

1 EXECUTIVE COMMITTEE MEETING TO REVIEW AND MAKE  
2 RECOMMENDATIONS ON PROPOSED LEGISLATION IMPLEMENTING THE  
3 U.S.-PERU TRADE PROMOTION AGREEMENT, AND TO CONSIDER  
4 FAVORABLY REPORTING S. 3495, TO AUTHORIZE THE EXTENSION  
5 OF NONDISCRIMINATORY TREATMENT (NORMAL TRADE RELATIONS  
6 TREATMENT) TO THE PRODUCTS OF VIETNAM

7 THURSDAY, JULY 27, 2006

8 U.S. Senate,  
9 Committee on Finance,  
10 Washington, DC.

11 The meeting was convened, pursuant to notice, at  
12 10:05 a.m., in room 215, Dirksen Senate Office Building,  
13 Hon. Charles E. Grassley (chairman of the committee)  
14 presiding.

15 Present: Senators Hatch, Lott, Kyl, Thomas, Bunning,  
16 Baucus, Conrad, Wyden, and Schumer.

17 Also present: Kolan Davis, Republican Staff Director  
18 and Chief Counsel; Russ Sullivan, Democratic Staff  
19 Director; Dean Zerbe, Tax Counsel and Senior Counsel to  
20 the Chairman; David Johanson, International Trade  
21 Counsel, Republican Staff, Senate Committee on Finance;  
22 Demetrios Marantis, International Trade Counsel,  
23 Democratic Staff, Senate Committee on Finance; Carla  
24 Martin, Chief Clerk; and Mark Blair, Deputy Clerk.

25 Also present: Everett Eissenstat, Assistant U.S.

1 Trade Representative for the Americas, Office of the U.S.  
2 Trade Representative, Executive Office of the President;  
3 Ken Freiberg, Deputy General Counsel, Office of the U.S.  
4 Trade Representative.

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1 OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S.  
2 SENATOR FROM IOWA, CHAIRMAN, COMMITTEE ON FINANCE

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4 The Chairman. The committee meets to consider the  
5 U.S.-Peru Trade Agreement. The committee's informal  
6 consideration of implementing legislation for this  
7 agreement is part of the consultative process that is  
8 established in the trade promotion authority. It is a  
9 required procedure, a very informal procedure.

10 It is very important for us to review this bill in a  
11 public forum, provide opportunity for comment on the  
12 bill, and propose potential legislative changes.

13 I would like to say a few words about the agreement.  
14 I think it is strong. It will remove Peru's high tariffs  
15 on products coming here. While most of Peru's tariffs  
16 average between 12 and 25 percent, all Peruvian products  
17 coming into the United States enjoy practically zero  
18 tariffs. Some 97 percent of the imports from Peru come  
19 in duty free.

20 This unbalanced trading relationship is largely the  
21 result of unilateral trade benefits provided by Congress  
22 through the Andean Trade Preference Act. The U.S.-Peru  
23 Trade Promotion Agreement will bring balance to our  
24 trading relationship. It will bring Peru's tariffs down  
25 to a level of almost all U.S. tariffs on Peruvian

1 products.

2 This agreement boosts U.S. exports. The U.S.  
3 International Trade Commission has found that under this  
4 agreement, U.S. exports to Peru will increase by 25  
5 percent. In comparison, Peruvian exports to our country  
6 will grow by 8 percent.

7 The International Trade Commission determined that  
8 the U.S. Gross Domestic Product will grow by an  
9 additional \$2.1 billion as a result of this agreement.  
10 This agreement will be particularly good for farming in  
11 the United States.

12 The average Peruvian duty on U.S. agricultural  
13 imports is 18 percent, and they will disappear under the  
14 agreement. The American Farm Bureau Federation has  
15 calculated a total increase in U.S. farm exports  
16 resulting from the agreement exceeding \$705 million  
17 annually.

18 The agreement will boost exports for our  
19 manufacturers as well. The International Trade  
20 Commission has an estimate of exporters of machinery,  
21 chemical, rubber, and plastic products to be the biggest  
22 beneficiaries. Our service providers also benefit. In  
23 sum, this agreement will clearly benefit our country, but  
24 also bring important benefits to Peru.

25 I now turn to my Ranking Member, Senator Baucus.

1 STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM THE  
2 STATE OF MONTANA

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4 Senator Baucus. Thank you, Mr. Chairman.

5 Today, the Finance Committee considers two measures.

6 One, a bill to grant Vietnam permanent normal trade  
7 relations. We also are considering the implementing bill  
8 for the Peru Trade Promotion Agreement.

9 These mark-ups come at a particularly critical time.  
10 With the collapse of the Doha Round, the time has come  
11 for an important change in focus. If we cannot make  
12 progress with trading partners in the World Trade  
13 Organization, then we should look to trading partners  
14 like Vietnam and Peru that are willing to move forward  
15 with us in agriculture, industrial products, services,  
16 and other areas.

17 Trade promotion authority expires in less than one  
18 year. Under the current climate, I am not optimistic  
19 that it will be easily renewed. So we should redouble  
20 our efforts to make the most of the time that is left and  
21 aggressively move forward on a trade agenda that we can  
22 all support.

23 Let me take a moment to recognize the strong efforts  
24 of the Chairman of this committee to respond to the  
25 concerns raised in this committee during consideration of

1 the Oman agreement.

2 He has worked to reach out and give all members of  
3 this committee the opportunity to air their concerns.  
4 These frank conversations are important, and I hope that  
5 they will continue.

6 With today's mark-up of the Vietnam PNTR bill, the  
7 committee can turn a new page. Unlike other trade bills,  
8 this bill has broad support in this committee, and in  
9 Congress, in general. This bill also has overwhelming  
10 support from the U.S. exporters and a number of non-  
11 governmental organizations.

12 With this legislation, Senator Smith and I, together  
13 on this committee with Senators Kerry and Crapo, speak  
14 for this broad consensus. We say the time has come to  
15 grant Vietnam permanent normal trade relations status.

16 The time has come to complete the process of  
17 normalization and reconciliation. The time has come to  
18 complete the work that Presidents George H.W. Bush, Bill  
19 Clinton, and George W. Bush steadily moved forward. The  
20 time has come to complete the effort that began with the  
21 courageous effort of Senators Kerry and McCain so many  
22 years ago.

23 The time has come for U.S. exporters to reap the  
24 benefits of Vietnam's burgeoning market of 83 million  
25 consumers before others beat us to it. The time has come

1 to welcome Vietnam as the 150th member of the World Trade  
2 Organization. The time has come to anchor this important  
3 country firmly into the family of the world's trading  
4 nations.

5 As we close one chapter with Vietnam and usher in a  
6 new beginning, I recall a poem by a young Vietnamese  
7 poet, Tran Dang Khoa. During the Vietnam war, he wrote  
8 these words in the hope that the spring rains would again  
9 emerge out of the darkness:

10 "When rain blackens the sky in the east,  
11 When rain blackens the sky in the west,  
12 When rain blackens the sky in the south and the  
13 north...

14 I see that stork white as alabaster  
15 Take wing to proclaim the rain again."

16 The Vietnam PNTR bill is the most historic and  
17 commercially meaningful bill on trade legislation that  
18 this committee has considered in several years. I  
19 encourage my Finance Committee colleagues to vote this  
20 bill out of this committee this morning, and I express my  
21 hope that the full Senate will vote on it before the  
22 August recess.

23 Also before this committee is the draft bill to  
24 implement the Peru trade promotion authority agreement.  
25 This agreement has great potential. For agriculture

1 producers, the Peru agreement is one of the best trade  
2 agreements that the U.S. Trade Representative has  
3 negotiated.

4 It immediately eliminates tariffs on roughly two-  
5 thirds of current U.S. agriculture exports, including on  
6 wheat and high-quality beef, which are of key importance  
7 to my State of Montana. It also treats sugar in an  
8 appropriately sensitive way, and this respect serves as a  
9 model for future trade agreements.

10 Nevertheless, members have significant concerns about  
11 this agreement which we must address. On beef, Peru must  
12 abide by the commitments that it made to open its market  
13 to U.S. beef. I am pleased that Peru has made progress  
14 since our hearing last month by opening its market to  
15 bone-in beef and offals.

16 But Peru has fallen short of its promises. Peru  
17 still bans all forms of U.S. beef cattle over 30 months  
18 of age. It is hard to contemplate approving an agreement  
19 when a trading partner has already proved itself  
20 unwilling to live up to trade commitments it has made.

21 On labor, the buck may stop with Peru. Peru has made  
22 great strides to address concerns that have been  
23 expressed about this labor regime, but it has become more  
24 difficult for Senators to understand why the labor  
25 chapter alone remains static, even when our trading



1 partner is willing to go further.

2 I hope that we can work together to address these  
3 concerns and reach a point where the Peru agreement can  
4 attract broader support in this committee and in the  
5 Congress. I look forward to working with Senator  
6 Grassley and this committee as we move forward.

7 Thank you, Mr. Chairman.

8 The Chairman. Thank you. We have already had a  
9 great deal of bipartisan cooperation to get us this far,  
10 and I thank everybody for participating in that,  
11 particularly under Senator Baucus' leadership.

12 We now turn to a review of the legislation, a very  
13 brief review, by David Johanson of our staff. But we  
14 also, for the members' benefit, have Everett Eissenstat,  
15 Assistant U.S. Trade Representative for the Americas, and  
16 Ken Freiberg, Deputy General Counsel of the Office of  
17 U.S. Trade Representative, to answer any questions that  
18 you might have.

19 Would you proceed, David?

20 Mr. Johanson. Thank you, Chairman Grassley, Ranking  
21 Member Baucus, and members of the committee. I am  
22 pleased to have the opportunity to summarize the  
23 administration's proposed implementing bill for the U.S.-  
24 Peru Trade Promotion Agreement Implementation Act.

25 I will begin by providing a general overview of the

1 implementing bill, and I will, next, highlight specific  
2 provisions of the legislation. First, an overview. The  
3 bill is divided into four titles. Title 1 approves the  
4 agreement and establishes the general proclamation  
5 authority for the President and general regulatory  
6 authority for the administration to implement the  
7 agreement. Title 2 authorizes the President to make  
8 changes to Customs laws that are necessary or appropriate  
9 to implement the agreement.

10 Title 3 implements a safeguard of Subtitle A of Title  
11 3, and the agreement's textile and apparel safeguard.  
12 Title 3 also implements provisions of the agreement  
13 related to the global safeguard under the Trade Act of  
14 1974. Title 4 amends U.S. law with regard to government  
15 procurement.

16 I will now turn to some specific provisions of the  
17 bill. Within Title 1, Section 101 provides for  
18 congressional approval of the agreement and the  
19 accompanying Statement of Administrative Action.  
20 Congressional approval of the agreement and statement is  
21 necessary for the bill to qualify under trade promotion  
22 authority procedures.

23 Section 102 of the bill establishes a relationship of  
24 the agreement to Federal and State law. Section 103  
25 authorizes the President to issue regulations and to

1     proclaim actions to implement the agreement.

2             Consultation and lay-over steps that must precede the  
3     President's implementation of any duty modification by  
4     proclamation are set forth in Section 104.

5             I will now turn to Title 2 and summarize the Customs  
6     provisions of the proposed bill. Section 201 authorizes  
7     the President to implement by proclamation the  
8     continuation or modification of tariffs the a President  
9     determines to be necessary or appropriate to carry out  
10    the terms of the agreement. Section 202 of the bill  
11    implements the agreement's agricultural safeguard that  
12    covers certain agricultural products.

13            Other sections of Title 2 of the bill establishes  
14    rules of origin for goods to qualify for preferential'  
15    treatment under the agreement; authorizes actions to be  
16    taken by the administration to enforce the textile and  
17    apparel rules of origin; and authorizes the Secretary of  
18    Treasury to prescribe regulations as may be necessary to  
19    carry out Customs-related provisions of the agreement.

20            Title 3 of the bill implements safeguard provisions.  
21    Subtitle A of Title 3 sets forth provisions for the  
22    conduct of safeguard investigations under this subtitle  
23    by the International Trade Commission. Subtitle B of  
24    Title 3 sets forth procedures for the application of the  
25    agreement's textile and apparel safeguard.

1           Determinations for relief under the textile and  
2 apparel safeguard will be made by the President, not the  
3 International Trade Commission.

4           Subtitle C of Title 3 authorizes the President in  
5 granting global import relief under Section 201 of the  
6 Trade Act of 1974, and to exclude exports of Peruvian-  
7 originating articles from relief when certain conditions  
8 are present. Title 4 amends U.S. law with regard to  
9 government procurement.

10          Mr. Chairman, that concludes my summary of the  
11 implementing bill. I would be pleased to answer any  
12 questions that you or other members of the committee  
13 might have. Thank you.

14          The Chairman. All right. Now we will call on  
15 members of the committee, I presume, in the order of  
16 arrival: Thomas, Conrad, Bunning, and Lott. Any  
17 questions that you want to ask either the administration  
18 or our staff? If there are not, then we would go to  
19 consideration of amendments.

20          Senator Bunning. Mr. Chairman?

21          The Chairman. Yes?

22          Senator Bunning. I do have a statement I would like  
23 to make at this time so the committee understands where I  
24 am coming from.

25          The Chairman. Please make your statement.

1 OPENING STATEMENT OF THE HON. JIM BUNNING, A U.S. SENATOR  
2 FROM KENTUCKY

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4 Senator Bunning. I am planning to vote "present"  
5 today on granting permanent normal trade relations status  
6 to Vietnam. I am voting this way because I still have  
7 concerns about a number of areas and need additional  
8 information, particularly in the areas of religious  
9 freedom in Vietnam. Additionally, some of my  
10 constituents have expressed that they still have concerns  
11 regarding some trade issues with Vietnam.

12 As I understand it, several other trading partners  
13 may share these concerns, so it is possible that these  
14 issues will be addressed during the multilateral  
15 negotiation process that is expected to begin shortly.

16 Because it could be several weeks before this  
17 agreement is debated on on the Senate floor, I plan to  
18 observe those multilateral negotiations to see if these  
19 issues are likely to be addressed adequately through that  
20 process. I look forward to working with the USTR on  
21 these matters.

22 As my colleagues point out, some sectors of the U.S.  
23 economy will likely stand to benefit from the passage of  
24 this agreement. I recognize this fact, but I also  
25 realize that there are important factors missing in

1 regards to this agreement, both in areas that are purely  
2 commercial and in areas of broad concern. I must see  
3 more progress in these areas I have discussed today  
4 before I am prepared to support this agreement.  
5 Accordingly, I plan to vote "present" today. Thank you.

6 The Chairman. Thank you.

7 Senator Lott. Mr. Chairman?

8 The Chairman. Yes?

9 Senator Lott. Since we are going to proceed to  
10 amendments, may I make just a brief statement here, too?

11 The Chairman. Please go ahead.

12 Senator Lott. I did not want to get ahead. Did you  
13 have anything you wanted to say, Senator Thomas?

14 Senator Thomas. No.

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1 OPENING STATEMENT OF HON. TRENT LOTT, A U.S. SENATOR FROM  
2 THE STATE OF MISSISSIPPI

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4 Senator Lott. Well, I just want to thank you for  
5 going forward with these two initiatives. I think they  
6 are both in our interest. I have had some reservations  
7 over the years in how we have done our trade agreements,  
8 and I have had some reservations about Vietnam in  
9 particular. But I do think things have changed. I think  
10 it would be in our best interests, and theirs, the people  
11 of both countries, if we go forward with that.

12 I also think we should go forward with the trade  
13 agreement with Peru. As I looked at the world situation,  
14 to me we have far too long been focused on trade  
15 arrangements and relationships with other parts of the  
16 world, Europe, and even Asia, when, as a matter of fact,  
17 when you look at the number of people and the potential  
18 in our own hemisphere in Central and South America, there  
19 is huge possibility and potential there.

20 I also want to get rid of the tariffs that are 5.9  
21 percent to as much as 12 percent on American--and  
22 Mississippi--exports. Conversely, we only levy 0.01  
23 percent or less on products from Peru.

24 So it is in our best interests that we get this  
25 agreement and open these markets up and reduce the levies

1 on our products so that we can export things that would  
2 be good for our economy and good for the people in these  
3 countries, making them stronger partners in a lot of  
4 other ways.

5 So, I thank you for going forward with the mark-up.  
6 I never quite understood what these really were, but I  
7 understand it is a traditional thing. We are going to  
8 fake like we might do something, but we will not really  
9 do it later. But I understand.

10 Senator Baucus. Well, we might.

11 Senator Lott. We might? Yes. All right. Thank  
12 you, Mr. Chairman.

13 The Chairman. Anybody else?

14 [No response]

15 The Chairman. All right. Then I think Senator  
16 Conrad is the first one to have an amendment. I think  
17 that there has been a modification that is bipartisan  
18 that has been passed out that you are going to talk about  
19 now?

20 Senator Conrad. That is correct.

21 The Chairman. All right. Proceed.

22 Senator Conrad. I thank the Chairman and I thank my  
23 colleagues.

24 As all of you know, in conjunction with the Peru Free  
25 Trade Agreement, Peru has entered into a side agreement



1 with the United States on sanitary and phytosanitary  
2 issues. This agreement is captured in two side letters  
3 dated January 5 and April 10 of this year.

4 Although the side letters are not technically part of  
5 the trade agreement, they are a critical part of the  
6 package for U.S. agriculture. The agreement would not  
7 have been complete without them, and the U.S. would not  
8 have finalized the agreement had Peru not agreed to the  
9 side letters.

10 The implementing bill before us requires Peru to  
11 fully comply with its obligation under the agreement  
12 before it can enter into force. But because the side  
13 letters are not technically part of the agreement, they  
14 are not covered by this provision.

15 Unfortunately, Peru is not fully complying with the  
16 side letters when it comes to U.S. beef. In the side  
17 letters, Peru agreed to fully reopen its market to  
18 imports of U.S. beef, in full compliance with the World  
19 Animal Health Organization standards.

20 That standard says that, for a country like ours with  
21 an extremely low incidence of BSE, it is safe to import  
22 all beef products, except those containing specified risk  
23 materials.

24 However, unfortunately, Peru is not living up to its  
25 agreement. Instead, it continues to arbitrarily block

1 U.S. beef products from cattle aged greater than 30  
2 months. That is unacceptable. When other countries make  
3 commitments on trade, we must ensure that they fully and  
4 completely comply with those agreements.

5 My amendment adds a provision to the Statement of  
6 Administrative Action that ensures that this problem will  
7 be fixed. It requires the administration to ensure that  
8 Peru is fully complying with the side letters before the  
9 free trade agreement can enter into force.

10 Mr. Chairman, we have had unfortunate experiences  
11 with side deals when it comes to sugar in the NAFTA, and  
12 wheat in the CAFTA. We found that once an agreement  
13 takes an effect, it is virtually impossible to fix  
14 problems that then arise.

15 So, it is critically important to make certain that  
16 the problem is fixed before the agreement takes effect.  
17 That is what my amendment does. I very much appreciate  
18 the Chairman's support for this amendment.

19 In closing, I would simply ask that the  
20 representatives from USTR confirm that this amendment  
21 will ensure that the Peru FTA will not take effect until,  
22 and unless, Peru fully complies with the side letters and  
23 accepts our beef exports without arbitrary age  
24 restrictions.

25 The Chairman. All right. So you are calling on Mr.

1 Eissenstat?

2 Senator Conrad. I am.

3 The Chairman. All right.

4 Mr. Eissenstat. Yes. Thank you, Senator Conrad.  
5 That is correct. We will ensure that Peru is in full  
6 compliance with its obligations under the SPS letters  
7 before proceeding. We have every intention that this  
8 will occur prior to entry into force, and we will  
9 continue to work with you and the members of the  
10 committee to ensure that that occurs.

11 Senator Conrad. Well, I appreciate very much that  
12 answer, and I appreciate, Mr. Chairman, the time.

13 The Chairman. Do you want to speak, Senator Thomas?

14 Senator Thomas. Just to say that I, too, was  
15 concerned and was a sponsor of the amendment. I am  
16 pleased with the way it has turned out and I think it  
17 will solve the problem.

18 Certainly, I think we have been unfairly treated on  
19 our beef trade throughout the world. We offer safety to  
20 our own people, yet other countries do not act like that  
21 is good enough for them. But in any event, I support  
22 this, and I thank you for your help.

23 The Chairman. Senator Bunning?

24 Senator Bunning. Mr. Chairman, I would like to be  
25 added as a co-sponsor of the amendment. Thank you.

1           The Chairman.   All right.  Senator Bunning will be  
2 added as a co-sponsor.  All right.

3           Senator Baucus.   Mr. Chairman?

4           The Chairman.   Yes.  Senator Baucus?

5           Senator Baucus.   I thank Senator Conrad very much  
6 for making this change.  I mean, this is critical.  Peru  
7 made two side letter agreements.  They agreed to take all  
8 beef.  They agreed.  They agreed.  Peru agreed to take  
9 all beef, and now they are slacking.

10           They are backing off.  That is inconsistent and in  
11 contravention with those two letters.  What I heard from  
12 Mr. Eissenstat is very helpful, namely, that the USTR  
13 will not implement this agreement until the beef side  
14 letters are fully implemented and lived up to.  That is  
15 very good news.  I do not like slipping off on side  
16 letters and trying to get away with commitments.

17           I commend the Senator for standing up and making it  
18 very clear that the side letters do what they say, that  
19 Peru will live up to the full force and intent of the  
20 agreement, the provisions in the side letter.

