

February 1, 2006

The Honorable George W. Bush
President of the United States
1600 Pennsylvania Avenue, NW
Washington D.C. 20500

Dear Mr. President:

Pursuant to Section 2104 (e) of the Trade Act of 2002 and Section 135 (e) of the Trade Act of 1974, as amended, I am pleased to transmit the report of the Advisory Committee for Trade Policy and Negotiations (ACTPN) on the U.S. - Peru Trade Promotion Agreement.

The ACTPN unanimously endorses the Peru Trade Promotion Agreement. We believe it fully meets the negotiating objectives laid out in the Trade Act of 2002, and believe it to be strongly in the economic interest of the United States. We also believe the U.S. – Peru Trade Promotion Agreement is a comprehensive state-of-the-art agreement that not only will benefit the U.S. and Peruvian economies and employment opportunities, but also will provide an incentive for the conclusion of additional agreements in the region.

In addition to its economic benefits for all parties, the agreement will contribute to political stability in the Western Hemisphere and advance regional economic cooperation. The agreement should be enacted into law as soon as possible, so American farmers and ranchers, manufacturers, services providers, and consumers can begin to receive the benefits of this agreement at the earliest possible date.

Sincerely,

Bill Frenzel
Chairman
Advisory Committee for Trade Policy and Negotiations

The U.S. - Peru Trade Promotion Agreement

**The Report of the
Advisory Committee
for Trade Policy and Negotiations
(ACTPN)**

February 1, 2006

**The Advisory Committee
for Trade Policy and Negotiations (ACTPN)**

**Report to the President, the Congress,
and the United States Trade Representative on the**

U.S. – Peru Trade Promotion Agreement

I. Preface

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)(I) 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 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 principal negotiating objectives set forth in the Trade Act of 2002.

Pursuant to these requirements, the Advisory Committee for Trade Policy and Negotiations hereby submits its report.

II. Executive Summary of Committee Report

The ACTPN believes the U.S. – Peru Trade Promotion Agreement (“the agreement”) fully meets the negotiating principles and objectives laid out in the Trade Act of 2002, and is strongly in the interest of the United States. It will level the playing field for America’s farmers and ranchers, manufacturers, and service establishments. It will provide increased market access for American goods and services. It will lock in Peru’s existing preferential access to the U.S. market for Peruvian goods and services, and does so in a manner not disruptive to the U.S. economy. Appropriate transition and adjustment times have been built into the agreement.

The Peru agreement was originally seen as part of a U.S. – Andean agreement that would include Colombia and Ecuador as well as Peru. The ACTPN urges the quickest possible Congressional action to put the Peru agreement into effect without waiting for negotiations with the other two nations to be concluded. While the committee urges those negotiations be completed as quickly as possible, the gains from the Peru agreement are significant enough so that this agreement should not be delayed. Proceeding quickly, moreover, will provide an incentive to the other two parties to conclude their negotiations with the United States more rapidly.

The agreement meets or exceeds the negotiating achievements of other recent agreements, including the Chile agreement and the Central-America-Dominican Republic agreement. Very importantly, the agreement provides binding arbitration for investor-state disputes that covers existing as well as prospective investments. The ACTPN particularly commends this achievement, and urges that it become a standard part of all future U.S. trade agreements.

The ACTPN believes the agreement will contribute strongly to the expansion of trade and economic relations between Peru and United States. The agreement provides for new consultation mechanisms to expand possibilities for improving trade cooperation and heading off disputes. The agreement is an excellent model to promote development and we endorse the extensive opportunities for cooperative activities including the creation of a permanent trade capacity-building committee. Additionally, the agreement makes significant advances in protecting intellectual property, ensuring fair and effective protection for investors, providing improved business facilitation, greatly improving access for service providers, and containing state-of-the-art treatment for new forms of doing business, including e-commerce.

