondiscriminatory access to, and use of, public telecommunication networks and services.
2. Obtain full market access and national treatment for computer and related services. Ensure that technologically evolving IT services, including those that are delivered electronically, continue to be covered by trade agreements and that barriers to these services do not develop.
3. Maximize the liberalization of all services that can be delivered electronically.

C. E-Commerce Issues

1. Electronically delivered goods and services should receive no less favorable treatment under trade rules and commitments than like products delivered in physical form. Trade classification should ensure the most liberal treatment possible. Software and other digital products should be duty free.
2. Make permanent the WTO moratorium on customs duties on electronic transmissions.
3. Support a moratorium on Internet taxes.
4. Monitor other e-commerce issues and take action as required: data privacy, security, consumer protection, spam, and digital signatures.

D. Intellectual Property Issues

1. Seek full implementation of existing TRIPs commitments and encourage ratification of WIPO Copyright Treaties.
2. Combat global software piracy and technology product counterfeiting.

3. Oppose Digital Rights Management legislation calling for government-mandated technological standards to protect digital content. Promote the development and adoption of market-led best practices to protect intellectual property.
4. Oppose the application of levies on information technology products as a way to compensate copyright holders for copying.

E. Government Procurement Issues

1. Seek market access and transparency in government procurement.
 - Seek to expand the membership of the WTO Government Procurement Agreement.
 - Seek a WTO Agreement on Transparency in Government Procurement.
2. Promote global use of electronic publication of procurement information, including notices of procurement opportunities.

F. Other Issues

1. Ensure that all countries comply with their obligations under their free trade agreements.
2. Enable global operations of U.S.-based companies by opening markets abroad and avoiding restrictions in the U.S. on worldwide sourcing.
3. Ensure U.S. trade laws are not weakened to the detriment of U.S. companies.

V. Advisory Committee Opinion on Agreement

ITAC 8 reviewed the chapters on Market Access, Government Procurement, Technical Barriers to Trade, Telecommunications, Electronic Commerce and Cross Border Trade in Services. For these chapters, ITAC 8 believes the provisions of the agreement meet our objectives, promote the economic interests of the United States and provide equity and reciprocity for our sectors.

Telecommunications Chapter

The Telecommunications Chapter includes several very important commitments that should foster a more open and liberalized telecommunications market in Peru. The Chapter ensures that US providers will have access to and use of the public

telecommunications network, including leased circuits, on reasonable and non-discriminatory terms and conditions. The Chapter also includes strong “WTO-plus” obligations for all suppliers, including interconnection and dialing parity, and appropriately more rigorous commitments for major suppliers, including competitive safeguards, resale, and cost-oriented interconnection. Importantly, the Chapter commits Peru to ensure that its regulatory body is separate from, and not accountable to, any supplier of public telecommunications services and that the regulatory body does not hold a financial interest or operating role in any supplier. The Chapter provides for enforcement authority, guarantees recourse to regulatory bodies, and specifies an appellate process for resolution of domestic telecommunications disputes, all of which are important to providing effective market access for US providers.

The Chapter includes two annexes that clarify the commitments for rural telephone suppliers. These annexes provide definitions for rural suppliers and specific terms for exempting suppliers of public telecommunications services from several elements of the Telecommunications Chapter.

The interconnection obligation relating to suppliers of public telecommunications services includes a commitment to provide interconnection at reasonable rates. This obligation attaches to all suppliers and is a positive development. However, mobile services are excluded from obligations to institute cost-oriented interconnection for major suppliers. This “carve-out” forfeits an opportunity for USTR to seek cost-oriented mobile rates, which is a negative development, since Peru’s mobile termination rates are among the highest in the world.