21           Mr. Chairman, I move the amendment.

22           The Chairman.   Can I ask this question?  Without  
23 objection, the amendment is adopted.

24           [No response]

25           The Chairman.   The amendment is adopted.

1 Senator Conrad, do you have another amendment?

2 Senator Conrad. I do, Mr. Chairman.

3 I have an amendment that I offered on the Oman  
4 agreement. Let me just talk about it a minute and see if  
5 we could get an agreement, Mr. Chairman, that would  
6 permit me not to offer the amendment.

7 As you know, I filed an amendment regarding slave  
8 labor and human trafficking. This amendment is identical  
9 to the one I offered on the Oman Free Trade Implementing  
10 bill. That amendment was adopted unanimously by the  
11 committee.

12 But despite clear evidence of problems with human  
13 trafficking and forced labor in Oman, my amendment was  
14 not included in the final version of the bill. Frankly,  
15 that causes me a significant loss of confidence in this  
16 whole process because under fast track, members give up  
17 their right to amend.

18 In return, this committee is supposed to have the  
19 right to have these so-called "mock" mark-ups and offer  
20 amendments, and if they are passed, they will be  
21 included.

22 I offered an amendment to the Oman agreement. It  
23 passed unanimously, and it was not included. It makes  
24 you wonder if this whole process is just a sham and  
25 Congress is just operating as a rubber stamp to any

1 agreement that comes up here.

2 Now we have the Peru Free Trade Agreement before the  
3 committee and the State Department Human Rights Report  
4 and Human Trafficking Reports make clear that there are  
5 problems with forced labor and human trafficking in Peru.

6 I think my amendment would be an important and  
7 appropriate addition to the implementing bill. But I  
8 also know from my experience that, even if we got a  
9 unanimous vote, it is unlikely to be included. So I will  
10 not go through the motions of offering the amendment; I  
11 see no purpose in that.

12 If I could get a commitment from the Chairman to work  
13 with me to enact changes to our underlying trade statutes  
14 to address the problems of slave labor and human  
15 trafficking, to ensure that goods made with forced labor  
16 or with the benefit of human trafficking cannot enter our  
17 country, I think this committee, on a unanimous basis,  
18 has said, no, we do not accept slave labor and we do not  
19 accept human trafficking. We do not accept what is going  
20 on in Peru with respect to sex slaves operating in that  
21 country. Those are not the values of America.

22 Forced and coerced labor has nothing to do with free  
23 trade and we need to make a strong statement in the  
24 United States' law that we will not subject American  
25 workers to that sort of competition.

1           So, I would ask, would the Chairman be willing to  
2 work with me on this issue to get changes enacted to  
3 improve and update our current laws on slave labor,  
4 forced labor, and human trafficking?

5           The Chairman. Well, the answer is yes, but I would  
6 like to give a little longer answer, if I could, and not  
7 modifying anything I just said.

8           Number one, I appreciate very much your doing it the  
9 way you have done it, because quite obviously, it is not  
10 a problem just with Oman or it is not a problem just with  
11 Peru, it is a problem generally, so it ought to be  
12 addressed in a broader context.

13           This is more generic than just the issue you brought  
14 up. There is no way I would disagree with the statement  
15 that you made when you said that the process is a sham.  
16 What I have asked my staff to do, and they have not gone  
17 very far down this road--and I am not going to do  
18 anything with Senator Baucus' assent--but I want to  
19 encourage all the trade staff of the members, I want a  
20 process in place prior to mock mark-up where there is  
21 consultation going on, so that I know that every member  
22 at least has had a chance to know that a certain  
23 agreement might be up here in three months so they have  
24 an opportunity to have consultation.

25           Because if we do have a sham process, then the whole

1 consultative process of the law is being ignored. Also,  
2 we are not abiding by our constitutional responsibilities  
3 of jurisdiction over trade, which we only give to the  
4 President because we cannot negotiate as a Congress with  
5 other countries.

6 So I would invite trade staff, working with my trade  
7 staff, to see what we can put together that would be a  
8 process involving notification to members that in a  
9 certain period of time something is coming up here. Are  
10 you interested in having these rump sessions we have?

11 Because when you are talking about negotiations, you  
12 cannot do that in public. We want to give them our  
13 opinion of what we do so that you or anybody else,  
14 including some failures that I see in the whole process,  
15 so we cannot use the word "sham" any more.

16 Senator Wyden. Mr. Chairman?

17 The Chairman. Yes.

18 Senator Wyden. I would just like to say, I think  
19 your proposal is extremely constructive and will go a  
20 long way to bringing this committee together in a  
21 bipartisan fashion on trade.

22 I am somebody who considers himself a free trader. I  
23 voted for NAFTA, I voted for CAFTA, I voted for a variety  
24 of these agreements, and I did not support Oman when we  
25 voted on it a couple of weeks ago for the reasons you



1 have outlined.

2 So I just want to say that I think what you proposed  
3 will go a long way to rebuilding the bipartisan coalition  
4 for free trade, both in the committee and outside this  
5 committee, and I commend you for the suggestion.

6 The Chairman. Senator Baucus?

7 Senator Baucus. I think we all agree. Certainly,  
8 Senator Conrad has brought up a point that needs to be  
9 addressed, namely, the statute is pretty clear on  
10 providing for prohibition against slave labor, but not so  
11 clear on human trafficking, the course labor, and that  
12 has got to be cleared up, clearly.

13 It is the United States' beacon of not allowing or  
14 countenancing in any way human trafficking or forced  
15 labor. It is going to be so important, I think, for our  
16 country, and also it is the right thing to do anyway.  
17 The trade laws in Chapter 19 have to be clarified to make  
18 that point.

19 I would suggest, Mr. Chairman, it is a great idea to  
20 try to work out a process, as you outlined. But I would  
21 go even one step further. I think that you are  
22 suggesting is not only constructive in the confines of  
23 what we do here in this committee, but also it would be  
24 helpful to think about how it might fit into trade  
25 promotion authority amendments.

1           Because when trade promotion authority comes up for  
2 renewal next year, we are going to have to figure out  
3 ways to assure members that they have got full access to  
4 negotiations, or an integral part of negotiations, with  
5 the administration as the administration is negotiating  
6 trade agreements. There have got to be some ways to  
7 address that, and I think this is a good way to begin.

8           The Chairman. I hope there is not a lapse in trade  
9 promotion authority. But the last time it ran out, there  
10 was a seven- or eight-year lapse. So I would like to  
11 make sure that we get to work on something that can be in  
12 place in anticipation that we might have a lapse.

13           Senator Bunning. Mr. Chairman?

14           The Chairman. I looked at Senator Conrad first,  
15 then I will get you.

16           Senator Bunning. I was not on this committee when  
17 PNTR for China was passed, and I was not on the floor of  
18 the Senate when it was done either. Is it possible to go  
19 back and change some of the things that we did in the  
20 past?

21           If you do not think human trafficking is going on in  
22 certain countries that we have passed permanent normal  
23 trade relationships with, and other things that are not  
24 addressed in our trade agreements, you are not very  
25 observant in the world that we live in.

1       There are constitutions in these countries,  
2 particularly in Peru, that prohibit slave labor. There  
3 is nothing in their constitution that prohibits human  
4 trafficking. It is just a natural thing that you would  
5 not expect countries to do, but they do it.

6       We ought to be able to address it before we give them  
7 carte blanche, because we have no control over anything  
8 that they do after we sign on the line. We have no  
9 control over our trade with that country once we give  
10 them permanent normal trade relations and help them  
11 ascend to the World Trade Organization.

12       So, it is really irritating when we see things going  
13 by that we cannot do anything about, and that we have  
14 already done in the past. So, I think that is something.  
15 Thank you for bringing up the amendment.

16       The Chairman.     Senator Conrad, you wanted to speak?

17       Senator Conrad.    Well, first of all, I want to thank  
18 my colleague from Kentucky. I entirely agree with his  
19 observation. I am somebody that voted for WTO. I voted  
20 for the China agreement. I voted, on the other hand,  
21 against NAFTA and CAFTA, and the Canadian Free Trade  
22 Agreement, because I thought they would be harmful to  
23 certain sectors.

24       But I will tell you, I have really lost confidence in  
25 this process and I will not vote again for fast track

1 authority, which I have in the past. I will not do it  
2 again unless there is some very significant change.

3 It has happened to me twice now, where I have offered  
4 amendments that have been passed, last time unanimously,  
5 and it means nothing. So, anybody who does not think  
6 this is a sham, I do not know what other word to put on  
7 it. But I personally have lost confidence in this whole  
8 way that we operate.

9 I thank the Chairman for being constructive in  
10 suggesting a way to move in a different direction for the  
11 future. I thank you very much for that, and I thank  
12 Senator Baucus for his further recommendation, because I  
13 do think that is constructive. If we do not rebuild  
14 confidence in this procedure, I think we have seen the  
15 death of this kind of fast track authority.

16 With respect to Peru, the Senator from Kentucky  
17 talked about what we see there. We are told that slave  
18 labor occurs mostly where narco-traffickers force local  
19 residents to do their bidding, and that human trafficking  
20 mostly occurs where women are sold into the domestic sex  
21 trade or to be household servants.

22 There are reports of forced labor in the timber  
23 industry, but we do not see a lot of slave labor in the  
24 exporting industries. So, I do think the larger question  
25 here is the underlying law. The underlying law ought to

1 apply, as Senator Baucus has said, to all of the  
2 countries with whom we do business. Clearly, we have got  
3 to tighten that up based on the overwhelming case we saw  
4 with Jordan.

5 So I would be willing to withhold on that amendment,  
6 Mr. Chairman, if you are willing to work with me, and the  
7 Ranking Member is willing to work with me, to try to  
8 address the underlying law.

9 The Chairman. Senator Baucus?

10 Senator Baucus. Yes. I think addressing the  
11 underlying law is critical, and that would apply to all  
12 countries. That would go back and undo whatever, on the  
13 surface level, was not done.

14 Because if we amend the law, the law will apply to  
15 all countries, not only Peru, but also China, any  
16 country. I think it is very important to get this law  
17 changed. I think it is a slam-dunk. That is a start.

18 There may be a way to solve some of the problems that  
19 the Senator from North Dakota is raising with respect to  
20 process, is to kind of look at some of the underlying  
21 laws that clearly should be amended, such as this one on  
22 human trafficking.

23 Senator Schumer. Mr. Chairman?

24 The Chairman. I have got to call on Senator Thomas  
25 first, then you. I think it is fair to say that we do

1 not have the Conrad amendment before us, even though we  
2 are discussing it, because we have reached an agreement  
3 on how we will work on this in the future.

4 Senator Thomas?

5 Senator Thomas. Mr. Chairman, just a reaction to  
6 some of the conversation that has gone on here. I agree  
7 entirely that we have to take a look at this, that we  
8 ought to take a look at the process that we have  
9 involved.

10 But I think we have to keep in mind that we do have  
11 an opportunity--and I have to tell you that the  
12 administration has done a good job of communicating--to  
13 comment on this. We have had some hearings on trade, and  
14 nobody shows up.

15 So I am a little offended by the idea that we have  
16 not had any input. I do not think that is the case.  
17 Furthermore, you cannot have trade agreements that are  
18 determined by 100 different people in the administration  
19 of it.

20 We have to have input, and I think we have to make  
21 sure that that is the case. But you cannot negotiate  
22 with 100 different people doing the negotiation into a  
23 trade agreement.

24 So, I am a little concerned about the kind of  
25 conversation that has gone on here, that every issue has

1 to be considered and voted on by everyone in this  
2 Congress. That is not the way it can be, and we know  
3 that. Specifically, Peru's constitution prohibits  
4 slavery, servitude, trafficking, and so on.

5 So I am with you, Mr. Chairman. We ought to take a  
6 look at the process and make sure we have an opportunity,  
7 but I am a little bit offended by the idea that we do not  
8 have input; if we take advantage of it, we do.

9 Senator Conrad. Mr. Chairman?

10 The Chairman. He may want to respond. But I have  
11 got to get Senator Schumer.

12 Senator Conrad. I would just say to my colleague, I  
13 am offended that offering an amendment that gets a  
14 unanimous vote here means nothing. Talk about being  
15 offended, that is pretty offensive. If you are talking  
16 about having input, that is our opportunity for input.  
17 We voted, and it meant nothing.

18 The Chairman. Senator Schumer?

19 Senator Schumer. Mr. Chairman, I have an amendment,  
20 as you know, about ILO labor standards which I am going  
21 to offer, or I am asking to offer now. I know we have a  
22 queue of amendments.

23 The Chairman. Senator Lott wanted to comment on  
24 this issue.

25 Senator Schumer. It just relates to what has been

1 said before. But I will defer to Senator Lott, then go  
2 on.

3 The Chairman. Well, he does not have an amendment.  
4 He just wants to speak.

5 Senator Lott. A couple of points. One, Mr.  
6 Chairman, let me confirm that while we might like more  
7 consultation--and I am one that would be supportive of  
8 that--and make sure we have input understandings as we go  
9 along, and I have been aggressive in doing that on  
10 occasion, but I do believe that there was a lot of  
11 consultation on the Peru provisions. In fact, can you  
12 confirm that there was a lot of consultation as this was  
13 being developed? I understand that committee members and  
14 individuals were involved in as many as 75 contacts or  
15 consultations. I do not want to leave the impression  
16 that the administration was not engaged with us, because  
17 I think they do. They could maybe do more.

18 The Chairman. I think what you would include in  
19 that, consultation that the executive branch has taken  
20 either at the institution of committee staff, including  
21 individual staff.

22 Senator Lott. Sure. Sure.

23 The Chairman. And our request to have those  
24 consultations. There were 29 in the case of Peru  
25 negotiations, is what we have tabulated.



1           Senator Lott.    All right.   Well, you can always work  
2   on that and improve it for the future.   I agree with what  
3   has been said about beef.   I do not like it when our  
4   trading partners, including Japan, South Korea, and  
5   others, want in our markets but they do not give us any  
6   latitude, quite often, in getting into theirs.   So, I  
7   feel strongly about that.

8           But I do think that the language in this agreement  
9   does provide the protections that this amendment would  
10   offer, but I still think that your point is well taken,  
11   Senator Conrad.   Your effort here is a good one to make  
12   the point.   But I also think you are doing the right  
13   thing by not forcing it to a vote, to get a colloquy and  
14   work in the future.

15           I do think we should extend this law and process we  
16   go through, but there is no reason that we should not try  
17   to make it better.   I assume we will do that next year.  
18   Thank you.

19           The Chairman.    In addition to the 29 consultations  
20   that I just commented on, there were also 5 instances  
21   during the course of Peru negotiations on which either  
22   the congressional oversight group or the Finance  
23   Committee met with the U.S. Trade Representative.

24           During those meetings, which I do not think I  
25   attended every one of them, we had an opportunity to have

1 this exchange. I do not recall that Peru was ever raised  
2 during any of those consultations.

3 Senator Schumer, on your amendment.

4 Senator Schumer. Yes. Mr. Chairman, the amendment  
5 I am offering, I think, underscores what my colleagues  
6 from North Dakota, Oregon, and Montana are bringing up.

7 My amendment would amend the implementing bill to  
8 incorporate the core ILO labor standards into the text of  
9 the agreement and subject the labor chapter to the same  
10 dispute settlement mechanisms as the other chapters of  
11 the agreement.

12 Now, as I understand it, the President of Peru,  
13 during the negotiations--that is, Alejandro Toledo--  
14 agreed to do this. So here we have the country we are  
15 negotiating with that was all for putting certain labor  
16 standards in, and more or less unilaterally the  
17 administration said, no, we do not want to put them in.

18 The first point I would make is, that does not make  
19 much sense. If you have a country itself that is willing  
20 to raise the labor standards to a modicum of a decent  
21 level, and we are the country that says, no, do not do  
22 it, that does not make sense. That is why I am going to  
23 insist that we do vote on this amendment, at the very  
24 least. I am offering it, by the way, on behalf of  
25 Senator Kerry and Senator Wyden, as well as myself.

1           But, second, I just asked my staff, was there any  
2 consultation about this? What is consultation? I mean,  
3 I have met with Susan Schwab. I have met with her  
4 predecessor. We have nice, general discussions.

5           But I do not know if our Ranking Member or any member  
6 on this side was told, Peru is willing to put in ILO  
7 labor standards, which is a perennial issue on every  
8 trade agreement, and do you think we ought to put those  
9 in or reject them?

10           That is the kind of consultation we are talking  
11 about. We are not just talking, someone comes in and  
12 meets and says, well, what do you care about, when we do  
13 not know what is going on in the negotiations.

14           I am a little sympathetic to my friend from Wyoming's  
15 argument that we cannot renegotiate every treaty before  
16 the 18 members of the Finance Committee or the 100  
17 members of the Senate.

18           On the other hand, I supported fast track as well,  
19 but there was supposed to be real consultation. Well, if  
20 there was ever an issue that would beg for some  
21 consultation, it is labor standards. I say that has been  
22 that, and environmental standards have been the two bete  
23 noirs of these agreements.

24           You finally have a country that says, yes, do it, and  
25 our country says no, and it just does not make sense. So

1 I know that we voted down these amendments in the past,  
2 but I would ask everyone to consider the fact that Peru  
3 is willing to agree to this standard.

4 It was our own negotiator who said no, at least to my  
5 knowledge. I may be wrong, and I am willing to stand  
6 corrected--without any consultation with members on this  
7 committee.

8 So, first I would offer the amendment, and second,  
9 urge that we vote "yes" on it as a way of letting the  
10 administration know that there has got to be some real  
11 consultation. There is not one cookie cutter formula  
12 that fits all for free trade. One of the issues is labor  
13 standards.

14 One of the issues we hear from our constituents is,  
15 people are getting paid \$1 a day. How are we going to  
16 compete? Obviously, the theory of comparative advantage,  
17 which I think still holds up pretty well, although with  
18 one international labor market caused by the Internet, it  
19 certainly has to be looked at, as I have said before.

20 You do not want to say every country should pay the  
21 exact same wages, but there ought to be a modicum--and  
22 the ILO standards are a modicum of decent standards--and  
23 we just say, the heck with them.

24 I do not know when the appropriate time is, but I am  
25 going to ask for a vote on my amendment.

1           The Chairman.    I would like to have a vote right  
2           away.  I would like to say why your amendment is not  
3           necessary.  You probably disagree with me.  I would also  
4           like to say it is not appropriate.

5           Listen, can I comment, aside, on the general  
6           environment here, as I did in the case of Senator Conrad?  
7           You said, did the administration ever ask any of us about  
8           these ILO provisions, or anything else for that matter,  
9           that maybe we think they ought to ask about?

10          I think the responsibility under the Constitution for  
11          regulating interstate and foreign trade is ours.  Now, we  
12          decided to have trade promotion authority and other  
13          things by other names for the last 50-some years because,  
14          as Senator Thomas implied, it is impossible for 535  
15          members of Congress to negotiate bilaterally or through  
16          the WTO.

17          So I think that you are wrong in saying, did the  
18          administration ask us about this.  We had the  
19          constitutional responsibility.  We ought to be telling  
20          the administration what we think they ought to negotiate.  
21          Then if they do not negotiate it the way we want to, then  
22          we can reject it.

23          But I do not think it is right for any of us,  
24          including Chuck Grassley, to say, has there been enough  
25          consultation?  The consultation is our opportunity for

1 input. If we do not get our oar in the water, I think it  
2 is our fault not theirs. I will listen to your comment,  
3 but I do want to --

4 Senator Schumer. I do not want to debate it all the  
5 way. But I thought part of the reason for fast track was  
6 to have some consultation ahead of time, for the reasons  
7 that Senator Thomas --

8 The Chairman. You are absolutely right.

9 Senator Schumer. This one just jumps out at you.  
10 Everyone knows it is a contentious issue. Everyone knows  
11 it is going to be something that people care a lot about.  
12 It is not esoteric, like the price of eggs in Lima versus  
13 eggs here. Yet, nobody knew about it, that it had been  
14 rejected, until we were presented with a fait accompli.

15 So all I am saying is, those of us who want to see  
16 some of these treaties go forward in a fair and  
17 reasonable way, the climate has changed, the feeling  
18 about them has changed, and the kind of consultation,  
19 which is not written into the Constitution -- obviously  
20 it is our responsibility to vote "yes" or "no."

21 We could vote "yes" or "no" on 100 amendments and gum  
22 up the whole works. But the goal is to make the thing  
23 work better, and this is an obvious case in point. That  
24 is my only point, Mr. Chairman.

25 The Chairman. All right. Now, why your amendment

1 should be defeated. It does not meet the standard under  
2 trade promotion authority. It should be rejected. Peru,  
3 as a country, has already ratified all eight core ILO  
4 conventions.

5 Under the Peru constitution, treaties entered into by  
6 the Peruvian government, which obviously would include  
7 those conventions, are part of Peru's national law. Our  
8 trade agreement obligates Peru to enforce its own labor  
9 laws.

10 So under the agreement, Peru would already be  
11 obligated to enforce the core ILO conventions. That is  
12 why I think your amendment is unnecessary, and on a roll  
13 call I would ask people to vote "no".

14 Go ahead, if you want a reaction.

15 Senator Schumer. We all know what this stands for.  
16 We all know the points I made before about having some  
17 modicum of fairness in labor organizations. It was true,  
18 Mr. Chairman, just going back a little bit to the first  
19 point, that a number of us did write letters to the  
20 administration asking that ILO standards be included. I  
21 do not have the letter in front of me.

