

# Peru FTA

## Facts

**Some concerns have been raised regarding investment, food safety, and government procurement under the Peru FTA. The following facts should help to set the record straight.**

### **INVESTMENT**

- **A Battle Democrats Fought in 2002.** In 2001-2002, House Democrats fought for and achieved significant changes to protect U.S. environmental and public welfare regulations under U.S. FTAs, including Peru and Panama. These changes **substantially changed the NAFTA text.** For example, these regulations are now presumed not to constitute regulatory expropriations. The new language states, among other things, that:

“Except in rare circumstances, non-discriminatory regulatory actions designed and applied to protect legitimate **public welfare objectives, such as public health, safety and the environment, do not constitute indirect expropriations.**”

- **Democrats Further Clarify Investor Rights This Year.** House Democrats further insisted that the Peru FTA be re-opened to add the following language on investment:

“Agree that foreign investors are **not hereby accorded greater substantive rights** with respect to investment protections than domestic investors under domestic law where, as in the United States, protections of investor rights under domestic law equal or exceed those set forth in this Agreement.”

- **The United States Has Not Lost a Single Case in Any Investor-State Dispute under Any Free Trade Agreement.** Not a single dollar has been awarded to an investor in a dispute against the United States under NAFTA since NAFTA entered into force more than 12 years ago (or under any other FTA or bilateral investment treaty, ever).

### **FOOD SAFETY AND INSPECTION**

- **United States Free to Set and Enforce Its Own Food Safety Standards.** The Peru FTA does not subject the United States to *any* new limitations or requirements regarding food safety and inspection. The

FTA simply reaffirms the rights and obligations that exist now – and have existed for over a decade – under the WTO agreements.

- Even under WTO rules, the United States is free to reject Peru’s safety standards if those standards are not at least as high as U.S. standards.
  - **For example, the United States has never recognized Mexico's meat inspection system as being equivalent to the U.S. system.** No international agreement requires the United States to accept imported food that fails to meet U.S. standards.
- **The United States Does Not Need an FTA with Peru to Enhance its Food Safety System.** It can do that unilaterally – and can apply it broadly, including to imports from China.

### **GOVERNMENT PROCUREMENT**

- The Peru FTA contains major carve-outs that **preserve a substantial portion of “Buy America”** benefits for U.S. businesses at the local, state and federal levels:
  - All **small and minority business set aside programs** are exempted.
  - **States are exempt unless an individual state chooses to opt in.** Only **eight** U.S. states have “opted in” to the procurement chapters of the Peru and Panama FTAs.
  - **Key procurements are excluded from the FTA.** “Buy America” will continue to apply to, for example, mass transit projects (i.e., federal highway construction must use U.S. steel), Defense Department procurements of “Berry Amendment” items like apparel and tools, and carve outs for some purchases by special entities, such as the Tennessee Valley Authority and rural power generation authorities.
  - **Dollar thresholds limit the scope of coverage.** Buy America still applies to procurements below certain dollar thresholds (state contracts below \$480,000 and federal contracts below \$60,000).
- **Opening USG procurement means that our producers get access to foreign procurement.** Since 1979, Congress has sought to open foreign procurement to U.S. producers and workers through international

government procurement agreements. It is unlikely that Peru has very many companies that can compete for U.S. procurement contracts. However, U.S. companies can compete in these foreign markets.