III. Description of the Committee

The Advisory Committee for Trade Policy and Negotiations (ACTPN) is the U.S. government's senior trade advisory panel. It was established to provide the U.S. Trade Representative with policy advice on: (1) matters concerning objectives and bargaining positions of proposed trade agreements; (2) the implementation of trade agreements once they are in force; and (3) other matters arising in connection with the trade policy of the United States. The ACTPN provides an overview of trade policy and issues. Advice on matters affecting individual sectors or policy areas is expected to be provided by several Policy Advisory Committees and by the Industry Trade Advisory Committees (ITACs).

In keeping with its broad charter, the membership of the ACTPN is representative of key economic sectors affected by trade. Members are drawn from business, industry, labor, agriculture, small business, service industries, retailers, and consumer interests. The membership of the ACTPN is appended to this report.

IV. Advisory Committee Opinion on Agreement

The ACTPN (or "the committee") fully endorses the U.S. - Peru Free Trade Agreement ("the agreement") as negotiated by the President's U.S. Trade Representative. Though the negotiations started out seeking an Andean agreement with three participants (Colombia, Ecuador, and Peru), the negotiations with Colombia and Ecuador have not moved as rapidly as with Peru. The ACTPN fully endorses proceeding with the Peru agreement ahead of the other two countries. We believe the benefits of the agreement both to Peru and the United States are considerable and should not be delayed. Two-way bilateral trade already amounts to about \$7 billion annually.

Moreover, the committee is of the view that quick action with Peru will serve as an incentive to the other two nations to conclude their negotiations with the United States. The ACTPN urges the Administration to press for a successful conclusion of the negotiations with Colombia and Ecuador, but believes that the quality of these agreements is more important than the timing. When those two countries have concluded their negotiations with the United States, the ACTPN expects that there will be provisions for relating those agreements with the Peru agreement so that a truly regional agreement will exist.

We believe the Peru agreement will substantially improve market access in that country for American farm products, industrial and other non-agricultural goods, and services. We also believe it will expand two-way trade opportunities and will benefit employment and living standards for both parties. We further believe the agreement will help make the benefits of democracy and greater economic openness more visible to South American countries. Agreements such as that with Peru contribute to the political stability and economic integration of the region and provide an incentive for further trade liberalization in the Western Hemisphere.

The committee also believes that the economic interests of the United States are advanced on the import side of the agreement. Consumers will benefit from continued preferential access to Peru's exports, and the staging of U.S. liberalization has taken account of the need of sensitive sectors to adjust to the reduction and eventual elimination of the few remaining barriers to Peruvian goods and services.

The ACTPN's more detailed views on salient parts of the agreement follow. We urge the Administration and the Congress to act expeditiously so that the agreement may come into effect as soon as possible.

Manufactured Goods -- The ACTPN believes that the provisions on trade in manufactured goods achieve the Trade Act's market access goals. We particularly applaud the fact that 80 percent of U.S. exports of consumer and industrial goods will become totally duty-free as soon as the agreement goes into effect. The remainder will be duty-free within ten years. The ACTPN sees this schedule as being highly beneficial to U.S. exporters while meeting the transition needs of Peruvian producers. The ACTPN is especially pleased that as a result of the agreement, Peru will become a full member of the World Trade Organization (WTO) Information Technology Agreement (ITA), which provides for duty-free treatment of information technology products. This benefits many of our largest exports. Semiconductors, for example, is the single largest U.S. export category, in itself accounting for nearly one in every ten dollars of U.S. industrial exports.

In a manner similar to the CAFTA agreement, the Peru agreement levels the playing field for U.S. producers. Peru has already had virtually complete market access through the Andean Trade Preference agreement (ATPA), while U.S. exporters to Peru have been paying significant duties. Fully 98 percent of all imports to the United States from Peru already enter duty-free, and the average U.S. duty on imports from Peru is just one-tenth of one percent (0.1 percent). Peru's average applied duty on imports of manufactured goods, on the other hand is 10 percent, and the elimination of these duties will confer a significant advantage to U.S. exporters.