22 The Chairman. We will take your word for it.

23 Senator Schumer. But that was done. Again, what  
24 really befuddles me is, in a case where the country was  
25 willing to go along, why we said no. It would have made

1 things a lot easier. It would have made things more  
2 bipartisan, and it would have made things fairer for both  
3 Peruvian and American workers. I do not think anyone  
4 disagrees with any of that.

5 Again, that is why I insist that we have a vote, and  
6 hope my colleagues on both sides of the aisle, all of  
7 whom represent workers, all of whom understand what we  
8 are doing here, vote "yes."

9 The Chairman. I guess I am suggesting a redundancy,  
10 and I am suggesting a process that is probably not 100  
11 years old, but I will bet 80 years old, for talking about  
12 solving some of these through the ILO.

13 Would the Clerk call the roll, please?

14 The Clerk. Mr. Hatch?

15 Senator Hatch. No.

16 The Clerk. Mr. Lott?

17 Senator Lott. No.

18 The Clerk. Ms. Snowe?

19 The Chairman. Aye by proxy.

20 The Clerk. Mr. Kyl?

21 The Chairman. No by proxy.

22 The Clerk. Mr. Thomas?

23 Senator Thomas. No.

24 The Clerk. Mr. Santorum?

25 The Chairman. No by proxy.



1           The Clerk.    Mr. Frist?  
2           The Chairman.  No by proxy.  
3           The Clerk.    Mr. Smith?  
4           The Chairman.  No by proxy.  
5           The Clerk.    Mr. Bunning?  
6           Senator Bunning.  No.  
7           The Clerk.    Mr. Crapo?  
8           The Chairman.  No by proxy.  
9           The Clerk.    Mr. Baucus?  
10          Senator Baucus.  Aye.  
11          The Clerk.    Mr. Rockefeller?  
12          Senator Baucus.  Aye by proxy.  
13          The Clerk.    Mr. Conrad?  
14          Senator Conrad.  Aye.  
15          The Clerk.    Mr. Jeffords?  
16          Senator Baucus.  Aye by proxy.  
17          The Clerk.    Mr. Bingaman?  
18          Senator Baucus.  Aye by proxy.  
19          The Clerk.    Mr. Kerry?  
20          Senator Baucus.  Aye by proxy.  
21          The Clerk.    Mrs. Lincoln?  
22          Senator Baucus.  Aye by proxy.  
23          The Clerk.    Mr. Wyden?  
24          Senator Wyden.  Aye.  
25          The Clerk.    Mr. Schumer?

1 Senator Schumer. Aye.

2 The Clerk. Mr. Chairman?

3 The Chairman. No.

4 The Clerk. Mr. Chairman, the tally is 10 ayes, 10  
5 nays.

6 The Chairman. All right. The amendment fails.

7 Senator Schumer. Mr. Chairman, if you vote your  
8 proxy "yes" it could be adopted. [Laughter].

9 The Chairman. Senator Baucus would clarify, because  
10 he was with me, we had a long night, and it was all  
11 business.

12 Senator Wyden. Mr. Chairman?

13 The Chairman. Yes?

14 Senator Wyden. Could I just ask a question of the  
15 USTR representative on this?

16 The Chairman. Yes.

17 Senator Wyden. My understanding is that you all are  
18 going to be going very shortly to Peru to look  
19 specifically at the labor issue. That suggests to me  
20 that you are already concerned that labor laws are not  
21 being enforced there. Is that correct?

22 Mr. Eissenstat. Senator Wyden, we do not have any  
23 immediate plans, but we would like to get to Peru very  
24 soon to meet the new administration. We have long been  
25 concerned with the general labor regime.

1           As you know, under the Fujimori presidency, some of  
2 the labor reforms were rolled back. President Toledo has  
3 made great progress at bringing those reforms up to the  
4 ILO consistency.

5           We will work with the Peruvian administration through  
6 the labor cooperation mechanisms and the Labor Fairness  
7 Council to ensure that the labor rights are protected and  
8 that the people of Peru can benefit from the agreement.  
9 So, we will be continuing to work with them, not just on  
10 a trip in the short term, but throughout this.

11           Senator Wyden. But are you making a trip there  
12 fairly shortly? My understanding was that you all were,  
13 which indicated to me that you were concerned about the  
14 lack of enforcement of labor laws. If that was the case,  
15 then it certainly suggests that maybe we ought to be  
16 waiting a few weeks to get a report of what you found  
17 with respect to enforcement of labor law.

18           Mr. Eissenstat. Senator Wyden, I am not aware of a  
19 trip to Peru on labor issues. But we do plan to go to  
20 Peru in the near future to meet with the administration,  
21 and we are happy to raise these issues with them. If you  
22 have some particular questions, we would be happy to  
23 bring those along with us.

24           Senator Wyden. Thank you.

25           The Chairman. We do not have a quorum. I hope we

1 can get a quorum. If we do not get a quorum, I will  
2 convene a meeting off the floor when we have a vote to  
3 vote on this.

4 We would now go to Vietnam. Since Senator Baucus  
5 gave a very good statement, and mine is somewhat  
6 repetitive, I do raise some concerns about religious  
7 freedom that are in my statement, but I think I will put  
8 my statement in the record so that we can immediately go  
9 to any discussion of this issue.

10 So is there any discussion of Vietnam? [No response]  
11 All right. Since we do not have a quorum on Vietnam, we  
12 will also vote on that off the floor as well.

13 Senator Conrad. Mr. Chairman?

14 The Chairman. Senator Conrad has an amendment.

15 Senator Conrad. I do. Can I just briefly go  
16 through this?

17 The Chairman. Yes. I think, though, we will not be  
18 able to take action.

19 Senator Conrad. We may not have to take action.

20 The Chairman. Go ahead, then.

21 Senator Conrad. As you know, Mr. Chairman, I filed  
22 an amendment to the Vietnam PNTR related to the New  
23 Shipper Review Act. This amendment deals with an issue  
24 that is critically important to the U.S. honey industry.

25 Over the past several years, the U.S. industry has

1 struggled to compete with a flood of unfairly traded  
2 Chinese honey. The industry took action to put a stop to  
3 these unfair imports and the U.S. Government imposed  
4 duties on Chinese honey to prevent the Chinese from  
5 selling honey into our market at fire sale prices.

6 At first these duties worked, but then the Chinese  
7 found a loophole to avoid the duties. Under our law,  
8 they could post a bond rather than pay the duties in  
9 cash. So the Chinese set up front companies that posted  
10 the bond, brought the honey in, and then promptly went  
11 out of business without ever paying the duties. This is  
12 a scam.

13 In response, I have joined colleagues in supporting  
14 the New Shipper Review Act, which would close the  
15 loophole. It simply says that for new shippers, duties  
16 must be paid in cash rather than simply posting a bond.

17 This is not controversial. It is supported by the  
18 Chairman and the Ranking Member, it has passed the Senate  
19 repeatedly by unanimous consent, but it has not been  
20 signed into law. The problem is not on the Senate side,  
21 the problem is on the House side.

22 Mr. Chairman, if I could just have your attention on  
23 this amendment. It is past time to find a vehicle for  
24 the New Shipper Review Act that can pass the finish line.  
25 I understand that your feeling is that the Vietnam bill

1 is not the right vehicle.

2 I would respect that and not offer the amendment if  
3 you would commit to me that you will help us find a way  
4 to get the New Shipper Review provisions enacted at some  
5 appropriate time, and hopefully soon.

6 The Chairman. I am in the process of doing that on  
7 some conference work that is going on right now. I  
8 cannot predict for sure exactly how that is going to turn  
9 out, because it is not quite final. We are just about  
10 final.

11 There are some overriding issues that may preclude  
12 it, but it is my intention not to have those overriding  
13 issues precluded. If I come out on the right side, I  
14 think your issue will be taken care of.

15 Senator Conrad. I thank the Chairman for that. For  
16 the Chinese to get away with this deal, where they post  
17 these bonds, set up these front companies, get the honey  
18 in here and then just go out of business without ever  
19 paying the duties, that is the kind of thing that just  
20 causes a loss of confidence in these trade agreements.  
21 So, I hope we are able to get this done. On the basis of  
22 your assurances, I will not offer the amendment.

23 The Chairman. All right.

24 We are recessed until the committee meeting is called  
25 off the floor during one of these votes when we can

1 easily get a quorum. I thank everybody for their  
2 participation and cooperation.

3 [Whereupon, at 11:02 p.m. the meeting was recessed.]

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Conrad-Thomas-Wyden-Baucus-Grassley/<sup>Bunning</sup> Amendment to Peru TPA Statement of Administration Action (modified)

At an appropriate place in the draft Statement of Administrative Action, insert the following:

"The Administration will ensure that at the time the Agreement enters into force Peru has taken measures necessary to comply with its obligations under the agreements on sanitary and phytosanitary and technical barriers to trade entered into between Peruvian President of the Council of Ministers Pedro Pablo Kuczynski and Peruvian Minister of Agriculture Manuel Manrique, and U.S. Trade Representative Rob Portman on January 5, 2006, and April 10, 2006."

Conrad Amendment #1 to the Peru TPA implementing bill

Slave Labor and Human Trafficking

At an appropriate place, add a provision to prevent goods made with slave labor (including under sweatshop conditions so egregious as to be tantamount to slave labor), or with the benefit of human trafficking, from benefiting from the agreement.

*Kerry/Wyden*  
**Schumer/Amendment #1 to U.S.-Peru Trade Promotion Agreement  
Implementing Bill**

**Peru Labor**

Amend Section 101 of the implementing bill to require that the agreement be renegotiated to:

- 1) Take up Peruvian President Alejandro Toledo's offer to incorporate the core ILO labor standards into the text of the agreement; and
  - 2) Subject the labor chapter to the same dispute settlement mechanisms as the other chapters of the agreement before the agreement can enter into force.
-

Conrad Amendment to Vietnam PNTR ( S. 3495)

New Shipper Review

At an appropriate place, add the New Shipper Review provisions from S. 2467.

**UNITED STATES SENATE  
COMMITTEE ON FINANCE**

**Charles E. Grassley, Chairman**

Thursday, July 27, 2006

215 Dirksen Senate Office Building

**Agenda for Business Meeting**

1. To review and make recommendations on proposed legislation implementing the U.S. – Peru Trade Promotion Agreement
2. To consider favorably reporting S. 3495, to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Vietnam

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**THE UNITED STATES – PERU TRADE PROMOTION AGREEMENT  
IMPLEMENTATION ACT**

**STATEMENT OF ADMINISTRATIVE ACTION**

This Statement of Administrative Action (“Statement”) is submitted to the Congress in compliance with section 2105(a)(1)(C)(ii) of the Bipartisan Trade Promotion Authority Act of 2002 (“TPA Act”) and accompanies the implementing bill for the free trade agreement that the United States has concluded with Peru. The bill approves and makes statutory changes necessary or appropriate to implement the Agreement, which the United States Trade Representative signed on April 12, 2006.

This Statement describes significant administrative actions proposed to implement U.S. obligations under the Agreement.

In addition, incorporated into this Statement are two other statements required under section 2105(a) of the TPA Act: (1) an explanation of how the implementing bill and proposed administrative action will change or affect existing law; and (2) a statement setting forth the reasons why the implementing bill and proposed administrative action are necessary or appropriate to carry out the Agreement. The Agreement does not change the provisions of any agreement the United States has previously negotiated with Peru.

For ease of reference, this Statement generally follows the organization of the Agreement, with the exception of grouping the general provisions of the Agreement (Chapters One and Nineteen through Twenty-Three) at the beginning of the discussion.

For each chapter of the Agreement, the Statement describes the pertinent provisions of the implementing bill, explaining how the bill changes or affects existing law, and stating why those provisions are necessary or appropriate to implement the Agreement. The Statement then describes the administrative action proposed to implement the particular chapter of the Agreement, explaining how the proposed action changes existing administrative practice or authorizes further action and stating why such actions are necessary or appropriate to implement the Agreement.

It should be noted that this Statement does not, for the most part, discuss those many instances in which U.S. law or administrative practice will remain unchanged under the Agreement. In many cases, U.S. laws and regulations are already in conformity with the obligations assumed under the Agreement.

Finally, references in this Statement to particular sections of U.S. statutes are based on those statutes in effect as of the date this Statement was submitted to the Congress.

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**Chapters:**  
**One (Initial Provisions and General Definitions)**  
**Nineteen (Transparency)**  
**Twenty (Administration of the Agreement and Trade Capacity Building)**  
**Twenty-One (Dispute Settlement)**  
**Twenty-Two (Exceptions)**  
**Twenty-Three (Final Provisions)**

**1. Implementing Bill**

**a. Congressional Approval**

Section 101(a) of the implementing bill provides Congressional approval for the Agreement and this Statement, as required by sections 2103(b)(3) and 2105(a)(1) of the TPA Act.

**b. Entry into Force**

Article 23.4 requires the United States and Peru to exchange written notifications that their respective legal requirements for the entry into force of the Agreement have been fulfilled. The exchange of notifications is a necessary condition for the Agreement's entry into force. Section 101(b) of the implementing bill authorizes the President to exchange notes with Peru to provide for the Agreement to enter into force for the United States on or after January 1, 2007. The exchange of notes is conditioned on a determination by the President that Peru has taken measures necessary to comply with those of its obligations that are to take effect at the time the Agreement enters into force.

Certain provisions of the Agreement become effective after the Agreement enters into force. For example, the Agreement provides Peru up to three years to comply with certain provisions relating to customs administration. Likewise, the Agreement allots Peru 18 months to begin carrying out certain transparency provisions governing financial services measures. In addition, the Agreement's obligations regarding intellectual property rights, specifically those governing the ratification of certain international agreements, patent restoration, and the enforcement of certain copyright protections apply to Peru at prescribed times after the Agreement enters into force.

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**c. Relationship to Federal Law**

Section 102(a) of the bill establishes the relationship between the Agreement and U.S. law. The implementing bill, including the authority granted to federal agencies to promulgate implementing regulations, is intended to bring U.S. law fully into compliance with U.S. obligations under the Agreement. The bill accomplishes that objective with respect to federal legislation by amending existing federal statutes that would otherwise be inconsistent with the Agreement and, in certain instances, by creating entirely new provisions of law.

Section 102(a) clarifies that no provision of the Agreement will be given effect under domestic law if it is inconsistent with federal law, including provisions of federal law enacted or amended by the bill. Section 102(a) will not prevent implementation of federal statutes consistent with the Agreement, where permissible under the terms of such statutes. Rather, the section reflects the Congressional view that necessary changes in federal statutes should be specifically enacted rather than provided for in a blanket preemption of federal statutes by the Agreement.

The Administration has made every effort to include all laws in the implementing bill and to identify all administrative actions in this Statement that must be changed in order to conform with the new U.S. rights and obligations arising from the Agreement. Those include both regulations resulting from statutory changes in the bill itself and changes in laws, regulations, rules, and orders that can be implemented without a change in the underlying U.S. statute.

Accordingly, at this time it is the expectation of the Administration that no changes in existing federal law, rules, regulations, or orders other than those specifically indicated in the implementing bill and this Statement will be required to implement the new international obligations that the United States will assume under the Agreement. This is without prejudice to the President's continuing responsibility and authority to carry out U.S. law and agreements. As experience under the Agreement is gained over time, other or different administrative actions may be taken in accordance with applicable law to implement the Agreement. If additional action is called for, the Administration will seek legislation from Congress or, if a change in regulation is required, follow normal agency procedures for amending regulations.

**d. Relationship to State Law**

The Agreement's rules generally cover state and local laws and regulations, as well as those at the federal level. There are a number of exceptions to, or limitations on, this general rule, however, particularly in the areas of government procurement, labor and environment, investment, and cross-border trade in services and financial services.

The Agreement does not automatically "preempt" or invalidate state laws that do not conform to the Agreement's rules, even if a dispute settlement panel were to find a state measure inconsistent with the Agreement. The United States is free under the Agreement to determine how it will conform with the Agreement's rules at the federal and non-federal level. The



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Administration is committed to carrying out U.S. obligations under the Agreement, as they apply to the states, through the greatest possible degree of state-federal consultation and cooperation.

Section 102(b)(1) of the bill makes clear that only the United States is entitled to bring an action in court in the event that there is an unresolved conflict between a state law, or the application of a state law, and the Agreement. The authority conferred on the United States under this paragraph is intended to be used only as a "last resort," in the unlikely event that efforts to achieve consistency through consultations have not succeeded.

The reference in section 102(b)(2) of the bill to the business of insurance is required by virtue of section 2 of the McCarran-Ferguson Act (15 U.S.C. 1012). That section states that no federal statute shall be construed to supersede any state law regulating or taxing the business of insurance unless the federal statute "specifically relates to the business of insurance." Certain provisions of the Agreement (for example, Chapter Twelve, relating to financial services) do apply to state measures regulating the insurance business, although "grandfathering" provisions in Chapter Twelve exempt existing inconsistent (*i.e.*, "non-conforming") measures.

Given the provision of the McCarran-Ferguson Act, the implementing act must make specific reference to the business of insurance in order for the Agreement's provisions covering the insurance business to be given effect with respect to state insurance law. Insurance is otherwise treated in the same manner under the Agreement and the implementing bill as other financial services under the Agreement.

**e. Private Lawsuits**

Section 102(c) of the implementing bill precludes any private right of action or remedy against a federal, state, or local government, or against a private party, based on the provisions of the Agreement. A private party thus could not sue (or defend a suit against) the United States, a state, or a private party on grounds of consistency (or inconsistency) with the Agreement. The provision also precludes a private right of action attempting to require, preclude, or modify federal or state action on grounds such as an allegation that the government is required to exercise discretionary authority or general "public interest" authority under other provisions of law in conformity with the Agreement.

With respect to the states, section 102(c) represents a determination by the Congress and the Administration that private lawsuits are not an appropriate means for ensuring state compliance with the Agreement. Suits of this nature may interfere with the Administration's conduct of trade and foreign relations and with suitable resolution of disagreements or disputes under the Agreement.

Section 102(c) does not preclude a private party from submitting a claim against the United States to arbitration under Chapter Ten (Investment) of the Agreement or seeking to enforce an award against the United States issued pursuant to such arbitration. The provision also would not preclude any agency of government from considering, or entertaining argument

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on, whether its action or proposed action is consistent with the Agreement, although any change in agency action would have to be consistent with domestic law.

**f. Implementing Regulations**

Section 103(a) of the bill provides the authority for new or amended regulations to be issued, and for the President to proclaim actions implementing the provisions of the Agreement, as of the date the Agreement enters into force. Section 103(b) of the bill requires that, whenever possible, all federal regulations required or authorized under the bill and those proposed in this Statement as necessary or appropriate to implement immediately applicable U.S. obligations under the Agreement are to be developed and promulgated within one year of the Agreement's entry into force. In practice, the Administration intends, wherever possible, to amend or issue the other regulations required to implement U.S. obligations under the Agreement at the time the Agreement enters into force. The process for issuing regulations pursuant to this authority will comply with the requirements of the Administrative Procedures Act, including requirements to provide notice of and an opportunity for public comment on such regulations. If issuance of any regulation will occur more than one year after the date provided in section 103(b), the officer responsible for issuing such regulation will notify the relevant committees of both Houses of Congress of the delay, the reasons for such delay, and the expected date for issuance of the regulation. Such notice will be provided at least 30 days prior to the end of the one-year period.

**g. Dispute Settlement**

Section 105(a) of the bill authorizes the President to establish within the Department of Commerce an office responsible for providing administrative assistance to dispute settlement panels established under Chapter Twenty-One of the Agreement. This provision enables the United States to implement its obligations under Article 20.3.1 of the Agreement. This office will not be an "agency" within the meaning of 5 U.S.C. 552, consistent with treatment provided under other U.S. free trade agreements, including the North American Free Trade Agreement ("NAFTA") and free trade agreements with Australia, Chile, and Singapore, Morocco, Bahrain, and Oman. Thus, for example, the office will not be subject to the Freedom of Information Act or the Government in the Sunshine Act. Since they are international bodies, panels established under Chapter Twenty-One are not subject to those acts.

Section 105(b) of the bill authorizes the appropriation of funds to support the office established pursuant to section 105(a).

**h. Effective Dates**

Section 107(b) of the bill provides that the first three sections of the bill as well as Title I of the bill go into effect when the bill is enacted into law.

Section 107(a) provides that the other provisions of the bill and the amendments to other statutes made by the bill take effect on the date on which the Agreement enters into force.

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Section 107(c) provides that the provisions of the bill (other than section 107(c) itself) and the amendments to other statutes made by the bill will cease to have effect on the date on which the Agreement terminates.

**2. Administrative Action**

No administrative changes will be necessary to implement Chapters One, Twenty, Twenty-Two, and Twenty-Three.

Article 19.1.1 of the Agreement requires each government to designate a contact point to facilitate communications regarding the Agreement. The Office of the United States Trade Representative ("USTR") will serve as the U.S. contact point for this purpose.

The Agreement calls for the United States and Peru to develop rosters of independent experts willing to serve as panelists to settle disputes between the parties that may arise under the Agreement. One roster will be available for most types of disputes, while a specialized roster will be established to address disputes regarding the Agreement's financial services provisions. USTR will consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate ("Trade Committees") as it develops rosters of panelists.