Cross Border Trade in Services Chapter

The Agreement ensures full market access and national treatment for most services by adopting a “negative list” approach and by including limited reservations. With regard to computer and related services, Peru has made no commitments in this sector in the WTO General Agreement on Trade in Services (GATS). Therefore, this Agreement is an important new guarantee for the U.S. information technology industry. The Agreement covers all modes of delivery for computer and related services, including electronic delivery, such as via the Internet. Importantly, the negative list approach also ensures that rapidly evolving computer services, driven by continual advances in technology, will be covered by commitments contained in the Agreement. Without such an approach, computer and related services definitions and commitments could quickly become obsolete as new services are introduced. The commitments for computer and related services are complemented by the commitments contained in the Electronic Commerce Chapter.

By employing a negative list approach, the Agreement ensures full market access and national treatment for a broad range of services that can be delivered electronically, further enhancing its value with respect to electronic commerce. The Agreement also includes full commitments in management consulting services, which complement

technology consulting commitments contained under computer and related services. This provides greater certainty for U.S. information technology service providers that provide comprehensive consulting services on the implementation and use of technology to transform and improve their clients' businesses. Peru has made no commitments in management consulting services as part of its GATS commitments, so this Agreement provides an advantage for American companies.

Electronic Commerce Chapter

The U.S.-Peru Trade Promotion Agreement contains an Electronic Commerce Chapter, which essentially continues the concept of "digital products" in terms of trade as defined in previous agreements. The Chapter affirms the importance of avoiding e-commerce barriers and the applicability of WTO rules. The Chapter assures the non-discriminatory treatment of digital products and addresses the valuation of physically delivered digital products.

In the Peru FTA, the parties agreed not to impose customs duties, fees or other charges on digital products transmitted electronically. This provision is similar to the WTO Moratorium on Customs Duties on Electronic Transmissions. ITAC 8 seeks to make the Moratorium permanent and values the inclusion of the customs duties provision in this FTA. The E-Commerce Chapter reflects digital product development in the last two decades and the need for predictability in how digital products are treated in terms of trade.

Peru agreed to non-discriminatory treatment of digital products, providing a broad national treatment and most-favored nation provision. This is a step forward in securing liberal trade treatment of digital products. ITAC 8 appreciates the importance of this provision and believes it is consistent with our objective to ensure the most liberal treatment possible of electronically delivered goods and services.

With respect to the physical delivery of digital products, Peru agreed to apply customs duties on the basis of the value of the carrier medium alone. Presently countries use different methods to apply customs duties. ITAC 8 prefers valuation on the basis of the physical medium and applauds the inclusion of this provision in the Agreement.

The Agreement also promotes e-commerce by: requiring publication of laws, regulations and other measures pertaining to e-commerce; providing flexibility to parties in mutually determining the appropriate authentication method for their electronic transactions; and encouraging paperless trade administration.

Government Procurement Chapter

The Government Procurement Chapter reflects strong commitments, and this is especially important since Peru is not yet a member of the WTO Government

Procurement Agreement. In many countries, particularly developing countries, government is a key purchaser of IT and communications products and services. Therefore, this Committee views the Government Procurement Chapter as critically important to ensuring access to the government procurement market in Peru.

The Agreement provides for greater certainty relating to the government procurement of digital products. Specifically, the Chapter clarifies that government procurement includes the procurement of digital products as defined in the Electronic Commerce Chapter. This is a welcome clarification and ITAC-8 recommends that a similar clarification be included in all future free trade and government procurement agreements.

The Agreement provides that a procuring entity may reduce the time for submission of tenders where the entity publishes a notice of intended procurement in an electronic medium and at the same time provides the tender documentation in an electronic medium. ITAC-8 is particularly pleased with this provision and believes that similar encouragement of the use of electronic means to disseminate information regarding planned procurement should be provided by all future free trade and trade promotion agreements, as it will increase significantly the opportunity for U.S. businesses to participate in procurements.

Technical Barriers to Trade Chapter

Technical barriers are a new and evolving issue for the high technology community. Poorly contemplated standards, technology mandates, and pernicious industrial planning through standards-setting mechanisms can prevent access to key markets for the U.S. high-technology sector. Increasingly, the IT sector is experiencing more complicated and difficult technical barriers worldwide, including unique encryption standards, unique wireless standards, data privacy barriers, software preference mandates, and chemical content requirements for IT products, among others. Strong enforcement of the WTO Agreement on Technical Barriers to Trade (TBT) and reinforcement of its principles through FTAs are important.