The agreement will also remove a competitive disadvantage to U.S. exporters by eliminating the tariff advantage of countries already having free trade agreements with Peru. Time and added resources, however, will be needed for U.S. exporters to “catch up” with exporters from countries that have had an FTA in place with Peru. This underscores the importance of quick action to implement the Peru agreement and other pending FTAs.

The agreement is a balanced one, with significant benefits for Peru as well. Though Peru has had nearly complete market access to the U.S. market, the Andean preferences have always been subject to Congressional re-authorization with no guarantees. The U.S. – Peru agreement makes Peru’s favorable access to the U.S. market permanent and also provides other advantages to Peru. Not the least of these is the fact that the agreement will improve market functioning in Peru and will advance the business climate and the prospects for faster economic growth.

Agriculture -- The committee endorses the provisions covered in this agreement for agriculture. More than two-thirds of U.S. agricultural exports to Peru will be duty free upon implementation of the agreement, and tariffs on most remaining U.S. farm exports will be phased out within 15 years. A few, however, will not be eliminated for 18 years. The ACTPN notes that the agreement is comprehensive in its coverage, providing commercially-meaningful access for U.S. agricultural priorities while taking due account both of U.S. and Peruvian agricultural sensitivities. The agreement specifically addresses sanitary and phytosanitary (SPS) cooperation.

Services -- The ACTPN commends the fact that Peru agreed to a “negative list” approach in the services component of the agreement, meaning that access is provided for all services markets unless a specific exception is stated in the agreement. These exceptions are quite limited in the agreement. The committee is pleased that the agreement’s services commitments cover both the cross-border supply of services and the right to invest and establish a local service presence, strengthened by a set of detailed disciplines on regulatory transparency – which is fundamental to meaningful services market access. The breadth of coverage of service sectors is impressive, and will not only provide wide access for U.S. services companies, but also will extend the range of services available to Peruvian consumers -- likely at lower cost.

E-commerce -- The e-commerce and digital products provisions meet the ACTPN's objectives and provide state-of-the-art recognition of the increased importance of this issue. The e-commerce provisions and the liberal treatment of services in this agreement continue the high standard that has been set for these provisions in other recent U.S. trade agreements. The committee draws particular attention to the fact that the agreement establishes guarantees of non-discrimination and a binding prohibition on customs duties on products delivered electronically, and creates a favorable environment for the development of increased e-commerce.

Investment -- The committee believes the agreement fully meets the investment requirements laid out in the Trade Act of 2002, and applauds the comprehensive nature of the investment provisions. The committee notes that there have been investment disputes with Peru in the past, and believes that the strong investment protections in the bilateral agreement are very important. These provisions should ensure that U.S. investors have the right to establish investments in Peru, and provide U.S. investors with the protections that Peruvian investors currently enjoy in the U.S. legal system.

The committee stresses the importance of covering both existing and prospective investments, and has urged consistently that such investment provisions be part of all future agreements. The ACTPN is very pleased that the Peru agreement goes beyond earlier agreements in this regard and sets a higher standard than in the past. It enables binding third party arbitration for investor-state disputes not only for investments concluded after the agreement goes into effect, but also for many types of investments that pre-date the agreement. The agreement provides for rights that are consistent with U.S. law and also contains fully transparent dispute settlement procedures that are open to the public and allow interested parties to provide their input.

Intellectual Property Rights (IPR) -- The ACTPN endorses the IPR provisions in the Peru agreement. The protection of patents, trademarks, geographic indicators, internet domain names and copyrighted works continues the high standard for free trade agreements. The agreement will improve intellectual property protection in Peru not just for U.S. firms, but for Peruvian citizens as well. This will contribute to Peru's attractiveness as a place to do business. The agreement contains a considerable number of provisions that improve the protection of patents, trade secrets, copyrights, and trademarks. The ACTPN notes the agreement contains new provisions regarding internet domain names to prevent "cyber-squatting," requires the development of an on-line trademark registration system, and addresses other protections for on-line use of copyrights.