**Chapter Two (National Treatment and Market Access for Goods)**

**1. Implementing Bill**

**a. Proclamation Authority**

Section 201(a)(1) of the bill grants the President authority to implement by proclamation U.S. rights and obligations under Chapter Two of the Agreement through the application or elimination of customs duties and tariff-rate quotas ("TRQs"). Section 201(a)(1) authorizes the President to:

- modify or continue any duty;
- keep in place duty-free or excise treatment; or
- impose any duty

that the President determines to be necessary or appropriate to carry out or apply Articles 2.3, 2.5, 2.6, 3.3.13, and Annex 2.3 of the Agreement.

The proclamation authority with respect to Article 2.3 authorizes the President to provide for the continuation, phase-out, and elimination, according to the Schedule of the United States to Annex 2.3 of the Agreement, of customs duties on imports from Peru that meet the

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Agreement's rules of origin.

The proclamation authority with respect to Articles 2.5 and 2.6 authorizes the President to provide for the elimination of duties on particular categories of imports from the other Agreement countries. Article 2.5 pertains to the temporary admission of certain goods, such as commercial samples, goods intended for display at an exhibition, and goods necessary for carrying out the business activity of a person who qualifies for temporary entry into the United States. Article 2.6 pertains to the importation of goods: (i) returned to the United States after undergoing repair or alteration in Peru; or (ii) sent from Peru for repair or alteration in the United States.

Sections 201(a)(2) and (3) of the bill address the status of Peru as a designated beneficiary country under the Generalized System of Preferences and the Andean Trade Preference Act.

Section 201(a)(2) of the bill requires the President to withdraw beneficiary country status under the Generalized System of Preferences from Peru on the date the Agreement takes effect.

Section 201(a)(3) of the bill requires the President to withdraw beneficiary country status under the Andean Trade Preference Act on the date the Agreement takes effect.

Section 201(b) of the bill authorizes the President, subject to the consultation and layover provisions of section 104 of the bill, to:

- modify or continue any duty;
- modify the staging of any duty elimination under the Agreement pursuant to an agreement under Annex 2.3 with one or more Agreement countries;
- keep in place duty-free or excise treatment; or
- impose any duty

by proclamation whenever the President determines it to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Peru provided by the Agreement.

Section 104 of the bill sets forth consultation and layover steps that must precede the President's implementation of any duty modification by proclamation. This would include, for example, modifications of duties under section 201(b) of the bill. Under the consultation and layover provisions, the President must obtain the advice of the appropriate private sector advisory committees (pursuant to section 135 of the Trade Act of 1974) and the ITC on the proposed action. The President must submit a report to the Trade Committees setting forth the action proposed, the reasons for the proposed action, and the advice of the private sector and the

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ITC. The bill sets aside a 60-day period following the date of transmittal of the report for the President to consult with the Trade Committees on the action. Following the expiration of the 60-day period, the President may proclaim the action.

The President may initiate the consultation and layover process under section 104 of the bill on enactment of the bill. However, under section 103(a), any modifying proclamation cannot take effect until the Agreement enters into force. In addition to modifications of customs duties, these provisions apply to other Presidential proclamation authority provided in the bill that is subject to consultation and layover, such as authority to implement a proposal to modify the Agreement's specific rules of origin pursuant to an agreement with Peru under Article 4.14 of the Agreement.

Section 201(c) of the bill provides for the conversion of existing specific or compound rates of duty for various goods to *ad valorem* rates for purposes of implementing the Agreement's customs duty reductions. (A compound rate of duty for a good would be a rate of duty stated, for example, as the sum of X dollars per kilogram plus Y percent of the value of the good.)

Section 201(d) of the bill directs the President to take such action as may be necessary to ensure that imports of goods subject to tariff rate quotas do not disrupt the orderly marketing of commodities in the United States. This provision will be implemented consistent with Article 2.15 of the Agreement. Any agency action pursuant to this provision will be taken in accordance with regulations promulgated after providing notice and opportunity for public comment.

**b. Agricultural Safeguard**

Section 202 of the bill implements the agricultural safeguard provisions of Article 2.18 and Annex 2.18 of the Agreement. Article 2.18 permits the United States to impose an "agricultural safeguard measure," in the form of additional duties, on imports of certain goods of Peru specified in the Schedule of the United States to Annex 2.18 of the Agreement that exceed the volume thresholds set out in that annex.

Section 202(a) of the bill provides the overall contour of the agricultural safeguard rules, including definitions of terms used in the agricultural safeguard provisions. Section 202(a)(2) defines the applicable normal trade relations (most-favored-nation) ("NTR (MFN)") rate of duty for purposes of the agricultural safeguard. Under the Agreement, the sum of the duties assessed under an agricultural safeguard and the applicable rate of duty in the Schedule of the United States to Annex 2.3 of the Agreement may not exceed the general NTR (MFN) rate of duty.

Section 202(a)(3) of the bill defines the "schedule rate of duty" for purposes of the agricultural safeguard as the rate of duty for a good set out in the Schedule of the United States to Annex 2.3 of the Agreement.

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Section 202(a)(4) of the bill specifies the products that may be subject to an agricultural safeguard measure. These goods must qualify as originating goods under section 203, except that operations performed in or material obtained from the United States will be considered as if the operations were performed in, and the material was obtained from, a country that is not a party to the Agreement.

Section 202(a)(5) of the bill implements Article 2.18.4 of the Agreement by establishing that 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.

Section 202(a)(6) of the bill provides that the agricultural safeguard provision ceases to apply with respect to a good on the date on which duty-free treatment must be provided to that good under the Schedule of the United States to Annex 2.3 of the Agreement.

Section 202(a)(7) of the bill implements Article 2.18.6 of the Agreement by directing the Secretary of the Treasury (the "Secretary") within 60 days of the date on which the Secretary first assesses an agricultural safeguard duty on a good to notify Peru and provide it with supporting data.

Section 202(b) of the bill provides for the Secretary to impose agricultural safeguard duties and explains how the additional duties are to be calculated. The additional duties are triggered in any year when the volume of imports of the good from an Agreement country exceeds 130 percent of the in-quota quantity allocated to Peru for the good in that calendar year in the Schedule of the United States to Annex 2.3 of the Agreement. (The in-quota quantities for goods are set out in the Schedule of the United States to Annex 2.3 of the Agreement on a calendar-year basis beginning with "year one." Year one refers to the calendar year in which the Agreement enters into force.) The additional duties remain in effect only until the end of the calendar year in which they are imposed.

**c. Customs User Fees**

Section 204 of the bill implements U.S. commitments under Article 2.10.4 of the Agreement, regarding customs user fees on originating goods, by amending section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)). The amendment provides for the immediate elimination of the merchandise processing fee for goods qualifying as originating goods under Article 3.3, Annex 3-A or Chapter Four of the Agreement. Customs processing of goods qualifying as originating goods under the Agreement will be financed by money from the General Fund of the Treasury. This is necessary to ensure that the United States complies with obligations under the General Agreement on Tariffs and Trade 1994 by limiting fees charged for the processing of non-originating imports to amounts commensurate with the processing services provided. That is, fees charged on such non-originating imports will not be used to finance the processing of originating imports.

2. **Administrative Action**

a. **Temporary Admission of Goods and Goods Entered After Repair or Alteration**

As discussed above, section 201(a)(1) of the bill authorizes the President to proclaim duty-free treatment for certain goods to carry out Article 2.5 (temporary admission of certain goods) and Article 2.6 (repair or alteration of certain goods) of the Agreement. The Secretary will issue regulations to carry out this portion of the proclamation.

b. **Agricultural Safeguard**

The Secretary will issue regulations implementing the agricultural safeguard provisions of section 202. It is the Administration's intent that agricultural safeguard measures will be applied whenever the volume thresholds specified in the Agreement have been met.

**Chapter Three (Textiles and Apparel)**

1. **Implementing Bill**

a. **Handloomed, Handmade, or Folklore Articles**

The proclamation authority granted to the President under section 201(a)(1) includes authority to implement Article 3.3.13 of the Agreement by providing duty-free treatment for Peruvian textile or apparel articles that the United States and Peru agree are handloomed, handmade, or folklore articles, and are certified as such by Peru's competent authority.

b. **Textile or Apparel Safeguard**

Article 3.1 of the Agreement makes remedies available to domestic textile and apparel industries that have sustained or are threatened by serious damage from imports of textile or apparel goods for which duties have been reduced or eliminated under the Agreement. It also sets forth procedures for obtaining such remedies. The Administration does not anticipate that the Agreement will result in injurious increases in textile or apparel imports from the other Agreement countries. Nevertheless, the Agreement's textile or apparel safeguard procedure will ensure that relief is available if needed.

The safeguard mechanism applies when, as a result of the reduction or elimination of a customs duty under the Agreement, textile or apparel goods of Peru are being imported into the United States in such increased quantities, in absolute or relative terms, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing like or directly competitive goods. In these circumstances, Article 3.1 permits the United States to

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increase duties on the imported goods to a level that does not exceed the lesser of the prevailing U.S. NTR (MFN) duty rate for the good or the U.S. NTR (MFN) duty rate in effect at the time the Agreement entered into force.

Subtitle B of Title III of the bill (sections 321 through 328) implements the Agreement's textile and apparel safeguard.

Section 321(a) establishes that an interested party may file a request for a textile or apparel safeguard measure with the President, who must review the request to determine whether to commence consideration of the request on its merits. 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 in the *Federal Register* stating that the request will be considered and seeking public comments on the request. The notice will contain a summary of the request itself and the dates by which comments and rebuttals must be received. Subject to protection of confidential business information, if any, the full text of the request will be made available on the Department of Commerce, International Trade Administration's website.

Section 322 sets out the procedures to be followed in considering the request. Section 322(a)(1) of the bill provides for the President to determine whether, as a result of the reduction or elimination of a duty provided for 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 that imports of the article cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. Section 301(2) of the bill defines "Peruvian textile or apparel article" to mean an article listed in the Annex to the World Trade Organization ("WTO") Agreement on Textiles and Clothing (other than a good listed in Annex 3-C of the Agreement) that qualifies as an originating good under section 203(b) of the bill. The President's determination corresponds to the determination required under Article 3.1.1 of the Agreement. Section 322(a)(2) of the bill includes criteria for determining serious damage or actual threat thereof, consistent with Article 3.1.2 of the Agreement. Section 322(a)(3) provides that the President must make his determination no later than 30 days after the conclusion of any consultations with the country that may be subject to the measure.

Section 322(b) of the bill identifies the relief that the President may provide to a U.S. industry that the President determines is facing serious damage or actual threat thereof. Such relief may consist of an increase in tariffs to the lesser of: (i) the NTR (MFN) duty rate in place for the textile or apparel article at the time the relief is granted; or (ii) the NTR (MFN) duty rate for that article on the day before the Agreement entered into force.

Section 323 of the bill provides that the maximum period of relief under the textile or apparel safeguard shall be three years in the aggregate. The initial period of import relief may be up to two years. The President may extend the relief for up to one year, however, if he determines that continuation is necessary to remedy or prevent serious damage and to facilitate adjustment, and that the domestic industry is, in fact, adjusting to import competition.



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Section 324 of the bill provides that relief may not be granted to an article under the textile and apparel safeguard if: (i) relief previously has been granted to that article under the textile and apparel safeguard; or (ii) the article is subject, or becomes subject, to a safeguard measure under (a) Chapter Eight of the Agreement (corresponding to Subtitle A of Title III of the bill), or (b) chapter 1 of Title II of the Trade Act of 1974.

Section 325 of the bill provides that on the date import relief terminates, imports of the textile or apparel article that was subject to the safeguard action will be subject to the rate of duty that would have been in effect on that date in the absence of the relief.

Section 326 of the bill provides that authority to provide relief under the textile and apparel safeguard will expire five years after the date on which the Agreement enters into force.

Under Article 3.1.7 of the Agreement, if the United States provides relief to a domestic industry under the textile and apparel safeguard, it must provide Peru "mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the [safeguard]." If the United States and Peru are unable to agree on trade liberalizing compensation, that country may increase tariffs equivalently on U.S. goods. The obligation to provide compensation (and the right to increase tariffs absent agreement on compensation) terminates when the safeguard relief ends.

Section 123 of the Trade Act of 1974 (19 U.S.C. 2133), as amended, authorizes the President to provide trade compensation for global safeguard measures taken pursuant to chapter 1 of title II of the Trade Act of 1974. Section 327 of the implementing bill extends that authority to measures taken pursuant to the Agreement's textile or apparel safeguard provisions.

Finally, section 328 of the bill provides that confidential business information submitted in the course of consideration of a request for a textile or apparel safeguard may not be released absent the consent of the party providing the information. It also provides that a party submitting confidential business information in a textile or apparel safeguard proceeding must submit a non-confidential version of the information or a summary of the information.

**c. Enforcement of Textile and Apparel Rules of Origin**

In addition to lowering barriers to trade in textile and apparel goods, the Agreement includes anti-circumvention provisions designed to ensure the accuracy of claims of origin and to prevent circumvention of laws, regulations, and procedures affecting such trade. Article 3.2 of the Agreement provides for verifications to determine the accuracy of claims of origin for textile or apparel goods, and to determine that exporters and producers are complying with applicable laws, regulations, and procedures regarding trade in textile or apparel goods.

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Under Articles 3.2.3 and 3.2.4 of the Agreement, at the request of the United States, the government of Peru must conduct a verification. The object of a verification under Article 3.2.3(a)(i) is to determine whether a claim of origin for a textile or apparel good is accurate. The object of a verification under Article 3.2.3(a)(ii) is to determine whether an exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods, including those implementing international agreements. The United States may assist in the verification or, at the request of the government of Peru, conduct the verification itself. A verification may entail visits by officials of Peru and the United States to the premises of a textile or apparel exporter or producer in Peru.

Pursuant to Article 3.2.7 of the Agreement, the United States may take appropriate action during and after a verification, including, depending on the nature of the verification, by suspending or denying preferential tariff treatment for textile or apparel goods exported or produced by the person subject to the verification, detaining the goods, or denying them entry into the United States.

Section 208 of the bill implements Article 3.2 of the Agreement. Under section 208(a), the President may direct the Secretary to take "appropriate action" while a verification that the Secretary has requested is being conducted. Section 208(b) provides that, depending on the nature of the verification, the 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 incorrect 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. Under section 208(d), depending on the nature of the verification, the action may include: (i) denying preferential tariff treatment under the Agreement 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 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.

**d. Fabrics, Yarns, or Fibers Not Available in Commercial Quantities**

Under the specific rules of origin for textile and apparel goods set out in Annex 3-A of the Agreement, fabrics, yarns, or fibers that are not available in commercial quantities in a timely manner in the United States or Peru are treated as if they originate in the United States or Peru, regardless of their actual origin, when used as inputs in the production of textile or apparel goods. Annex 3-B lists certain fabrics, yarns, and fibers that the governments of the United States and Peru have collectively agreed are unavailable in the region.

In addition, Article 3.3.5 of the Agreement provides that the United States may add fabrics, yarns, or fibers to the list in certain circumstances. First, Article 3.3.5(e) of the Agreement provides that the United States may, after consultations with Peru add any fabrics or yarns that it has determined under its regional trade preference programs before the Agreement enters into force to be unavailable in the United States in commercial quantities in a timely manner. These regional trade preference program provisions are set out in: section 112(b)(5)(B) of the African Growth and Opportunity Act (19 U.S.C. § 3721(b)), section 204(b)(3)(B)(ii) of the Andean Trade Preference Act (19 U.S.C. § 3203(b)(3)(B)(ii)), and section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (19 U.S.C. § 2703(b)(2)(A)(v)(II)).

Second, if the United States determines, at the request of an “interested entity” (a potential or actual purchaser or seller, or the government of Peru), that a fabric, yarn, or fiber is unavailable in commercial quantities in a timely manner in Peru or the United States, or if it determines that no interested entity objects to the request, the United States will add the material to the list – in a restricted or unrestricted quantity. In addition, within six months of adding a material to the list in Annex 3-B, the United States may remove any restriction it has imposed on the product.

Article 3.3.6 authorizes the United States, in response to a request from an interested entity, either to remove a material from the list or impose a restriction on any material it has added to the list in an unrestricted quantity. The United States may take this action beginning six months after it determines, in response to a request, that the material has become commercially available in Peru or the United States.

Section 203(o)(2) of the bill provides authority for the President to carry out the provision in Article 3.3.5(e) of the Agreement pursuant to which the United States may, after consultations with Peru, add materials to the list that it has determined are unavailable in commercial quantities in a timely manner in the United States under its regional trade preference programs (the African Growth and Opportunity Act, the Andean Trade Preference Act, and the Caribbean Basin Economic Recovery Act) before the Agreement enters into force.

Section 203(o)(4) of the bill implements those provisions of Article 3.3 that provide for

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the United States to modify the list of materials in Annex 3-B after the Agreement enters into force.

Specifically, subparagraph (C) provides that an interested entity may request the President to determine that a fabric, yarn, or fiber is not available in commercial quantities in Peru or the United States and to proclaim that the material is included in the list in Annex 3-B.

Subparagraph (C)(ii) authorizes the President to determine whether the material is commercially available in a timely manner in Peru or the United States. Subparagraph (C)(iii) provides that if the President determines that the material is not commercially available in a timely manner in Peru or the United States, or if no interested entity has objected, he may issue a proclamation adding the fabric, yarn, or fiber to the Annex 3-B list in a restricted or unrestricted quantity. The President normally must issue the proclamation within 30 business days of receiving a request. However, subparagraph (C)(iv)(II) provides that the President may take up to 44 business days if the President decides he lacks sufficient information to make the determination within 30 business days. Subparagraph (C)(v) provides for proclamations to take effect when published in the *Federal Register*.

Subparagraph (C)(vi) provides that within six months after adding a fabric, yarn, or fiber to the list in Annex 3-B in a restricted quantity, the President may eliminate the restriction if he determines that the fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of Peru or the United States.

Subparagraph (D) implements Article 3.3.5(c) of the Agreement. It provides that in the unlikely event that the President takes no action in response to a request to add a material to the list, the material is automatically added in an unrestricted quantity beginning 45 business days after the request was submitted, or 60 days after the request was submitted if the President has determined under subparagraph (C)(iv) that he lacks sufficient information to make the determination within 30 business days.

Under subparagraph (E)(i), an interested entity may request the President to limit the amount of any fabric, yarn, or fiber that the United States has included on the list in Annex 3-B in an unrestricted quantity, or to remove such a material from the list entirely. Under subparagraph (E)(ii), an interested entity may submit such a request beginning six months after the product was placed on the list in an unrestricted amount. Subparagraph (E)(iii) provides for the President to issue a proclamation carrying out a request if he determines within 30 business days after the request is submitted that the material is available in commercial quantities in a timely manner in Peru or the United States. Subparagraph (E)(iv) provides that this type of proclamation may take effect no earlier than six months after it is published in the *Federal Register*.

Subparagraph (F) calls for the President to establish procedures for interested entities to submit requests for changes in the Annex 3-B list and to submit comments and supporting evidence before the President determines whether to change the list.

**2. Administrative Action**

**a. Handloomed, Handmade, or Folklore Articles**

The President will authorize the Committee for the Implementation of Textile Agreements ("CITA") to consult with Peru to determine which, if any, textile or apparel goods from Peru will be treated as handloomed, handmade, or folklore articles. CITA is an interagency entity created by Executive Order 11651 that carries out U.S. textile trade policies, as directed by the President. The President will delegate to CITA his authority under the bill to provide duty-free treatment for these articles.

**b. Textile and Apparel Safeguard**

CITA will perform the function of receiving requests for textile or apparel safeguard measures under section 321 of the bill, making determinations of serious damage or actual threat thereof under section 322(a), and providing relief under section 322(b). CITA will issue procedures for requesting such safeguard measures, for making its determinations under section 322(a), and for providing relief under section 322(b). CITA will perform these functions pursuant to a delegation of the President's authority under the bill.

**c. Enforcement of Textile and Apparel Rules of Origin**

Section 208 of the bill provides that the Secretary may request Peru to initiate verifications in order to determine whether claims of origin for textile or apparel goods are accurate or whether exporters and producers are complying with applicable laws, regulations, and procedures regarding trade in textile or apparel goods. The President will delegate to CITA his authority under the bill to direct appropriate U.S. officials to take an action described in section 208(b) of the bill while such a verification is being conducted. The President will also authorize CITA to direct pertinent U.S. officials to take an action described in section 208(d) after a verification is completed. If CITA decides that it is appropriate to deny preferential tariff treatment or deny entry to particular goods, CITA will issue an appropriate directive to U.S. Customs and Border Protection (CBP).

Section 208 of the bill provides the exclusive basis in U.S. law for CITA to direct appropriate action implementing Article 3.2 of the Agreement.

**d. Fabrics, Yarns, or Fibers Not Available in Commercial Quantities**

The President will delegate to CITA his authority under section 203(o)(4) of the bill, which establishes procedures for changing the list of fabrics, yarns, or fibers not available in commercial quantities in a timely manner in Agreement countries set out in Annex 3-B of the Agreement.

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CITA will publish procedures under which interested entities may request that CITA: (i) add a fabric, yarn, or fiber to the list in Annex 3-B; (ii) eliminate a restriction on a fabric, yarn, or fiber within six months after the item was added to the list in a restricted quantity; (iii) remove a fabric, yarn, or fiber from the list; or (iv) restrict the quantity of a fabric, yarn, or fiber that was added to the list in an unrestricted quantity or with respect to which CITA previously eliminated a restriction. These procedures will set out the information required to be submitted with a request. CITA will publish notice of requests that meet these requirements. CITA will provide an opportunity for interested entities to submit comments and evidence regarding a request, and to rebut evidence that other interested entities have submitted, before CITA makes a determination.