Keeping these concerns in mind and recognizing the genuine need to regulate in some cases, ITAC 8 supports, through the WTO TBT and other trade agreements, development of mechanisms to ensure global, market-led, voluntary standards developed through open and transparent processes. We encourage an overall objective to reduce technical barriers to trade; ensure that product testing, licensing and certification requirements, certificate of origin mandates and customs procedures are fair, transparent and streamlined; and, eliminate those procedures that are duplicative or unnecessarily increase costs to users or delay the availability of products to market. Where product regulations are deemed necessary they must be nondiscriminatory, based on sound, widely accepted scientific principles and available technical information and should not impede the effective functioning of the market. Consistent with existing WTO rules, regulations should be the least trade restrictive possible.

It is very encouraging to the industry to see Peru – in this early stage of trade engagement with the US (trade promotion versus free trade agreement) – already undertaking such substantial obligations in this area. Indeed, in some slight ways, this may be a stronger text than previously negotiated FTAs. For example, the bilateral committee on Technical Barriers to Trade takes on slightly more duties than the US-Oman Committee. Importantly, the chapter on Technical Barriers to Trade is consistent with ITAC 8's objectives. The Chapter emphasizes the importance of the WTO TBT Agreement and consistently reinforces the TBT provisions. In addition, the U.S.-Peru TPA is absolutely consistent with previously negotiated model TBT chapters in Free Trade Agreements. We support the text.

VI. Membership of the Committee

1. Mr. Steven W. Stewart (Chairman) IBM Corporation
2. Ms. B. Anne Craib (Vice-Chairman) Semiconductor Industry Association
3. Ms. Tatiana I. Lannelongue (Second Vice-Chairman) Saucini, LLC
4. Mr. Arun K. Bhumitra Arjay Telecommunications
5. Mr. Mark F. Bohannon, Esq. Software and Information Industry Association
6. Mr. Robert G. Britain National Electrical Manufacturers Association
7. Mr. Michael A. Brown Quantum Corporation
8. Ms. Melika D. Carroll Intel Corporation
9. Mr. Mark Chandler, Esq. Cisco Systems, Inc.
10. Ms. Susan D. Chapman General Motors Corporation
11. Mr. Calman J. Cohen Emergency Committee for American Trade
12. Mr. Tod H. Cohen, Esq. eBay Inc.
13. Ms. Barbara A. Dooley Barbara A. Dooley & Associates
14. Ms. Holly A. Evans, Esq. Advanced Micro Devices
15. Mr. John P. Goyer Coalition of Service Industries
16. Mr. Christopher G. Hankin Sun Microsystems, Inc.
17. Mr. Christopher J. Hirth Intuit, Inc.
18. Mr. F. Edward Jones Kemet Electronics Corporation
19. Mr. John D. Kania IPC - Association Connecting Electronics Industries
20. Mr. David M. Leifer, Esq. American Council of Life Insurers
21. Mr. Robert J. Mulligan American Electronics Association
22. Ms. Wendy E. Owens AbleMedia, LLC
23. Mr. Daniel J. Peterson Cook Group, Inc.
24. Mr. George Phillips, Ph.D. Union Carbide, Inc.
25. Mr. David K. Rensin Reality Mobile LLC
26. Mr. Edward M. Rozynski Rozynski and Associates
27. Ms. Laura S. Sallstrom Sallstrom Consulting
28. Mr. R. Wayne Sayer R. Wayne Sayer and Associates, Inc.
29. Ms. Loretta Schmitzer The Boeing Company
30. Mr. Douglas W. Schoenberger AT&T
31. Mr. Eric D. Schwerin, Esq. Oldaker, Biden and Belair, LLP
32. Ms. Susan C. Tuttle IBM Corporation
33. Mr. Glenn Zagoren Zagoren-Zozzora Corporation