Noting the ACTPN's strong interest in firm steps to reduce copyright piracy and trademark counterfeiting, the committee particularly commends the strong IPR enforcement mechanisms and penalties provisions, particularly the criminalization of end-user piracy and counterfeiting and Peru's guarantees of authority to seize and destroy not only counterfeit goods but also the equipment used to produce them. Free trade zones have become a particular problem in the trans-shipment of counterfeit goods, and the ACTPN applauds the agreement's provisions aimed at goods-in-transit. These provisions, once fully enforced, can make a real dent in counterfeit trade, and the committee urges similar provisions be part of all trade agreements.

Customs Procedures and Rules of Origin -- The ACTPN endorses the customs chapter of the agreement. The specificity of obligations with regard to customs procedures coupled with the commitments to information sharing to combat illegal trans-shipment of goods and facilitate express shipment maintain a high standard. Steps to ensure transparency and efficiency are also included. Provisions also provide that the release of goods should be accomplished quickly – within 48 hours to the extent possible. These provisions greatly improve customs administration in Peru – an important objective for U.S. business. Transparency and ease of doing business will be greatly improved by provisions for advanced customs rulings and for providing customs laws and regulations on the internet.

There is not a consensus in the ACTPN with respect to the rules of origin for textile and apparel products under the Peru agreement. All ACTPN members agree that it is important to have clear and consistent rules of origin in our trade agreements. However, there are various views regarding specific aspects of those rules as they apply to textiles and apparel. Concern was raised about the fact that certain of the agreement's rules of origin provisions for textiles and apparel are different from and more restrictive than those in the recent DR-CAFTA agreement, and that this difference may create unnecessary complexity for U.S. companies that will be trading with Peru and other free trade agreement partners in the region. The opposite view was also raised, stating that the rule for certain products in the Peru agreement will promote further cooperation among textile and apparel producers in the region and that such a rule addresses a significant concern that had been raised over the rule in the DR-CAFTA agreement.

Varying views were also expressed regarding cumulation. One view was that the lack of a cumulation provision in the Peru agreement, which was a part of the DR-CAFTA agreement, may hinder the ability to create a hemispheric-wide apparel production platform to compete more effectively with Asian producers. An opposing view was also expressed that cumulation should be addressed as part of a hemispheric-wide negotiation, and that only those countries who are signatories to the agreement should actually benefit from its provisions.

No ACTPN member, however, felt that their concerns about the rules of origin provisions warranted dissenting from the ACTPN's endorsement of the Peru Agreement, and all support the agreement. It is evident, though, that ACTPN members want the fullest consideration of the rationale for rules of origin as future agreements are considered.

Government Procurement -- The ACTPN believes that the government procurement provisions of the agreement meet the objectives of the Trade Act and will provide new access for U.S. firms. Most Peruvian government entities are covered, especially the ones that are more important from the perspective of U.S. exports and U.S. company interest. The committee takes particular note that the agreement provides for the criminalization of bribery in government procurement, an important provision that can eliminate unfair competition to U.S. companies and also provide for better and more efficient procurement on the part of Peruvian government entities. With regard to sub-federal procurement, the ACTPN regrets the negative stance that has been taken by some U.S. states. Sub-federal procurement in Peru is related to the number of U.S. states that provide procurement opportunities for Peruvian firms, and the ACTPN urges that educational efforts be made to correct misimpressions that have led some U.S. states to reject participation in the sub-federal component of government procurement.

Labor Provisions -- The ACTPN believes the Peru agreement fully meets the labor objectives that emerged from the Trade Act of 2002. The text of the agreement provides an effective and balanced means of implementing the negotiating objectives for labor. The labor provisions follow the TPA-mandated approach that was adopted in other agreements and enhance the procedural guarantees to transparency and due process. They meet the Trade Act's requirements while still providing strong assurances that the provisions cannot be used as a means of disguised protectionism.

Under the agreement, both parties reaffirm their commitments under the International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work. They guarantee in an enforceable manner, as provided for in the Trade Act of 2002, that they will not fail to enforce their labor laws in a way that could affect trade. They also agree to strive to ensure they do not weaken their labor laws in a manner that would affect trade. The ACTPN endorses the cooperative approach contained in the agreement, particularly the agreed mechanism to promote respect for International Labor Organization principles.