CITA will make determinations under section 203(o)(4) on a case-by-case basis taking into account factors relevant to the request. Such factors ordinarily would include the physical and technical specifications of the fabric, yarn, or fiber that is the subject of the request, as well as evidence demonstrating the extent to which manufacturers in Peru or the United States are able to supply the item in commercial quantities in a timely manner. CITA will provide public notice of its determinations.

#### **Chapter Four (Rules of Origin)**

##### **1. Implementing Bill**

###### **a. General**

Section 203 of the implementing bill codifies the general rules of origin set forth in Chapter Four of the Agreement. These rules apply only for the purposes of this bill and for the purposes of implementing the customs duty treatment provided under the Agreement. An originating good for the purposes of this bill would not necessarily be a good of or import from Peru for the purposes of other U.S. laws or regulations.

Under the general rules, there are three basic ways for a good of Peru to qualify as an "originating" good, and therefore be eligible for preferential treatment when it is imported into the United States. First, a good is originating if it is "wholly obtained or produced entirely in the territory of Peru, the United States, or both." The term "goods wholly obtained or produced entirely in the territory of Peru, the United States, or both" is defined in section 203(n)(5) of the bill and includes, for example, minerals extracted from the territory of Peru, the United States, or both, animals born and raised in the territory of Peru, the United States, or both, and waste and scrap derived from production of goods that takes place in the territory of Peru, the United States, or both.

The term "goods wholly obtained or produced entirely in the territory of Peru, the United States, or both" includes "recovered goods." These are parts resulting from the disassembly of used goods that are brought into good working condition in order to be combined with other recovered goods and other materials to form a "remanufactured good." The term

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“remanufactured good” is separately defined in section 203(n)(20) to mean an industrial good assembled in the territory of Peru or the United States, or both, and falling within Chapter 84, 85, 87 or 90 of the HTS or heading 9402 (with the exception of goods under heading 8418 or 8516) that: (i) is entirely or partially comprised of recovered goods; and (ii) has a similar life expectancy and enjoys a factory warranty similar to such a new good.

Second, the general rules of origin provide that a good is “originating” if the good is produced in the territory of Peru, the United States, or both, and the 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 and to meet other requirements, as specified in Annex 3-A or Annex 4.1 of the Agreement. Such additional requirements include, for example, performing certain processes or operations related to textile or apparel goods in the territory of Peru, the United States, or both, or meeting regional value content requirements, sometimes in conjunction with changes in tariff classification.

Third, the general rules of origin provide that a good is “originating” if the good is produced entirely in the territory of Peru, the United States, or both, exclusively from materials that themselves qualify as originating goods.

The remainder of section 203 of the implementing bill sets forth specific rules related to determining whether a good meets the Agreement’s specific requirements to qualify as an originating good. For example, section 203(c) implements provisions in Annex 4.1 of the Agreement that require certain goods to have at least a specified percentage of “regional value content” to qualify as originating goods. It prescribes alternative methods for calculating regional value content, as well as a specific method that may be used in the case of certain automotive goods. Section 203(f) provides that a good is not disqualified as an originating good if it contains *de minimis* quantities of non-originating materials that do not undergo a change in tariff classification. Other provisions in section 203 address how materials are to be valued, how to determine whether fungible goods and materials qualify as originating or non-originating, as well as a variety of other matters.

**b. Proclamation Authority**

Section 203(o)(1) of the bill authorizes the President to proclaim the specific rules of origin in Annex 3-A and Annex 4.1 of the Agreement, as well as any additional subordinate rules necessary to carry out the customs duty provisions of the bill consistent with the Agreement. In addition, section 203(o)(3) gives authority to the President to modify certain of the Agreement’s specific origin rules by proclamation, subject to the consultation and layover provisions of section 104 of the bill. (See item 1.a of Chapter Two, above.)

Various provisions of the Agreement expressly contemplate that Peru and the United States may agree to modify the Agreement’s rules of origin. Article 4.14 calls for two governments to consult regularly after the Agreement’s entry into force to discuss proposed modifications to Annex 4.1. Article 20.1.3(b) of the Agreement authorizes the Free Trade

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Commission to approve proposed modifications to any of the Agreement's origin rules. Such modifications are to be implemented in accordance with each country's applicable legal procedures. In addition, Article 3.3.2 of the Agreement calls for the Parties to consult at either Party's request to consider whether rules of origin for particular textile or apparel goods should be modified.

Section 203(o)(3) of the bill expressly limits the President's authority to modify by proclamation specific rules of origin pertaining to textile or apparel goods (listed in Chapters 50 through 63 of the HTS and identified in Annex 3-A of the Agreement). Those rules of origin may be modified by proclamation within one year of enactment of the implementing bill, to correct typographical, clerical, or other non-substantive technical errors. However, Section 203(o)(4), discussed above, provides the President with authority to proclaim modifications to the rules of origin for textile or apparel articles that are not available in commercial quantities in the United States or Peru.

**c. Disclosure of Incorrect Information and Denial of Preferential Treatment**

Article 4.19.3 of the Agreement provides that a Party may not impose a penalty on an importer who makes an invalid claim for preferential tariff treatment under the Agreement if the importer did not engage in negligence, gross negligence, or fraud in making the claim or, after discovering that the claim is invalid, promptly and voluntarily corrects the claim and pays any customs duty owing. Article 4.18.5 of the Agreement provides if an importing country determines through verification that an importer, exporter, or producer has engaged in a pattern of conduct in providing false or unsupported certifications or other representations that a good qualifies as originating, it may suspend preferential tariff treatment under the Agreement for identical goods covered by any subsequent certifications or other representations that that person may make. The suspension may continue until the importing country determines that the importer, exporter, or producer is in compliance with applicable laws and regulations governing claims for preferential tariff treatment under the Agreement.

Section 205(a) of the bill implements Article 4.19.3 for the United States by amending section 592(c) of the Tariff Act of 1930 (19 U.S.C. 1592(c)). Section 205(b) of the bill implements Article 4.18.5 for the United States by amending section 514 of the Tariff Act of 1930 (19 U.S.C. 1514).

**d. Claims for Preferential Tariff Treatment**

Article 4.19.5 of the Agreement provides that an importer may claim preferential tariff treatment for an originating good within one year of importation, even if no such claim was made at the time of importation. In seeking a refund for excess duties paid, the importer must provide to the customs authorities information substantiating that the good was in fact an originating good at the time of importation.



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Section 206 of the bill implements U.S. obligations under Article 4.19.5 of the Agreement by amending section 520(d) of the Tariff Act of 1930 (19 U.S.C. 1520(d)) to allow an importer to claim preferential tariff treatment for originating goods within one year of their importation.

**e. Exporter and Producer Certifications**

Article 4.15 of the Agreement provides that an importer may base a claim for preferential tariff treatment on either (i) a written or electronic certification by the importer, exporter, or producer, or (ii) the importer's knowledge that the good is an originating good, including through reasonable reliance on information in the importer's possession that the good is an originating good. (The Agreement allows certain exceptions, for example, for goods with a customs value less than or equal to \$1,500.) If an exporter issues a certification, it must either be based on the person's knowledge that the good is originating or supported by a separate certification issued by the producer.

Article 4.20 of the Agreement sets out rules governing incorrect certifications of origin issued by exporters or producers. Where an exporter or producer becomes aware that a certification of origin contains or is based on incorrect information, it must promptly and voluntarily notify in writing every person to whom the exporter or producer issued the certification of any change that could affect the accuracy or validity of the certification. If it does so, the United States may not impose a penalty.

Section 205(a) of the bill implements U.S. obligations under Article 4.20 by amending section 592 of the Tariff Act of 1930 (19 U.S.C. 1592). New subsection (i) of section 592, as added by section 205(a), imposes penalties on exporters and producers that issue false PTPA certifications of origin through fraud, gross negligence, or negligence. These penalties do not apply where an exporter or producer corrects an error in the manner described above.

**f. Recordkeeping Requirements**

Article 4.17 of the Agreement sets forth record keeping requirements that each government must apply to its importers. U.S. obligations under Article 4.17 regarding importers are satisfied by current law, including the record keeping provisions in section 508 of the Tariff Act of 1930 (19 U.S.C. 1508).

Article 4.17 also sets forth record keeping requirements that each government must apply to exporters and producers issuing certifications of origin for goods exported under the Agreement. Section 207 of the bill implements Article 4.17 for the United States by amending the customs record keeping statute (section 508 of the Tariff Act of 1930).

As added by section 207 of the bill, subsection (h) of section 508 of the Tariff Act of 1930 defines the terms "PTPA certification of origin" and "records and supporting documents." It then provides that a U.S. exporter or producer that issues a PTPA certification of origin must

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make, keep, and, if requested pursuant to rules and regulations promulgated by the Secretary, render for examination and inspection a copy of the certification and such records and supporting documents. The exporter or producer must keep these records and supporting documents for five years from the date it issues the certification. New subsection (h) of section 508 of the Tariff Act of 1930 sets forth penalties for violations of this record keeping requirement.

**2. Administrative Action**

The rules of origin in Chapter Four of the Agreement are intended to direct the benefits of customs duty elimination under the Agreement principally to firms producing or manufacturing goods in Peru and the United States. For this reason, the rules ensure that, in general, a good is eligible for benefits under the Agreement only if it is: (i) wholly produced or obtained in the territory of Peru, the United States, or both; or (ii) undergoes substantial processing in the territory of Peru, the United States, or both.

**a. Claims for Preferential Treatment**

Section 209 of the bill authorizes the Secretary to prescribe regulations necessary to carry out the tariff-related provisions of the bill, including the rules of origin and customs user fee provisions. The Secretary will use this authority in part to promulgate any regulations necessary to implement the Agreement's provisions governing claims for preferential treatment. Under Article 4.15 of the Agreement, an importer may claim preferential treatment for a good based on either (i) a written or electronic certification by the importer, exporter, or producer, or (ii) the importer's knowledge, including through reasonable reliance on information in the importer's possession, that the good is originating. A certification need not be in a prescribed format, but must include the elements set out in Article 4.15.2 of the Agreement. Under Article 4.19 of the Agreement, an importing Party must grant a claim for preferential tariff treatment unless its customs officials issue a written determination that the claim is invalid as a matter of law or fact.

**b. Verification**

Under Article 4.18 of the Agreement, customs officials may use a variety of methods to verify claims that goods imported from the other Party satisfy the Agreement's rules of origin. Article 3.2 sets out special procedures for verifying claims that textile or apparel goods imported from the other Party meet the Agreement's origin rules. (See item 1.c of Chapter Three, above.) U.S. officials will carry out verifications under Articles 4.18 and 3.2 of the Agreement pursuant to authorities under current law. For example, section 509 of the Tariff Act of 1930 (19 U.S.C. 1509) provides authority to examine records and issue summonses to determine liability for duty and ensure compliance with U.S. customs laws.

**Chapter Five (Customs Administration and Trade Facilitation)**

**1. Implementing Bill**

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No statutory changes will be required to implement Chapter Five.

**2. Administrative Action**

**a. Inquiry Point**

Article 5.1.2 of the Agreement requires each government to designate an inquiry point for inquiries from interested persons on customs matters. CBP will serve as the U.S. inquiry point for this purpose. Consistent with Article 5.1.2, CBP will post information on the Internet at "www.cbp.gov" on how interested persons can make customs-related inquiries.

**b. Advance Rulings**

Treasury regulations for advance rulings under Article 5.10 of the Agreement (including on classification, valuation, origin, and qualification as an originating good) will parallel in most respects existing regulations in Part 177 of the Customs Regulations for obtaining advance rulings. For example, a ruling may be relied on provided that the facts and circumstances represented in the ruling are complete and do not change. The regulations will make provision for modifications and revocations as well as for delaying the effective date of a modification where the firm in question has relied on an existing ruling. Advance rulings under the Agreement will be issued within 150 days of receipt of all information reasonably required to process the application for the ruling.

**Chapter Six (Sanitary and Phytosanitary Measures)**

No statutory or administrative changes will be required to implement Chapter Six.

**Chapter Seven (Technical Barriers to Trade)**

**1. Implementing Bill**

No statutory changes will be required to implement Chapter Seven.

**2. Administrative Action**

Article 7.7 of the Agreement establishes an inter-governmental Committee on Technical Barriers to Trade ("TBT"). A USTR official responsible for TBT matters or trade relations with Peru will serve as the U.S. coordinator for the committee.

**Chapter Eight (Trade Remedies)**

**1. Implementing Bill**

Subtitle A of Title III of the bill implements in U.S. law the safeguard provisions set out in Chapter Eight of the Agreement. Subtitle C of Title III of the bill implements the global safeguard provisions set out in Chapter Eight of the Agreement. (As discussed under Chapter Three, above, Subtitle B of Title III of the bill implements the textile or apparel safeguard provisions of the Agreement.)

**a. Safeguard Measures**

Subtitle A of Title III of the bill, Sections 311 through 316, authorizes the President, after an investigation and affirmative determination by the ITC (or a determination that the President may consider to be an affirmative determination), to suspend duty reductions or impose duties temporarily up to NTR (MFN) rates on a "Peruvian article" when, as a result of the reduction or elimination of a duty under the Agreement, the article 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 a domestic industry that produces a like or directly competitive good. The standards and procedures set out in these provisions closely parallel the procedures set forth in sections 201 through 204 of the Trade Act of 1974 (19 U.S.C. 2251 – 2254).

Section 301(1) defines the term "Peruvian article" to mean a good that qualifies as an originating good under section 203(b) of the bill, and section 301(3) defines the term "relevant Peruvian article" to mean the Peruvian article with respect to which a petition has been filed under section 311(a).

Section 311 of the bill provides for the filing of petitions with the ITC and for the ITC to conduct safeguard investigations initiated under Subtitle A. Section 311(a) provides that a petition requesting a safeguard action may be filed with the ITC by an entity that is "representative of an industry." As under section 202(a)(1) of the Trade Act of 1974, the term "entity" is defined to include a trade association, firm, certified or recognized union, or a group of workers.

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) makes applicable by reference several provisions of the Trade Act of 1974. These are the definition of "substantial cause" in section 202(b)(1)(B), the factors listed in section 202(c) applied in making determinations, the hearing requirement of section 202(b)(3), and the provisions of section 202(i) permitting confidential business information to be made

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available under protective order to authorized representatives of parties to a safeguard investigation.

Section 311(d) exempts from investigation under this section Peruvian articles that have previously been the basis for according relief under Subtitle A to a domestic industry.

Section 312(a) establishes deadlines for ITC determinations following an investigation under section 311(b). The ITC must make its injury determination within 120 days of the date on which it initiates an investigation.

Section 312(b) makes applicable the provisions of section 330(d) of the Tariff Act of 1930, which will apply when the ITC Commissioners are equally divided on the question of injury or remedy.

Under section 312(c), if the ITC makes an affirmative determination, or a determination that the President may consider to be an affirmative determination, under section 312(a), it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent the serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The relief that the ITC may recommend is limited to that authorized in section 313(c). Similar to procedures under the global safeguards provisions in current law, section 312(c) of the bill provides that only those members of the ITC who agreed to the affirmative determination under section 312(a) may vote on the recommendation of relief under section 312(c).

Under section 312(d), the ITC is required to transmit a report to the President not later than 30 days after making its injury determination. The ITC's report must include: (i) the ITC's determination(s) under section 312(a) and the reasons supporting the determination(s); (ii) if the determination under section 312(a) is affirmative or may be considered to be affirmative by the President, any findings and recommendations for import relief and an explanation of the basis for each recommendation; and (iii) any dissenting or separate views of ITC Commissioners. Section 312(e) requires the ITC to publish its report promptly and to publish a summary of the report in the *Federal Register*.

Section 313(a) of the bill directs the President, subject to section 313(b), to take action not later than 30 days after receiving a report from the ITC containing an affirmative determination or a determination that the President may consider to be an affirmative determination. The President must provide import relief to the extent that the President determines is necessary to remedy or prevent the injury the ITC has found 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 President determines that the relief will not provide greater economic and social benefits than costs.

Section 313(c)(1) sets forth the nature of the relief that the President may provide. In general, the President may take action in the form of:

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- 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 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 period for import relief under a Subtitle A safeguard may not exceed four years in the aggregate. The initial period of import relief may be of up to two years. The President may extend the period of import relief provided by up to two years, however, if he determines that continuation of relief is necessary to remedy or prevent serious injury and to facilitate adjustment to import competition, and that there is evidence that the industry is making a positive adjustment to import competition. That determination must follow an affirmative determination (or a determination that the President may consider to be an affirmative determination) by the ITC to the same effect.

Section 313(e) specifies the duty rate to be applied to Peruvian articles after termination of a safeguard action. On the termination of relief, the rate of duty for the remainder of the calendar year is to be the rate that was scheduled to have been in effect one year after the initial provision of import relief. For the rest of the duty phase-out period, the President may set the duty:

- at the rate called for under the Schedule of the United States to Annex 2.3 of the Agreement; or
- in a manner that eliminates the duty in equal annual stages ending on the date set out in that Schedule.

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 an assessment of additional duty under subsection (b) of section 202.

Section 314 provides that the President's authority to take action under Subtitle A expires ten years after the date on which the Agreement enters into force, unless the period for elimination of duties on a good exceeds ten years. In such case, relief may be provided until the expiration of the period for elimination of duties.

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Section 315 allows the President to provide trade compensation to Peru, as required under Article 8.5 of the Agreement, when the United States imposes relief through a Subtitle A safeguard action. Section 315 provides that for purposes of section 123 of the Trade Act of 1974, which allows the President to provide compensation for global safeguards, any relief provided under section 313 will be treated as an action taken under the global safeguard provisions of U.S. law (sections 201 through 204 of the Trade Act of 1974).

Section 316 amends section 202(a) of the Trade Act of 1974 to provide that the procedures in section 332(g) of the Tariff Act of 1930 with respect to the release of confidential business information are to apply to Subtitle A safeguard investigations.

The Administration has not provided classified information to the ITC in past safeguard proceedings and does not expect to provide such information in future proceedings. In the unlikely event that the Administration provides classified information to the ITC in such proceedings, that information would be protected from publication in accordance with Executive Order 12958.

**b. Global Safeguard Measures**

Section 331 of the bill implements the global safeguard provisions of Article 8.6.2 of the Agreement. It authorizes the President, in granting global import relief under sections 201 through 204 of the Trade Act of 1974, to exclude imports of originating articles from the relief when certain conditions are present.

Specifically, 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 imports of the article from Peru considered individually that qualify as originating goods under section 203(b) 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.

**2. Administrative Action**

No administrative changes will be required to implement Chapter Eight.

**Chapter Nine (Government Procurement)**

**1. Implementing Bill**

Chapter Nine of the Agreement establishes rules that certain government entities, listed in Annex 9.1 of the Agreement, must follow in procuring goods and services. The Chapter's rules

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will apply whenever these entities undertake procurements valued above thresholds specified in Annex 9.1.

In order to comply with its obligations under Chapter Nine, the United States must waive the application of certain federal laws, regulations, procedures and practices that ordinarily treat foreign goods and services and suppliers of such goods and services less favorably than U.S. goods, services, and suppliers. Section 301(a) of the Trade Agreements Act of 1979 (19 U.S.C. 2511(a)) authorizes the President to waive the application of such laws, regulations, procedures, and practices with respect to "eligible products" of a foreign country designated under section 301(b) of that Act. By virtue of taking on the procurement-related obligations in Chapter Nine, Peru is eligible to be designated under section 301(b) of the Trade Agreements Act and will be so designated.

The term "eligible product" in section 301(a) of the Trade Agreements Act is defined in section 308(4)(A) of that Act for goods and services of countries and instrumentalities that are parties to the WTO Agreement on Government Procurement and countries that are parties to the NAFTA and other recent free trade agreements. Section 401 of the bill amends the definition of "eligible product" in section 308(4)(A) of the Trade Agreements Act. As amended, section 308(4)(A) will provide that, for Peru, an "eligible product" means a product or service of Peru that is covered under the Agreement for procurement by the United States. This amended definition, coupled with the President's exercise of his authority under section 301(a) of the Trade Agreements Act, will allow U.S. government entities covered by the Agreement to purchase products and services from Peru.

## **2. Administrative Action**

As noted above, Annex 9.1 of the Agreement provides that U.S. government entities subject to Chapter Nine must apply the Chapter's rules to goods and services from Peru when they make purchases valued above certain dollar thresholds. USTR will notify the Federal Acquisition Regulatory Council ("FAR Council") of the thresholds that pertain to Peru under the Agreement. The FAR Council will then incorporate those thresholds into the Federal Acquisition Regulation in accordance with applicable procedures under the Office of Federal Procurement Policy Act.

## **Chapter Ten (Investment)**

### **1. Implementing Bill**

Section 106 of the bill authorizes the United States to use binding arbitration to resolve claims by investors of Peru under Article 10.16.1(a)(i)(C) or Article 10.16.1(b)(i)(C) of the Agreement. Those articles concern disputes over certain types of government contracts, and section 106 of the bill clarifies that the United States consents to the arbitration of such disputes. No statutory authorization is required for the United States to engage in binding arbitration for



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other claims covered by Article 10.16. Provisions allowing arbitration of contract claims have regularly been included in U.S. bilateral investment treaties over recent decades, and were included in the free trade agreements with Chile, Singapore, Morocco, CAFTA-DR, and Oman.

