

**THE UNITED STATES-PERU TRADE PROMOTION AGREEMENT
IMPLEMENTATION ACT
SECTION-BY-SECTION SUMMARY
PREPARED BY THE COMMITTEE ON WAYS AND MEANS**

Sections 1–3: Short Title, Table of Contents, Purposes, and Definitions

TITLE I: APPROVAL AND GENERAL PROVISIONS

Section 101: Approval and Entry into Force

Section 101 states that Congress approves the United States—Peru Trade Promotion Agreement (“Agreement”) and the Statement of Administrative Action. The Agreement 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.

Section 102: Relationship of the Agreement to United States and State Law

Section 102(a) provides that U.S. law prevails in the case of a conflict with the Agreement. 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 Agreement. Section 102(c) states that there is no private cause of action or defense under the Agreement and no person other than the United States may challenge a federal or state law in court as being inconsistent with the Agreement.

Section 103: Implementing Actions in Anticipation of Entry into Force and Initial Regulations

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 Act 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 Agreement. 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 Agreement or, where a provision takes effect on a later date, within one year of the effective date of the provision.

Section 104: Consultation and Layover for Proclaimed Actions

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.

Section 105: Administration of Dispute Settlement Proceedings

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 Agreement. 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.

Section 106: Arbitration of Claims

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

Section 107: Effective Dates; Effect of Termination

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 Agreement enters into force with respect to the United States. The provisions of the Act terminate on the date on which the Agreement terminates.

TITLE II: CUSTOMS PROVISIONS

Section 201: Tariff Modifications

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.

Section 202: Additional Duties on Certain Agricultural Goods

Section 202 implements the agricultural safeguard provisions of Article 2.18 and Annex 2.18 of the Agreement. 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.

Section 203: Rules of Origin

Section 203 codifies the rules of origin set out in Chapter 4 of the Agreement. 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 Agreement; 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 Agreement, 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 Agreement's requirements under the second method of qualifying as an originating good. These include rules 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.

Section 204: Customs User Fees

Section 204 of the bill implements the U.S. commitments under Article 2.10.4 of the Agreement to eliminate the Merchandise Processing Fee 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.

Section 205: Disclosure of Incorrect Information; False Certifications of Origin; Denial of Preferential Tariff Treatment

Section 205 implements Articles 4.18.5 and 4.19.3 of the Agreement. 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 falsely certify, 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.

Section 206: Reliquidation of Entries

Section 206 implements Article 4.19.5 of the Agreement 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.

Section 207: Recordkeeping requirements

Section 207 of the bill implements Article 4.17 of the Agreement. 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.

Section 208: Enforcement relating to trade in textile or apparel goods

Section 208 implements the customs cooperation and verification of origin provisions in Article 3.2 of the Agreement. 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 Agreement 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.

Section 209: Regulations

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.

TITLE III: RELIEF FROM IMPORTS

Section 301: Definitions

Section 301 defines “Peruvian article” and “Peruvian textile of apparel article,” which are key terms for Title III.

SUBTITLE A: RELIEF FROM IMPORTS BENEFITING FROM THE AGREEMENT

Section 311: Commencing of Action for Relief

Sections 311-316 authorize the President, after an investigation and affirmative determination by the 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 the 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: Commission Action on Petition

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: Provision of Relief

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 Agreement 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 Agreement 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: Termination of Relief Authority

Section 314 provides that no relief may be provided under this subtitle after ten years from the date the Agreement 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: Compensation Authority

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

Section 316: Confidential Business Information

Section 316 provides for the treatment of confidential business information.

SUBTITLE B: TEXTILE AND APPAREL SAFEGUARD MEASURES

Section 321: Commencement of Action for Relief

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: Determination and Provision of Relief

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 Agreement, 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: Period of Relief

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: Articles Exempt from Relief

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.

Section 325: Rate After Termination of Import Relief

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: Termination of Relief Authority

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: Compensation Authority

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

Section 328: Confidential Business Information

Section 328 provides for the treatment of confidential business information.

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

Section 331: Findings and Action on Goods from Peru

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 Agreement 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.

TITLE IV: PROCUREMENT

Section 401: Government Procurement

Section 401 implements Chapter 9 of the Agreement 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.

TITLE V: TRADE IN TIMBER PRODUCTS OF PERU

Section 501: Enforcement Relating to Trade in Timber Products of Peru

Sections 501-502 implement obligations set out in Annex 18.3.4 to the Agreement (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 (the “Committee”) responsible for overseeing the implementation of the Annex on Forest Sector Governance.

Section 501(b) authorizes the 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 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 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 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 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 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 Committee determines to be appropriate. In determining the appropriate action to take, and duration thereof, the 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 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 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 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 Agreement.

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 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 Agreement, 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: Report to Congress

Section 502 directs the United States Trade Representative, 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 Agreement 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 Agreement and periodically thereafter.

TITLE VI: OFFSETS

Section 601: Customs User Fees

Section 601 extends the passenger and conveyance processing fees and the merchandise processing fees authorized under Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") through December 13, 2014.

Section 602: Time for Payment of Corporate Estimated Taxes

Section 602 increases the rate of corporate estimated tax payments under subparagraph (B) of section 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005 from 114.75 percent to 115.5 percent.