Environmental Provisions -- The ACTPN endorses the environmental provisions of the agreement and believes they provide effective ways of contributing to environmental improvement. The agreement meets the requirements of the Trade Act of 2002 by requiring in an enforceable manner that neither country shall fail to enforce its environmental laws in a way that could affect trade.

The ACTPN applauds the provisions providing for transparency and input from interested parties. Both parties will develop public processes to ensure that views of civil society are considered in environmental questions, and that input from international organizations can be considered in evaluating progress. An environmental cooperation agreement that provides for capacity building is another significant factor. This agreement establishes an Environmental Cooperation Commission aimed at strengthening the ability to implement and enforce environmental laws, providing for public participation in the environmental decision-making process, and promoting clean production technologies, among other things.

Dispute Settlement -- The ACTPN believes that the dispute resolution provisions in the agreement fully meet the requirements of the Trade Act of 2002, and that they provide equivalent enforcement for all parts of the agreement – including the new labor and environmental provisions. The committee endorses the dispute settlement provisions and considers them to maintain the high standard in other U.S. agreements. The agreement also sets high standards of openness and transparency for panel procedures, including opportunities for interested parties to provide views, open hearings, and public release of submissions by parties.

The ACTPN believes that effective dispute settlement provisions are essential to ensure that trade agreements are actually implemented and enforced. These provisions must provide for timely and effective resolution of disputes and application of enforcement mechanisms that are suitable to provide an adequate incentive for compliance when needed. As is the case in other recent agreements, the parties agree to place emphasis on obtaining compliance through consultation and the use of trade-enhancing remedies.

The ACTPN wants to stress that trade retaliatory measures should be taken as a last resort, for they have the capability of interfering with trade and causing considerable economic disruption. While the committee hopes that there will be no disputes requiring settlement under the agreement's provisions, the ACTPN's preference is that whenever a remedy is necessary it be a financial penalty if at all possible rather than a trade-reducing tariff measure.

Membership:

Advisory Committee for Trade Policy and Negotiations (ACTPN)

Mr. Peter Baranay	ABRO Industries
Dr. Craig R. Barrett	Intel Corporation
Mr. Joseph Behar	Univision Music Group
Mr. James Berges	Emerson Electric Company
Ms. JoAnn Brouillette	Demeter
Mr. Michael Campbell	Arch Chemicals, Inc.
Mr. Thomas Donohue	U.S. Chamber of Commerce
The Honorable Calvin Dooley	Food Products Association
The Honorable Jennifer Dunn	DLA Piper
Mr. Edward C. Emma	Jockey International, Inc.
The Honorable John Engler	National Association of Manufacturers
Mr. William E. Frenzel (Chairman)	The Brookings Institute
Mr. Allen Gant, Jr.	Glen Raven Incorporated
Mr. Nicholas Giordano	National Pork Producers Council
Mr. Terry Growcock	The Manitowoc Company, Inc.
Ms. Stephanie Harkness	Pacific Plastics and Engineering
Dr. H. Fisk Johnson	SC Johnson & Son, Inc.
The Honorable Scott Klug	Trails Media Group
Mr. Charles E. Kruse	Missouri Farm Bureau
Mr. Larry A. Liebenow	Quaker Fabric
Mr. James W. Morrison	Small Business Exporters Association
Mrs. Tracy Mullin	National Retail Federation
Mr. Edward J. Perkins	University of Oklahoma
Mr. Kevin B. Rollins	Dell Computer Corporations
Ms. Lea Soupata	United Parcel Service
Ms. Maria Taxman	Chesterfield Trading
Mr. Jose Villamil	The Washington Economics Group, Inc.
Mr. Joseph Ward	International Union of Operating Engineers
Mr. Wythe W. Willey	National Cattlemen's Beef Association
Mr. Wendell Willkie	MeadWestvaco Corporation