**2. Administrative Action**

No administrative changes will be required to implement Chapter Ten.

**Chapter Eleven (Cross-Border Trade in Services)**

No statutory or administrative changes will be required to implement Chapter Eleven.

**Chapter Twelve (Financial Services)**

No statutory or administrative changes will be required to implement Chapter Twelve.

**Chapter Thirteen (Competition Policy, Designated Monopolies, and State Enterprises)**

No statutory or administrative changes will be required to implement Chapter Thirteen.

**Chapter Fourteen (Telecommunications)**

No statutory or administrative changes will be required to implement Chapter Fourteen.

**Chapter Fifteen (Electronic Commerce)**

No statutory or administrative changes will be required to implement Chapter Fifteen.

**Chapter Sixteen (Intellectual Property Rights)**

No statutory or administrative changes will be required to implement Chapter Sixteen.

**Chapter Seventeen (Labor)**

**1. Implementing Bill**

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No statutory changes will be required to implement Chapter Seventeen.

**2. Administrative Action**

Article 17.4.1 of the Agreement establishes a Labor Affairs Council comprising cabinet-level officials from each Party. Article 17.4.5 of the Agreement calls for each government to designate an office to serve as a contact point with the other country and the public and to assist the Council in carrying out the Agreement's Labor Cooperation and Capacity Building Mechanism. The Department of Labor's Office of Trade Agreement Implementation will serve as the U.S. contact point for this purpose.

**Chapter Eighteen (Environment)**

**1. Implementing Bill**

No statutory changes will be required to implement Chapter Eighteen.

**2. Administrative Action**

Article 18.5.1 of the Agreement establishes an Environmental Affairs Council, comprising senior-level officials with environmental responsibilities from each Party, and provides that each government will designate a contact point for carrying out the Council's work. The Department of State (Bureau of Oceans and International Environmental and Scientific Affairs OES), in consultation with USTR, will serve as the U.S. contact point.

109TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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IN THE SENATE OF THE UNITED STATES

Mr. \_\_\_\_\_ (for himself and \_\_\_\_\_) (both by request) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To implement the United States-Peru Trade Promotion Agreement.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “United States-Peru Trade Promotion Agreement Imple-  
6 mentation Act”.

7 (b) **TABLE OF CONTENTS.**—The table of contents for  
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.

**TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT**

- Sec. 101. Approval and entry into force of the agreement.
- Sec. 102. Relationship of the agreement to United States and State law.

- Sec. 103. Implementing actions in anticipation of entry into force and initial regulations.
- Sec. 104. Consultation and layover provisions for, and effective date of, proclaimed actions.
- Sec. 105. Administration of dispute settlement proceedings.
- Sec. 106. Arbitration of claims.
- Sec. 107. Effective dates; effect of termination.

#### TITLE II—CUSTOMS PROVISIONS

- Sec. 201. Tariff modifications.
- Sec. 202. Additional duties on certain agricultural goods.
- Sec. 203. Rules of origin.
- Sec. 204. Customs user fees.
- Sec. 205. Disclosure of incorrect information; false certifications of origin; denial of preferential tariff treatment.
- Sec. 206. Reliquidation of entries.
- Sec. 207. Recordkeeping requirements.
- Sec. 208. Enforcement relating to trade in textile or apparel goods.
- Sec. 209. Regulations.

#### TITLE III—RELIEF FROM IMPORTS

- Sec. 301. Definitions.

##### Subtitle A—Relief From Imports Benefiting From the Agreement

- Sec. 311. Commencing of action for relief.
- Sec. 312. Commission action on petition.
- Sec. 313. Provision of relief.
- Sec. 314. Termination of relief authority.
- Sec. 315. Compensation authority.
- Sec. 316. Confidential business information.

##### Subtitle B—Textile and Apparel Safeguard Measures

- Sec. 321. Commencement of action for relief.
- Sec. 322. Determination and provision of relief.
- Sec. 323. Period of relief.
- Sec. 324. Articles exempt from relief.
- Sec. 325. Rate after termination of import relief.
- Sec. 326. Termination of relief authority.
- Sec. 327. Compensation authority.
- Sec. 328. Confidential business information.

##### Subtitle C—Cases Under Title II of the Trade Act of 1974

- Sec. 331. Findings and action on goods of Peru.

#### TITLE IV—PROCUREMENT

- Sec. 401. Eligible products.

### 1 SEC. 2. PURPOSES.

- 2 The purposes of this Act are—

1 (1) to approve and implement the free trade  
2 agreement between the United States and Peru en-  
3 tered into under the authority of section 2103(b) of  
4 the Bipartisan Trade Promotion Authority Act of  
5 2002 (19 U.S.C. 3803(b));

6 (2) to strengthen and develop economic rela-  
7 tions between the United States and Peru for their  
8 mutual benefit;

9 (3) to establish free trade between the United  
10 States and Peru through the reduction and elimi-  
11 nation of barriers to trade in goods and services and  
12 to investment; and

13 (4) to lay the foundation for further coopera-  
14 tion to expand and enhance the benefits of the  
15 Agreement.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) **AGREEMENT.**—The term “Agreement”  
19 means the United States–Peru Trade Promotion  
20 Agreement approved by Congress under section  
21 101(a)(1).

22 (2) **COMMISSION.**—The term “Commission”  
23 means the United States International Trade Com-  
24 mission.

1 (3) HTS.—The term “HTS” means the Har-  
2 monized Tariff Schedule of the United States.

3 (4) TEXTILE OR APPAREL GOOD.—The term  
4 “textile or apparel good” means a good listed in the  
5 Annex to the Agreement on Textiles and Clothing  
6 referred to in section 101(d)(4) of the Uruguay  
7 Round Agreements Act (19 U.S.C. 3511(d)(4)),  
8 other than a good listed in Annex 3-C of the Agree-  
9 ment.

10 **TITLE I—APPROVAL OF, AND**  
11 **GENERAL PROVISIONS RE-**  
12 **LATING TO, THE AGREEMENT**

13 **SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE**  
14 **AGREEMENT.**

15 (a) APPROVAL OF AGREEMENT AND STATEMENT OF  
16 ADMINISTRATIVE ACTION.—Pursuant to section 2105 of  
17 the Bipartisan Trade Promotion Authority Act of 2002  
18 (19 U.S.C. 3805) and section 151 of the Trade Act of  
19 1974 (19 U.S.C. 2191), Congress approves—

20 (1) the United States-Peru Trade Promotion  
21 Agreement entered into on April 12, 2006, with the  
22 Government of Peru and submitted to Congress on  
23 [\_\_\_\_\_, 2006]; and

1           (2) the statement of administrative action pro-  
2           posed to implement the Agreement that was sub-  
3           mitted to Congress on [\_\_\_\_\_, 2006].

4           (b) **CONDITIONS FOR ENTRY INTO FORCE OF THE**  
5 **AGREEMENT.**—At such time as the President determines  
6 that Peru has taken measures necessary to comply with  
7 those provisions of the Agreement that are to take effect  
8 on the date on which the Agreement enters into force, the  
9 President is authorized to exchange notes with the Gov-  
10 ernment of Peru providing for the entry into force, on or  
11 after January 1, 2007, of the Agreement with respect to  
12 the United States.

13 **SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED**  
14 **STATES AND STATE LAW.**

15           (a) **RELATIONSHIP OF AGREEMENT TO UNITED**  
16 **STATES LAW.**—

17           (1) **UNITED STATES LAW TO PREVAIL IN CON-**  
18 **FFLICT.**—No provision of the Agreement, nor the ap-  
19 plication of any such provision to any person or cir-  
20 cumstance, which is inconsistent with any law of the  
21 United States shall have effect.

22           (2) **CONSTRUCTION.**—Nothing in this Act shall  
23 be construed—

24           (A) to amend or modify any law of the  
25 United States, or

1 (B) to limit any authority conferred under  
2 any law of the United States,  
3 unless specifically provided for in this Act.

4 (b) RELATIONSHIP OF AGREEMENT TO STATE  
5 LAW.—

6 (1) LEGAL CHALLENGE.—No State law, or the  
7 application thereof, may be declared invalid as to  
8 any person or circumstance on the ground that the  
9 provision or application is inconsistent with the  
10 Agreement, except in an action brought by the  
11 United States for the purpose of declaring such law  
12 or application invalid.

13 (2) DEFINITION OF STATE LAW.—For purposes  
14 of this subsection, the term “State law” includes—

15 (A) any law of a political subdivision of a  
16 State; and

17 (B) any State law regulating or taxing the  
18 business of insurance.

19 (c) EFFECT OF AGREEMENT WITH RESPECT TO PRI-  
20 VATE REMEDIES.—No person other than the United  
21 States—

22 (1) shall have any cause of action or defense  
23 under the Agreement or by virtue of congressional  
24 approval thereof; or



1           (2) may challenge, in any action brought under  
2 any provision of law, any action or inaction by any  
3 department, agency, or other instrumentality of the  
4 United States, any State, or any political subdivision  
5 of a State, on the ground that such action or inac-  
6 tion is inconsistent with the Agreement.

7 **SEC. 103. IMPLEMENTING ACTIONS IN ANTICIPATION OF**  
8                   **ENTRY INTO FORCE AND INITIAL REGULA-**  
9                   **TIONS.**

10           (a) **IMPLEMENTING ACTIONS.**—

11           (1) **PROCLAMATION AUTHORITY.**—After the  
12 date of the enactment of this Act—

13                   (A) the President may proclaim such ac-  
14 tions, and

15                   (B) other appropriate officers of the  
16 United States Government may issue such reg-  
17 ulations,

18 as may be necessary to ensure that any provision of  
19 this Act, or amendment made by this Act, that takes  
20 effect on the date on which the Agreement enters  
21 into force is appropriately implemented on such  
22 date, but no such proclamation or regulation may  
23 have an effective date earlier than the date on which  
24 the Agreement enters into force.

1           (2) EFFECTIVE DATE OF CERTAIN PROCLAIMED  
2           ACTIONS.—Any action proclaimed by the President  
3           under the authority of this Act that is not subject  
4           to the consultation and layover provisions under sec-  
5           tion 104 may not take effect before the 15th day  
6           after the date on which the text of the proclamation  
7           is published in the Federal Register.

8           (3) WAIVER OF 15-DAY RESTRICTION.—The 15-  
9           day restriction contained in paragraph (2) on the  
10          taking effect of proclaimed actions is waived to the  
11          extent that the application of such restriction would  
12          prevent the taking effect on the date the Agreement  
13          enters into force of any action proclaimed under this  
14          section.

15          (b) INITIAL REGULATIONS.—Initial regulations nec-  
16          essary or appropriate to carry out the actions required by  
17          or authorized under this Act or proposed in the statement  
18          of administrative action submitted under section  
19          101(a)(2) to implement the Agreement shall, to the max-  
20          imum extent feasible, be issued within 1 year after the  
21          date on which the Agreement enters into force. In the case  
22          of any implementing action that takes effect on a date  
23          after the date on which the Agreement enters into force,  
24          initial regulations to carry out that action shall, to the

1 maximum extent feasible, be issued within 1 year after  
2 such effective date.

3 **SEC. 104. CONSULTATION AND LAYOVER PROVISIONS FOR,**  
4 **AND EFFECTIVE DATE OF, PROCLAIMED AC-**  
5 **TIONS.**

6 If a provision of this Act provides that the implemen-  
7 tation of an action by the President by proclamation is  
8 subject to the consultation and layover requirements of  
9 this section, such action may be proclaimed only if—

10 (1) the President has obtained advice regarding  
11 the proposed action from—

12 (A) the appropriate advisory committees  
13 established under section 135 of the Trade Act  
14 of 1974 (19 U.S.C. 2155); and

15 (B) the Commission;

16 (2) the President has submitted to the Com-  
17 mittee on Finance of the Senate and the Committee  
18 on Ways and Means of the House of Representatives  
19 a report that sets forth—

20 (A) the action proposed to be proclaimed  
21 and the reasons therefor; and

22 (B) the advice obtained under paragraph  
23 (1);

24 (3) a period of 60 calendar days, beginning on  
25 the first day on which the requirements set forth in

1 paragraphs (1) and (2) have been met, has expired;  
2 and .

3 (4) the President has consulted with the com-  
4 mittees referred to in paragraph (2) regarding the  
5 proposed action during the period referred to in  
6 paragraph (3).

7 **SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PRO-**  
8 **CEEDINGS.**

9 (a) **ESTABLISHMENT OR DESIGNATION OF OFFICE.—**

10 The President is authorized to establish or designate with-  
11 in the Department of Commerce an office that shall be  
12 responsible for providing administrative assistance to pan-  
13 els established under chapter 21 of the Agreement. The  
14 office shall not be considered to be an agency for purposes  
15 of section 552 of title 5, United States Code.

16 (b) **AUTHORIZATION OF APPROPRIATIONS.—**There  
17 are authorized to be appropriated for each fiscal year after  
18 fiscal year 2006 to the Department of Commerce such  
19 sums as may be necessary for the establishment and oper-  
20 ations of the office established or designated under sub-  
21 section (a) and for the payment of the United States share  
22 of the expenses of panels established under chapter 21 of  
23 the Agreement.

1 **SEC. 106. ARBITRATION OF CLAIMS.**

2 The United States is authorized to resolve any claim  
3 against the United States covered by article  
4 10.16.1(a)(i)(C) or article 10.16.1(b)(i)(C) of the Agree-  
5 ment, pursuant to the Investor-State Dispute Settlement  
6 procedures set forth in section B of chapter 10 of the  
7 Agreement.

8 **SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.**

9 (a) **EFFECTIVE DATES.**—Except as provided in sub-  
10 section (b), this Act and the amendments made by this  
11 Act take effect on the date on which the Agreement enters  
12 into force.

13 (b) **EXCEPTIONS.**—Sections 1 through 3 and this  
14 title take effect on the date of the enactment of this Act.

15 (c) **TERMINATION OF THE AGREEMENT.**—On the  
16 date on which the Agreement terminates, this Act (other  
17 than this subsection) and the amendments made by this  
18 Act shall cease to have effect.

19 **TITLE II—CUSTOMS PROVISIONS**

20 **SEC. 201. TARIFF MODIFICATIONS.**

21 (a) **TARIFF MODIFICATIONS PROVIDED FOR IN THE**  
22 **AGREEMENT.**—

23 (1) **PROCLAMATION AUTHORITY.**—The Presi-  
24 dent may proclaim—

25 (A) such modifications or continuation of  
26 any duty,

1 (B) such continuation of duty-free or ex-  
2 cise treatment, or

3 (C) such additional duties,  
4 as the President determines to be necessary or ap-  
5 propriate to carry out or apply articles 2.3, 2.5, 2.6,  
6 3.3.13, and Annex 2.3 of the Agreement.

7 (2) EFFECT ON GSP STATUS.—Notwithstanding  
8 section 502(a)(1) of the Trade Act of 1974 (19  
9 U.S.C. 2462(a)(1)), the President shall, on the date  
10 on which the Agreement enters into force, terminate  
11 the designation of Peru as a beneficiary developing  
12 country for purposes of title V of the Trade Act of  
13 1974 (19 U.S.C. 2461 et seq.).

14 (3) EFFECT ON ATPA STATUS.—Notwith-  
15 standing section 203(a)(1) of the Andean Trade  
16 Preference Act (19 U.S.C. 3202(a)(1)), the Presi-  
17 dent shall, on the date on which the Agreement en-  
18 ters into force, terminate the designation of Peru as  
19 a beneficiary country for purposes of that Act.

20 (b) OTHER TARIFF MODIFICATIONS.—Subject to the  
21 consultation and layover provisions of section 104, the  
22 President may proclaim—

23 (1) such modifications or continuation of any  
24 duty,

1           (2) such modifications as the United States  
2           may agree to with Peru regarding the staging of any  
3           duty treatment set forth in Annex 2.3 of the Agree-  
4           ment,

5           (3) such continuation of duty-free or excise  
6           treatment, or

7           (4) such additional duties,  
8           as the President determines to be necessary or appropriate  
9           to maintain the general level of reciprocal and mutually  
10          advantageous concessions with respect to Peru provided  
11          for by the Agreement.

12          (c) CONVERSION TO AD VALOREM RATES.—For pur-  
13          poses of subsections (a) and (b), with respect to any good  
14          for which the base rate in the Schedule of the United  
15          States to Annex 2.3 of the Agreement is a specific or com-  
16          pound rate of duty, the President may substitute for the  
17          base rate an ad valorem rate that the President deter-  
18          mines to be equivalent to the base rate.

19          (d) TARIFF RATE QUOTAS.—In implementing the  
20          tariff rate quotas set forth in Appendix 1 to the Schedule  
21          of the United States to Annex 2.3 of the Agreement, the  
22          President shall take such action as may be necessary to  
23          ensure that imports of agricultural goods do not disrupt  
24          the orderly marketing of commodities in the United  
25          States.

1 SEC. 202. ADDITIONAL DUTIES ON CERTAIN AGRICUL-  
2 TURAL GOODS.

3 (a) DEFINITIONS.—In this section:

4 (1) APPLICABLE NTR (MFN) RATE OF DUTY.—

5 The term “applicable NTR (MFN) rate of duty”  
6 means, with respect to a safeguard good, a rate of  
7 duty equal to the lowest of—

8 (A) the base rate in the Schedule of the  
9 United States to Annex 2.3 of the Agreement;

10 (B) the column 1 general rate of duty that  
11 would, on the day before the date on which the  
12 Agreement enters into force, apply to a good  
13 classifiable in the same 8-digit subheading of  
14 the HTS as the safeguard good; or

15 (C) the column 1 general rate of duty that  
16 would, at the time the additional duty is im-  
17 posed under subsection (b), apply to a good  
18 classifiable in the same 8-digit subheading of  
19 the HTS as the safeguard good.

20 (2) SCHEDULE RATE OF DUTY.—The term  
21 “schedule rate of duty” means, with respect to a  
22 safeguard good, the rate of duty for that good that  
23 is set forth in the Schedule of the United States to  
24 Annex 2.3 of the Agreement.

25 (3) SAFEGUARD GOOD.—The term “safeguard  
26 good” means a good—



1 (A) that is included in the Schedule of the  
2 United States to Annex 2.18 of the Agreement;

3 (B) that qualifies as an originating good  
4 under section 203, except that operations per-  
5 formed in or material obtained from the United  
6 States shall be considered as if the operations  
7 were performed in, and the material was ob-  
8 tained from, a country that is not a party to  
9 the Agreement; and

10 (C) for which a claim for preferential tariff  
11 treatment under the Agreement has been made.

12 (b) ADDITIONAL DUTIES ON SAFEGUARD GOODS.—

13 (1) IN GENERAL.—In addition to any duty pro-  
14 claimed under subsection (a) or (b) of section 201,  
15 the Secretary of the Treasury shall assess a duty, in  
16 the amount determined under paragraph (2), on a  
17 safeguard good imported into the United States in  
18 a calendar year if the Secretary determines that,  
19 prior to such importation, the total volume of that  
20 safeguard good that is imported into the United  
21 States in that calendar year exceeds 130 percent of  
22 the volume that is provided for that safeguard good  
23 in the corresponding year in the applicable table  
24 contained in Appendix I of the General Notes to the  
25 Schedule of the United States to Annex 2.3 of the

1 Agreement. For purposes of this subsection, year 1  
2 in that table corresponds to the calendar year in  
3 which the Agreement enters into force.

4 (2) CALCULATION OF ADDITIONAL DUTY.—The  
5 additional duty on a safeguard good under this sub-  
6 section shall be—

7 (A) in years 1 through 12, an amount  
8 equal to 100 percent of the excess of the appli-  
9 cable NTR (MFN) rate of duty over the sched-  
10 ule rate of duty; and

11 (B) in years 13 through 16, an amount  
12 equal to 50 percent of the excess of the applica-  
13 ble NTR (MFN) rate of duty over the schedule  
14 rate of duty.

15 (3) NOTICE.—Not later than 60 days after the  
16 Secretary of the Treasury first assesses an addi-  
17 tional duty in a calendar year on a good under this  
18 subsection, the Secretary shall notify the Govern-  
19 ment of Peru in writing of such action and shall pro-  
20 vide to that Government data supporting the assess-  
21 ment of the additional duty.

22 (c) EXCEPTIONS.—No additional duty shall be as-  
23 sessed on a good under subsection (b) if, at the time of  
24 entry, the good is subject to import relief under—

25 (1) subtitle A of title III of this Act; or

1           (2) chapter 1 of title II of the Trade Act of  
2           1974 (19 U.S.C. 2251 et seq.).

3           (d) **TERMINATION.**—The assessment of an additional  
4 duty on a good under subsection (b) shall cease to apply  
5 to that good on the date on which duty-free treatment  
6 must be provided to that good under the Schedule of the  
7 United States to Annex 2.3 of the Agreement.

8 **SEC. 203. RULES OF ORIGIN.**

9           (a) **APPLICATION AND INTERPRETATION.**—In this  
10 section:

11           (1) **TARIFF CLASSIFICATION.**—The basis for  
12 any tariff classification is the HTS.

13           (2) **REFERENCE TO HTS.**—Whenever in this  
14 section there is a reference to a chapter, heading, or  
15 subheading, such reference shall be a reference to a  
16 chapter, heading, or subheading of the HTS.

17           (3) **COST OR VALUE.**—Any cost or value re-  
18 ferred to in this section shall be recorded and main-  
19 tained in accordance with the generally accepted ac-  
20 counting principles applicable in the territory of the  
21 country in which the good is produced (whether  
22 Peru or the United States).

23           (b) **ORIGINATING GOODS.**—For purposes of this Act  
24 and for purposes of implementing the preferential tariff  
25 treatment provided for under the Agreement, except as

1 otherwise provided in this section, a good is an originating  
2 good if—

3 (1) the good is a good wholly obtained or pro-  
4 duced entirely in the territory of Peru, the United  
5 States, or both;

6 (2) the good—

7 (A) is produced entirely in the territory of  
8 Peru, the United States, or both, and—

9 (i) each of the nonoriginating mate-  
10 rials used in the production of the good  
11 undergoes an applicable change in tariff  
12 classification specified in Annex 3-A or  
13 Annex 4.1 of the Agreement; or

14 (ii) the good otherwise satisfies any  
15 applicable regional value-content or other  
16 requirements specified in Annex 3-A or  
17 Annex 4.1 of the Agreement; and

18 (B) satisfies all other applicable require-  
19 ments of this section; or

20 (3) the good is produced entirely in the terri-  
21 tory of Peru, the United States, or both, exclusively  
22 from materials described in paragraph (1) or (2).

23 (c) REGIONAL VALUE-CONTENT.—

24 (1) IN GENERAL.—For purposes of subsection

25 (b)(2), the regional value-content of a good referred

1 to in Annex 4.1 of the Agreement, except for goods  
2 to which paragraph (4) applies, shall be calculated  
3 by the importer, exporter, or producer of the good,  
4 on the basis of the build-down method described in  
5 paragraph (2) or the build-up method described in  
6 paragraph (3).

7 (2) BUILD-DOWN METHOD.—

8 (A) IN GENERAL.—The regional value-con-  
9 tent of a good may be calculated on the basis  
10 of the following build-down method:

$$\text{RVC} = \frac{\text{AV} - \text{VNM}}{\text{AV}} \times 100$$

11 (B) DEFINITIONS.—In subparagraph (A):

12 (i) RVC.—The term “RVC” means  
13 the regional value-content of the good, ex-  
14 pressed as a percentage.

15 (ii) AV.—The term “AV” means the  
16 adjusted value of the good.

17 (iii) VNM.—The term “VNM” means  
18 the value of nonoriginating materials that  
19 are acquired and used by the producer in  
20 the production of the good, but does not  
21 include the value of a material that is self-  
22 produced.

23 (3) BUILD-UP METHOD.—

1 (A) IN GENERAL.—The regional value-con-  
2 tent of a good may be calculated on the basis  
3 of the following build-up method:

$$\text{RVC} = \frac{\text{VOM}}{\text{AV}} \times 100$$

4 (B) DEFINITIONS.—In subparagraph (A):

5 (i) RVC.—The term “RVC” means  
6 the regional value-content of the good, ex-  
7 pressed as a percentage.

8 (ii) AV.—The term “AV” means the  
9 adjusted value of the good.

10 (iii) VOM.—The term “VOM” means  
11 the value of originating materials that are  
12 acquired or self-produced, and used by the  
13 producer in the production of the good.

14 (4) SPECIAL RULE FOR CERTAIN AUTOMOTIVE  
15 GOODS.—

16 (A) IN GENERAL.—For purposes of sub-  
17 section (b)(2), the regional value-content of an  
18 automotive good referred to in Annex 4.1 of the  
19 Agreement may be calculated by the importer,  
20 exporter, or producer of the good, on the basis  
21 of the following net cost method:

NC-VNM

$$\text{RVC} = \frac{\quad}{\quad} \times 100$$

NC

1 (B) DEFINITIONS.—In subparagraph (A):

2 (i) AUTOMOTIVE GOOD.—The term  
3 “automotive good” means a good provided  
4 for in any of subheadings 8407.31 through  
5 8407.34, subheading 8408.20, heading  
6 8409, or any of headings 8701 through  
7 8708.

8 (ii) RVC.—The term “RVC” means  
9 the regional value-content of the auto-  
10 motive good, expressed as a percentage.

11 (iii) NC.—The term “NC” means the  
12 net cost of the automotive good.

13 (iv) VNM.—The term “VNM” means  
14 the value of nonoriginating materials that  
15 are acquired and used by the producer in  
16 the production of the automotive good, but  
17 does not include the value of a material  
18 that is self-produced.

19 (C) MOTOR VEHICLES.—

20 (i) BASIS OF CALCULATION.—For  
21 purposes of determining the regional value-  
22 content under subparagraph (A) for an  
23 automotive good that is a motor vehicle

1 provided for in any of headings 8701  
2 through 8705, an importer, exporter, or  
3 producer may average the amounts cal-  
4 culated under the formula contained in  
5 subparagraph (A), over the producer's fis-  
6 cal year—

7 (I) with respect to all motor vehi-  
8 cles in any one of the categories de-  
9 scribed in clause (ii); or

10 (II) with respect to all motor ve-  
11 hicles in any such category that are  
12 exported to the territory of the United  
13 States or Peru.

14 (ii) CATEGORIES.—A category is de-  
15 scribed in this clause if it—

16 (I) is the same model line of  
17 motor vehicles, is in the same class of  
18 motor vehicles, and is produced in the  
19 same plant in the territory of Peru or  
20 the United States, as the good de-  
21 scribed in clause (i) for which regional  
22 value-content is being calculated;

23 (II) is the same class of motor  
24 vehicles, and is produced in the same  
25 plant in the territory of Peru or the



1 United States, as the good described  
2 in clause (i) for which regional value-  
3 content is being calculated; or

4 (III) is the same model line of  
5 motor vehicles produced in the terri-  
6 tory of Peru or the United States as  
7 the good described in clause (i) for  
8 which regional value-content is being  
9 calculated.

10 (D) OTHER AUTOMOTIVE GOODS.—For  
11 purposes of determining the regional value-con-  
12 tent under subparagraph (A) for automotive  
13 materials provided for in any of subheadings  
14 8407.31 through 8407.34, in subheading  
15 8408.20, or in heading 8409, 8706, 8707, or  
16 8708, that are produced in the same plant, an  
17 importer, exporter, or producer may—

18 (i) average the amounts calculated  
19 under the formula contained in subpara-  
20 graph (A) over—

21 (I) the fiscal year of the motor  
22 vehicle producer to whom the auto-  
23 motive goods are sold,

24 (II) any quarter or month, or

1 (III) the fiscal year of the pro-  
2 ducer of such goods,  
3 if the goods were produced during the fis-  
4 cal year, quarter, or month that is the  
5 basis for the calculation;

6 (ii) determine the average referred to  
7 in clause (i) separately for such goods sold  
8 to 1 or more motor vehicle producers; or

9 (iii) make a separate determination  
10 under clause (i) or (ii) for such goods that  
11 are exported to the territory of Peru or the  
12 United States.

13 (E) CALCULATING NET COST.—The im-  
14 porter, exporter, or producer of an automotive  
15 good shall, consistent with the provisions re-  
16 garding allocation of costs provided for in gen-  
17 erally accepted accounting principles, determine  
18 the net cost of the automotive good under sub-  
19 paragraph (B) by—

20 (i) calculating the total cost incurred  
21 with respect to all goods produced by the  
22 producer of the automotive good, sub-  
23 tracting any sales promotion, marketing  
24 and after-sales service costs, royalties,  
25 shipping and packing costs, and nonallow-

1           able interest costs that are included in the  
2           total cost of all such goods, and then rea-  
3           sonably allocating the resulting net cost of  
4           those goods to the automotive good;

5           (ii) calculating the total cost incurred  
6           with respect to all goods produced by that  
7           producer, reasonably allocating the total  
8           cost to the automotive good, and then sub-  
9           tracting any sales promotion, marketing  
10          and after-sales service costs, royalties,  
11          shipping and packing costs, and nonallow-  
12          able interest costs that are included in the  
13          portion of the total cost allocated to the  
14          automotive good; or

15          (iii) reasonably allocating each cost  
16          that forms part of the total cost incurred  
17          with respect to the automotive good so that  
18          the aggregate of these costs does not in-  
19          clude any sales promotion, marketing and  
20          after-sales service costs, royalties, shipping  
21          and packing costs, or nonallowable interest  
22          costs.

23          (d) VALUE OF MATERIALS.—

24                 (1) IN GENERAL.—For the purpose of calcu-  
25          lating the regional value-content of a good under

1 subsection (c), and for purposes of applying the de  
2 minimis rules under subsection (f), the value of a  
3 material is—

4 (A) in the case of a material that is im-  
5 ported by the producer of the good, the ad-  
6 justed value of the material;

7 (B) in the case of a material acquired in  
8 the territory in which the good is produced, the  
9 value, determined in accordance with Articles 1  
10 through 8, Article 15, and the corresponding in-  
11 terpretive notes, of the Agreement on Imple-  
12 mentation of Article VII of the General Agree-  
13 ment on Tariffs and Trade 1994 referred to in  
14 section 101(d)(8) of the Uruguay Round Agree-  
15 ments Act (19 U.S.C. 3511(d)(8)), as set forth  
16 in regulations promulgated by the Secretary of  
17 the Treasury providing for the application of  
18 such Articles in the absence of an importation  
19 by the producer; or

20 (C) in the case of a material that is self-  
21 produced, the sum of—

22 (i) all expenses incurred in the pro-  
23 duction of the material, including general  
24 expenses; and

1                   (ii) an amount for profit equivalent to  
 2                   the profit added in the normal course of  
 3                   trade.

4                   (2) FURTHER ADJUSTMENTS TO THE VALUE OF  
 5                   MATERIALS.—

6                   (A) ORIGINATING MATERIAL.—The fol-  
 7                   lowing expenses, if not included in the value of  
 8                   an originating material calculated under para-  
 9                   graph (1), may be added to the value of the  
 10                  originating material:

11                  (i) The costs of freight, insurance,  
 12                  packing, and all other costs incurred in  
 13                  transporting the material within or be-  
 14                  tween the territory of Peru, the United  
 15                  States, or both, to the location of the pro-  
 16                  ducer.

17                  (ii) Duties, taxes, and customs broker-  
 18                  age fees on the material paid in the terri-  
 19                  tory of Peru, the United States, or both,  
 20                  other than duties or taxes that are waived,  
 21                  refunded, refundable, or otherwise recover-  
 22                  able, including credit against duty or tax  
 23                  paid or payable.

24                  (iii) The cost of waste and spoilage re-  
 25                  sulting from the use of the material in the

1 production of the good, less the value of  
2 renewable scrap or byproducts.

3 (B) NONORIGINATING MATERIAL.—The  
4 following expenses, if included in the value of a  
5 nonoriginating material calculated under para-  
6 graph (1), may be deducted from the value of  
7 the nonoriginating material:

8 (i) The costs of freight, insurance,  
9 packing, and all other costs incurred in  
10 transporting the material within or be-  
11 tween the territory of Peru, the United  
12 States, or both, to the location of the pro-  
13 ducer.

14 (ii) Duties, taxes, and customs broker-  
15 age fees on the material paid in the terri-  
16 tory of Peru, the United States, or both,  
17 other than duties or taxes that are waived,  
18 refunded, refundable, or otherwise recover-  
19 able, including credit against duty or tax  
20 paid or payable.

21 (iii) The cost of waste and spoilage re-  
22 sulting from the use of the material in the  
23 production of the good, less the value of  
24 renewable scrap or byproducts.

1                   (iv) The cost of originating materials  
2                   used in the production of the nonorigi-  
3                   nating material in the territory of Peru,  
4                   the United States, or both.

5                   (e) ACCUMULATION.—

6                   (1) ORIGINATING MATERIALS USED IN PRODUC-  
7                   TION OF GOODS OF ANOTHER COUNTRY.—Orig-  
8                   inating materials from the territory of Peru or the  
9                   United States that are used in the production of a  
10                  good in the territory of the other country shall be  
11                  considered to originate in the territory of such other  
12                  country.

13                  (2) MULTIPLE PRODUCERS.—A good that is  
14                  produced in the territory of Peru, the United States,  
15                  or both, by 1 or more producers, is an originating  
16                  good if the good satisfies the requirements of sub-  
17                  section (b) and all other applicable requirements of  
18                  this section.

19                  (f) DE MINIMIS AMOUNTS OF NONORIGINATING MA-  
20                  TERIALS.—

21                  (1) IN GENERAL.—Except as provided in para-  
22                  graphs (2) and (3), a good that does not undergo a  
23                  change in tariff classification pursuant to Annex 4.1  
24                  of the Agreement is an originating good if—

1 (A)(i) the value of all nonoriginating mate-  
2 rials that—

3 (I) are used in the production of the  
4 good, and

5 (II) do not undergo the applicable  
6 change in tariff classification (set forth in  
7 Annex 4.1 of the Agreement),  
8 does not exceed 10 percent of the adjusted  
9 value of the good;

10 (ii) the good meets all other applicable re-  
11 quirements of this section; and

12 (iii) the value of such nonoriginating mate-  
13 rials is included in the value of nonoriginating  
14 materials for any applicable regional value-con-  
15 tent requirement for the good; or

16 (B) the good meets the requirements set forth  
17 in paragraph 2 of Annex 4.6 of the Agreement.

18 (2) EXCEPTIONS.—Paragraph (1) does not  
19 apply to the following:

20 (A) A nonoriginating material provided for  
21 in chapter 4, or a nonoriginating dairy prepara-  
22 tion containing over 10 percent by weight of  
23 milk solids provided for in subheading 1901.90  
24 or 2106.90, that is used in the production of a  
25 good provided for in chapter 4.



1 (B) A nonoriginating material provided for  
2 in chapter 4, or a nonoriginating dairy prepara-  
3 tion containing over 10 percent by weight of  
4 milk solids provided for in subheading 1901.90,  
5 that is used in the production of any of the fol-  
6 lowing goods:

7 (i) Infant preparations containing  
8 over 10 percent by weight of milk solids  
9 provided for in subheading 1901.10.

10 (ii) Mixes and doughs, containing over  
11 25 percent by weight of butterfat, not put  
12 up for retail sale, provided for in sub-  
13 heading 1901.20.

14 (iii) Dairy preparations containing  
15 over 10 percent by weight of milk solids  
16 provided for in subheading 1901.90 or  
17 2106.90.

18 (iv) Goods provided for in heading  
19 2105.

20 (v) Beverages containing milk pro-  
21 vided for in subheading 2202.90.

22 (vi) Animal feeds containing over 10  
23 percent by weight of milk solids provided  
24 for in subheading 2309.90.

1 (C) A nonoriginating material provided for  
2 in heading 0805, or any of subheadings  
3 2009.11 through 2009.39, that is used in the  
4 production of a good provided for in any of sub-  
5 headings 2009.11 through 2009.39, or in fruit  
6 or vegetable juice of any single fruit or vege-  
7 table, fortified with minerals or vitamins, con-  
8 centrated or unconcentrated, provided for in  
9 subheading 2106.90 or 2202.90.

10 (D) A nonoriginating material provided for  
11 in heading 0901 or 2101 that is used in the  
12 production of a good provided for in heading  
13 0901 or 2101.

14 (E) A nonoriginating material provided for  
15 in chapter 15 that is used in the production of  
16 a good provided for in any of headings 1501  
17 through 1508, or any of headings 1511 through  
18 1515.

19 (F) A nonoriginating material provided for  
20 in heading 1701 that is used in the production  
21 of a good provided for in any of headings 1701  
22 through 1703.

23 (G) A nonoriginating material provided for  
24 in chapter 17 that is used in the production of  
25 a good provided for in subheading 1806.10.

1 (H) Except as provided in subparagraphs  
2 (A) through (G) and Annex 4.1 of the Agree-  
3 ment, a nonoriginating material used in the  
4 production of a good provided for in any of  
5 chapters 1 through 24, unless the nonorigi-  
6 nating material is provided for in a different  
7 subheading than the good for which origin is  
8 being determined under this section.

9 (I) A nonoriginating material that is a tex-  
10 tile or apparel good.

11 (3) TEXTILE OR APPAREL GOODS.—

12 (A) IN GENERAL.—Except as provided in  
13 subparagraph (B), a textile or apparel good  
14 that is not an originating good because certain  
15 fibers or yarns used in the production of the  
16 component of the good that determines the tar-  
17 iff classification of the good do not undergo an  
18 applicable change in tariff classification, set  
19 forth in Annex 3-A of the Agreement, shall be  
20 considered to be an originating good if—

21 (i) the total weight of all such fibers  
22 or yarns in that component is not more  
23 than 10 percent of the total weight of that  
24 component; or

1 (ii) the yarns are those described in  
2 section 204(b)(3)(B)(vi)(IV) of the Andean  
3 Trade Preference Act (19 U.S.C.  
4 3203(b)(3)(B)(vi)(IV)) (as in effect on the  
5 date of the enactment of this Act).

6 (B) CERTAIN TEXTILE OR APPAREL  
7 GOODS.—A textile or apparel good containing  
8 elastomeric yarns in the component of the good  
9 that determines the tariff classification of the  
10 good shall be considered to be an originating  
11 good only if such yarns are wholly formed in  
12 the territory of Peru, the United States, or  
13 both.

14 (C) YARN, FABRIC, OR FIBER.—For pur-  
15 poses of this paragraph, in the case of a good  
16 that is a yarn, fabric, or fiber, the term “com-  
17 ponent of the good that determines the tariff  
18 classification of the good” means all of the fi-  
19 bers in the good.

20 (g) FUNGIBLE GOODS AND MATERIALS.—

21 (1) IN GENERAL.—

22 (A) CLAIM FOR PREFERENTIAL TARIFF  
23 TREATMENT.—A person claiming that a fun-  
24 gible good or fungible material is an originating  
25 good may base the claim either on the physical

1 segregation of the fungible good or fungible ma-  
2 terial or by using an inventory management  
3 method with respect to the fungible good or  
4 fungible material.

5 (B) INVENTORY MANAGEMENT METHOD.—

6 In this subsection, the term “inventory manage-  
7 ment method” means—

- 8 (i) averaging;  
9 (ii) “last-in, first-out”;  
10 (iii) “first-in, first-out”; or  
11 (iv) any other method—

12 (I) recognized in the generally  
13 accepted accounting principles of the  
14 country in which the production is  
15 performed (whether Peru or the  
16 United States); or

17 (II) otherwise accepted by that  
18 country.

19 (2) ELECTION OF INVENTORY METHOD.—A

20 person selecting an inventory management method  
21 under paragraph (1) for a particular fungible good  
22 or fungible material shall continue to use that meth-  
23 od for that fungible good or fungible material  
24 throughout the fiscal year of such person.

25 (h) ACCESSORIES, SPARE PARTS, OR TOOLS.—

1           (1) IN GENERAL.—Subject to paragraphs (2)  
2           and (3), accessories, spare parts, or tools delivered  
3           with a good that form part of the good's standard  
4           accessories, spare parts, or tools shall—

5                   (A) be treated as originating goods if the  
6           good is an originating good; and

7                   (B) be disregarded in determining whether  
8           all the nonoriginating materials used in the pro-  
9           duction of the good undergo the applicable  
10          change in tariff classification set forth in Annex  
11          4.1 of the Agreement.

12          (2) CONDITIONS.—Paragraph (1) shall apply  
13          only if—

14                   (A) the accessories, spare parts, or tools  
15          are classified with and not invoiced separately  
16          from the good, regardless of whether such ac-  
17          cessories, spare parts, or tools are specified or  
18          are separately identified in the invoice for the  
19          good; and

20                   (B) the quantities and value of the acces-  
21          sories, spare parts, or tools are customary for  
22          the good.

23          (3) REGIONAL VALUE-CONTENT.—If the good is  
24          subject to a regional value-content requirement, the  
25          value of the accessories, spare parts, or tools shall

1 be taken into account as originating or nonorigi-  
2 nating materials, as the case may be, in calculating  
3 the regional value-content of the good.

4 (i) PACKAGING MATERIALS AND CONTAINERS FOR  
5 RETAIL SALE.—Packaging materials and containers in  
6 which a good is packaged for retail sale, if classified with  
7 the good, shall be disregarded in determining whether all  
8 the nonoriginating materials used in the production of the  
9 good undergo the applicable change in tariff classification  
10 set forth in Annex 3-A or Annex 4.1 of the Agreement,  
11 and, if the good is subject to a regional value-content re-  
12 quirement, the value of such packaging materials and con-  
13 tainers shall be taken into account as originating or non-  
14 originating materials, as the case may be, in calculating  
15 the regional value-content of the good.

16 (j) PACKING MATERIALS AND CONTAINERS FOR  
17 SHIPMENT.—Packing materials and containers for ship-  
18 ment shall be disregarded in determining whether a good  
19 is an originating good.

20 (k) INDIRECT MATERIALS.—An indirect material  
21 shall be treated as an originating material without regard  
22 to where it is produced.

23 (l) TRANSIT AND TRANSHIPMENT.—A good that has  
24 undergone production necessary to qualify as an origi-  
25 nating good under subsection (b) shall not be considered

1 to be an originating good if, subsequent to that produc-  
2 tion, the good—

3 (1) undergoes further production or any other  
4 operation outside the territory of Peru or the United  
5 States, other than unloading, reloading, or any other  
6 operation necessary to preserve the good in good  
7 condition or to transport the good to the territory of  
8 Peru or the United States; or

9 (2) does not remain under the control of cus-  
10 toms authorities in the territory of Peru or the  
11 United States.

12 (m) GOODS CLASSIFIABLE AS GOODS PUT UP IN  
13 SETS.—Notwithstanding the rules set forth in Annex 3-  
14 A and Annex 4.1 of the Agreement, goods classifiable as  
15 goods put up in sets for retail sale as provided for in Gen-  
16 eral Rule of Interpretation 3 of the HTS shall not be con-  
17 sidered to be originating goods unless—

18 (1) each of the goods in the set is an origi-  
19 nating good; or

20 (2) the total value of the nonoriginating goods  
21 in the set does not exceed—

22 (A) in the case of textile or apparel goods,  
23 10 percent of the adjusted value of the set; or



1 (B) in the case of a good, other than a tex-  
2 tile or apparel good, 15 percent of the adjusted  
3 value of the set.

4 (n) DEFINITIONS.—In this section:

5 (1) ADJUSTED VALUE.—The term “adjusted  
6 value” means the value determined in accordance  
7 with Articles 1 through 8, Article 15, and the cor-  
8 responding interpretive notes, of the Agreement on  
9 Implementation of Article VII of the General Agree-  
10 ment on Tariffs and Trade 1994 referred to in sec-  
11 tion 101(d)(8) of the Uruguay Round Agreements  
12 Act (19 U.S.C. 3511(d)(8)), adjusted, if necessary,  
13 to exclude any costs, charges, or expenses incurred  
14 for transportation, insurance, and related services  
15 incident to the international shipment of the mer-  
16 chandise from the country of exportation to the  
17 place of importation.

18 (2) CLASS OF MOTOR VEHICLES.—The term  
19 “class of motor vehicles” means any one of the fol-  
20 lowing categories of motor vehicles:

21 (A) Motor vehicles provided for in sub-  
22 heading 8701.20, 8704.10, 8704.22, 8704.23,  
23 8704.32, or 8704.90, or heading 8705 or 8706,  
24 or motor vehicles for the transport of 16 or

1 more persons provided for in subheading  
2 8702.10 or 8702.90.

3 (B) Motor vehicles provided for in sub-  
4 heading 8701.10 or any of subheadings  
5 8701.30 through 8701.90.

6 (C) Motor vehicles for the transport of 15  
7 or fewer persons provided for in subheading  
8 8702.10 or 8702.90, or motor vehicles provided  
9 for in subheading 8704.21 or 8704.31.

10 (D) Motor vehicles provided for in any of  
11 subheadings 8703.21 through 8703.90.

12 (3) FUNGIBLE GOOD OR FUNGIBLE MATE-  
13 RIAL.—The term “fungible good” or “fungible mate-  
14 rial” means a good or material, as the case may be,  
15 that is interchangeable with another good or mate-  
16 rial for commercial purposes and the properties of  
17 which are essentially identical to such other good or  
18 material.

19 (4) GENERALLY ACCEPTED ACCOUNTING PRIN-  
20 CIPLES.—The term “generally accepted accounting  
21 principles” means the recognized consensus or sub-  
22 stantial authoritative support in the territory of  
23 Peru or the United States, as the case may be, with  
24 respect to the recording of revenues, expenses, costs,  
25 assets, and liabilities, the disclosure of information,

1 and the preparation of financial statements. The  
2 principles may encompass broad guidelines of gen-  
3 eral application as well as detailed standards, prac-  
4 tices, and procedures.

5 (5) GOOD WHOLLY OBTAINED OR PRODUCED  
6 ENTIRELY IN THE TERRITORY OF PERU, THE  
7 UNITED STATES, OR BOTH.—The term “good wholly  
8 obtained or produced entirely in the territory of  
9 Peru, the United States, or both” means any of the  
10 following:

11 (A) Plants and plant products harvested or  
12 gathered in the territory of Peru, the United  
13 States, or both.

14 (B) Live animals born and raised in the  
15 territory of Peru, the United States, or both.

16 (C) Goods obtained in the territory of  
17 Peru, the United States, or both from live ani-  
18 mals.

19 (D) Goods obtained from hunting, trap-  
20 ping, fishing, or aquaculture conducted in the  
21 territory of Peru, the United States, or both.

22 (E) Minerals and other natural resources  
23 not included in subparagraphs (A) through (D)  
24 that are extracted or taken from the territory  
25 of Peru, the United States, or both.

- 1 (F) Fish, shellfish, and other marine life  
2 taken from the sea, seabed, or subsoil outside  
3 the territory of Peru or the United States by—
- 4 (i) a vessel that is registered or re-  
5 corded with Peru and flying the flag of  
6 Peru; or
- 7 (ii) a vessel that is documented under  
8 the laws of the United States.
- 9 (G) Goods produced on board a factory  
10 ship from goods referred to in subparagraph  
11 (F), if such factory ship—
- 12 (i) is registered or recorded with Peru  
13 and flies the flag of Peru; or
- 14 (ii) is a vessel that is documented  
15 under the laws of the United States.
- 16 (H)(i) Goods taken by Peru or a person of  
17 Peru from the seabed or subsoil outside the ter-  
18 ritorial waters of Peru, if Peru has rights to ex-  
19 ploit such seabed or subsoil.
- 20 (ii) Goods taken by the United States or a  
21 person of the United States from the seabed or  
22 subsoil outside the territorial waters of the  
23 United States, if the United States has rights  
24 to exploit such seabed or subsoil.

1 (I) Goods taken from outer space, if the  
2 goods are obtained by Peru or the United  
3 States or a person of Peru or the United States  
4 and not processed in the territory of a country  
5 other than Peru or the United States.

6 (J) Waste and scrap derived from—

7 (i) manufacturing or processing oper-  
8 ations in the territory of Peru, the United  
9 States, or both; or

10 (ii) used goods collected in the terri-  
11 tory of Peru, the United States, or both, if  
12 such goods are fit only for the recovery of  
13 raw materials.

14 (K) Recovered goods derived in the terri-  
15 tory of Peru, the United States, or both, from  
16 used goods, and used in the territory of Peru,  
17 the United States, or both, in the production of  
18 remanufactured goods.

19 (L) Goods, at any stage of production, pro-  
20 duced in the territory of Peru, the United  
21 States, or both, exclusively from—

22 (i) goods referred to in any of sub-  
23 paragraphs (A) through (J), or

24 (ii) the derivatives of goods referred  
25 to in clause (i).

1           (6) IDENTICAL GOODS.—The term “identical  
2 goods” means goods that are the same in all re-  
3 spects relevant to the rule of origin that qualifies the  
4 goods as originating goods.

5           (7) INDIRECT MATERIAL.—The term “indirect  
6 material” means a good used in the production, test-  
7 ing, or inspection of another good but not physically  
8 incorporated into that other good, or a good used in  
9 the maintenance of buildings or the operation of  
10 equipment associated with the production of another  
11 good, including—

12           (A) fuel and energy;

13           (B) tools, dies, and molds;

14           (C) spare parts and materials used in the  
15 maintenance of equipment or buildings;

16           (D) lubricants, greases, compounding ma-  
17 terials, and other materials used in production  
18 or used to operate equipment or buildings;

19           (E) gloves, glasses, footwear, clothing,  
20 safety equipment, and supplies;

21           (F) equipment, devices, and supplies used  
22 for testing or inspecting the good;

23           (G) catalysts and solvents; and

24           (H) any other goods that are not incor-  
25 porated into the other good but the use of

1           which in the production of the other good can  
2           reasonably be demonstrated to be a part of that  
3           production.

4           (8) MATERIAL.—The term “material” means a  
5           good that is used in the production of another good,  
6           including a part or an ingredient.

7           (9) MATERIAL THAT IS SELF-PRODUCED.—The  
8           term “material that is self-produced” means an orig-  
9           inating material that is produced by a producer of  
10          a good and used in the production of that good.

11          (10) MODEL LINE OF MOTOR VEHICLES.—The  
12          term “model line of motor vehicles” means a group  
13          of motor vehicles having the same platform or model  
14          name.

15          (11) NET COST.—The term “net cost” means  
16          total cost minus sales promotion, marketing, and  
17          after-sales service costs, royalties, shipping and  
18          packing costs, and non-allowable interest costs that  
19          are included in the total cost.

20          (12) NONALLOWABLE INTEREST COSTS.—The  
21          term “nonallowable interest costs” means interest  
22          costs incurred by a producer that exceed 700 basis  
23          points above the applicable official interest rate for  
24          comparable maturities of the country in which the  
25          producer is located.

1           (13) NONORIGINATING GOOD OR NONORIGI-  
2           NATING MATERIAL.—The terms “nonoriginating  
3           good” and “nonoriginating material” mean a good  
4           or material, as the case may be, that does not qual-  
5           ify as originating under this section.

6           (14) PACKING MATERIALS AND CONTAINERS  
7           FOR SHIPMENT.—The term “packing materials and  
8           containers for shipment” means goods used to pro-  
9           tect another good during its transportation and does  
10          not include the packaging materials and containers  
11          in which the other good is packaged for retail sale.

12          (15) PREFERENTIAL TARIFF TREATMENT.—  
13          The term “preferential tariff treatment” means the  
14          customs duty rate, and the treatment under article  
15          2.10.4 of the Agreement, that are applicable to an  
16          originating good pursuant to the Agreement.

17          (16) PRODUCER.—The term “producer” means  
18          a person who engages in the production of a good  
19          in the territory of Peru or the United States.

20          (17) PRODUCTION.—The term “production”  
21          means growing, mining, harvesting, fishing, raising,  
22          trapping, hunting, manufacturing, processing, as-  
23          sembling, or disassembling a good.

24          (18) REASONABLY ALLOCATE.—The term “rea-  
25          sonably allocate” means to apportion in a manner



1 that would be appropriate under generally accepted  
2 accounting principles.

3 (19) RECOVERED GOODS.—The term “recov-  
4 ered goods” means materials in the form of indi-  
5 vidual parts that are the result of—

6 (A) the disassembly of used goods into in-  
7 dividual parts; and

8 (B) the cleaning, inspecting, testing, or  
9 other processing that is necessary for improve-  
10 ment to sound working condition of such indi-  
11 vidual parts.

12 (20) REMANUFACTURED GOOD.—The term “re-  
13 manufactured good” means an industrial good as-  
14 sembled in the territory of Peru or the United  
15 States, or both, that is classified under chapter 84,  
16 85, 87, or 90 or heading 9402, other than a good  
17 classified under heading 8418 or 8516, and that—

18 (A) is entirely or partially comprised of re-  
19 covered goods; and

20 (B) has a similar life expectancy and en-  
21 joys a factory warranty similar to such a good  
22 that is new.

23 (21) TOTAL COST.—

24 (A) IN GENERAL.—The term “total  
25 cost”—

1 (i) means all product costs, period  
2 costs, and other costs for a good incurred  
3 in the territory of Peru, the United States,  
4 or both; and

5 (ii) does not include profits that are  
6 earned by the producer, regardless of  
7 whether they are retained by the producer  
8 or paid out to other persons as dividends,  
9 or taxes paid on those profits, including  
10 capital gains taxes.

11 (B) OTHER DEFINITIONS.—In this para-  
12 graph:

13 (i) PRODUCT COSTS.—The term  
14 “product costs” means costs that are asso-  
15 ciated with the production of a good and  
16 include the value of materials, direct labor  
17 costs, and direct overhead.

18 (ii) PERIOD COSTS.—The term “pe-  
19 riod costs” means costs, other than prod-  
20 uct costs, that are expensed in the period  
21 in which they are incurred, such as selling  
22 expenses and general and administrative  
23 expenses.

24 (iii) OTHER COSTS.—The term “other  
25 costs” means all costs recorded on the

1 books of the producer that are not product  
2 costs or period costs, such as interest.

3 (22) USED.—The term “used” means utilized  
4 or consumed in the production of goods.

5 (o) PRESIDENTIAL PROCLAMATION AUTHORITY.—

6 (1) IN GENERAL.—The President is authorized  
7 to proclaim, as part of the HTS—

8 (A) the provisions set forth in Annex 3-A  
9 and Annex 4.1 of the Agreement; and

10 (B) any additional subordinate category  
11 that is necessary to carry out this title, con-  
12 sistent with the Agreement.

13 (2) FABRICS AND YARNS NOT AVAILABLE IN  
14 COMMERCIAL QUANTITIES IN THE UNITED  
15 STATES.—The President is authorized to proclaim  
16 that a fabric or yarn is added to the list in Annex  
17 3-B of the Agreement in an unrestricted quantity,  
18 as provided in article 3.3.5(e) of the Agreement.

19 (3) MODIFICATIONS.—

20 (A) IN GENERAL.—Subject to the consulta-  
21 tion and layover provisions of section 104, the  
22 President may proclaim modifications to the  
23 provisions proclaimed under the authority of  
24 paragraph (1)(A), other than provisions of

1 chapters 50 through 63 (as included in Annex  
2 3-A of the Agreement).

3 (B) ADDITIONAL PROCLAMATIONS.—Not-  
4 withstanding subparagraph (A), and subject to  
5 the consultation and layover provisions of sec-  
6 tion 104, the President may proclaim, before  
7 the end of the 1-year period beginning on the  
8 date of the enactment of this Act, modifications  
9 to correct any typographical, clerical, or other  
10 nonsubstantive technical error regarding the  
11 provisions of chapters 50 through 63 (as in-  
12 cluded in Annex 3-A of the Agreement).

13 (4) FABRICS, YARNS, OR FIBERS NOT AVAIL-  
14 ABLE IN COMMERCIAL QUANTITIES IN PERU OR THE  
15 UNITED STATES.—

16 (A) IN GENERAL.—Notwithstanding para-  
17 graph (3)(A), the list of fabrics, yarns, and fi-  
18 bers set forth in Annex 3-B of the Agreement  
19 may be modified as provided for in this para-  
20 graph.

21 (B) DEFINITIONS.—In this paragraph:

22 (i) The term “interested entity”  
23 means the Government of Peru, a potential  
24 or actual purchaser of a textile or apparel

1 good, or a potential or actual supplier of a  
2 textile or apparel good.

3 (ii) All references to "day" and  
4 "days" exclude Saturdays, Sundays, and  
5 legal holidays observed by the Government  
6 of the United States.

7 (C) REQUESTS TO ADD FABRICS, YARNS,  
8 OR FIBERS.—(i) An interested entity may re-  
9 quest the President to determine that a fabric,  
10 yarn, or fiber is not available in commercial  
11 quantities in a timely manner in the territory of  
12 Peru or the United States and to add that fab-  
13 ric, yarn, or fiber to the list in Annex 3-B of  
14 the Agreement in a restricted or unrestricted  
15 quantity.

16 (ii) After receiving a request under clause  
17 (i), the President may determine whether—

18 (I) the fabric, yarn, or fiber is avail-  
19 able in commercial quantities in a timely  
20 manner in the territory of Peru or the  
21 United States; or

22 (II) any interested entity objects to  
23 the request.

24 (iii) The President may, within the time  
25 periods specified in clause (iv), proclaim that

1 the fabric, yarn, or fiber that is the subject of  
2 the request is added to the list in Annex 3-B  
3 of the Agreement in an unrestricted quantity,  
4 or in any restricted quantity that the President  
5 may establish, if the President has determined  
6 under clause (ii) that—

7 (I) the fabric, yarn, or fiber is not  
8 available in commercial quantities in a  
9 timely manner in the territory of Peru or  
10 the United States; or

11 (II) no interested entity has objected  
12 to the request.

13 (iv) The time periods within which the  
14 President may issue a proclamation under  
15 clause (iii) are—

16 (I) not later than 30 days after the  
17 date on which a request is submitted under  
18 clause (i); or

19 (II) not later than 44 days after the  
20 request is submitted, if the President de-  
21 termines, within 30 days after the date on  
22 which the request is submitted, that the  
23 President does not have sufficient informa-  
24 tion to make a determination under clause  
25 (ii).

1 (v) Notwithstanding section  
2 103(a)(2), a proclamation made under  
3 clause (iii) shall take effect on the date on  
4 which the text of the proclamation is pub-  
5 lished in the Federal Register.

6 (vi) Not later than 6 months after  
7 proclaiming under clause (iii) that a fabric,  
8 yarn, or fiber is added to the list in Annex  
9 3-B of the Agreement in a restricted  
10 quantity, the President may eliminate the  
11 restriction if the President determines that  
12 the fabric, yarn, or fiber is not available in  
13 commercial quantities in a timely manner  
14 in the territory of Peru or the United  
15 States.

16 (D) DEEMED APPROVAL OF REQUEST.—If,  
17 after an interested entity submits a request  
18 under subparagraph (C)(i), the President does  
19 not, within the applicable time period specified  
20 in subparagraph (C)(iv), make a determination  
21 under subparagraph (C)(ii) regarding the re-  
22 quest, the fabric, yarn, or fiber that is the sub-  
23 ject of the request shall be considered to be  
24 added, in an unrestricted quantity, to the list in  
25 Annex 3-B of the Agreement beginning—

1 (i) 45 days after the date on which  
2 the request was submitted; or

3 (ii) 60 days after the date on which  
4 the request was submitted, if the President  
5 made a determination under subparagraph  
6 (C)(iv)(II).

7 (E) REQUESTS TO RESTRICT OR REMOVE  
8 FABRICS, YARNS, OR FIBERS.—(i) Subject to  
9 clause (ii), an interested entity may request the  
10 President to restrict the quantity of, or remove  
11 from the list in Annex 3-B of the Agreement,  
12 any fabric, yarn, or fiber—

13 (I) that has been added to that  
14 list in an unrestricted quantity pursu-  
15 ant to paragraph (2) or subparagraph  
16 (C)(iii) or (D) of this paragraph; or

17 (II) with respect to which the  
18 President has eliminated a restriction  
19 under subparagraph (C)(vi).

20 (ii) An interested entity may submit a re-  
21 quest under clause (i) at any time beginning 6  
22 months after the date of the action described in  
23 subclause (I) or (II) of that clause.

24 (iii) Not later than 30 days after the date  
25 on which a request under clause (i) is sub-



1           mitted, the President may proclaim an action  
2           provided for under clause (i) if the President  
3           determines that the fabric, yarn, or fiber that  
4           is the subject of the request is available in com-  
5           mercial quantities in a timely manner in the  
6           territory of Peru or the United States.

7           (iv) A proclamation under clause (iii) shall  
8           take effect no earlier than the date that is 6  
9           months after the date on which the text of the  
10          proclamation is published in the Federal Reg-  
11          ister.

12          (F) PROCEDURES.—The President shall  
13          establish procedures—

14               (i) governing the submission of a re-  
15               quest under subparagraphs (C) and (E);  
16               and

17               (ii) providing an opportunity for inter-  
18               ested entities to submit comments and sup-  
19               porting evidence before the President  
20               makes a determination under subpara-  
21               graph (C) (ii) or (vi) or (E)(iii).

22   **SEC. 204. CUSTOMS USER FEES.**

23           Section 13031(b) of the Consolidated Omnibus Budg-  
24   et Reconciliation Act of 1985 (19 U.S.C. 58c(b)) is  
25   amended by adding after paragraph (17) the following:

1       “(18) No fee may be charged under subsection (a)  
2 (9) or (10) with respect to goods that qualify as origi-  
3 nating goods under section 203 of the United States-Peru  
4 Trade Promotion Agreement Implementation Act. Any  
5 service for which an exemption from such fee is provided  
6 by reason of this paragraph may not be funded with  
7 money contained in the Customs User Fee Account.”.

8 **SEC. 205. DISCLOSURE OF INCORRECT INFORMATION;**  
9                   **FALSE CERTIFICATIONS OF ORIGIN; DENIAL**  
10                   **OF PREFERENTIAL TARIFF TREATMENT.**

11       (a) **DISCLOSURE OF INCORRECT INFORMATION.—**  
12 Section 592 of the Tariff Act of 1930 (19 U.S.C. 1592)  
13 is amended—

14       (1) in subsection (c)—

15       (A) by redesignating paragraph (10) as  
16 paragraph (11); and

17       (B) by inserting after paragraph (9) the  
18 following new paragraph:

19       “(10) **PRIOR DISCLOSURE REGARDING CLAIMS**  
20 **UNDER THE UNITED STATES-PERU TRADE PRO-**  
21 **MOTION AGREEMENT.—**An importer shall not be  
22 subject to penalties under subsection (a) for making  
23 an incorrect claim that a good qualifies as an origi-  
24 nating good under section 203 of the United States-  
25 Peru Trade Promotion Agreement Implementation

1 Act if the importer, in accordance with regulations  
2 issued by the Secretary of the Treasury, promptly  
3 and voluntarily makes a corrected declaration and  
4 pays any duties owing with respect to that good.”;  
5 and

6 (2) by adding at the end the following new sub-  
7 section:

8 “(i) FALSE CERTIFICATIONS OF ORIGIN UNDER THE  
9 UNITED STATES-PERU TRADE PROMOTION AGREE-  
10 MENT.—

11 “(1) IN GENERAL.—Subject to paragraph (2),  
12 it is unlawful for any person to certify falsely, by  
13 fraud, gross negligence, or negligence, in a PTPA  
14 certification of origin (as defined in section  
15 508(h)(1)(B) of this Act) that a good exported from  
16 the United States qualifies as an originating good  
17 under the rules of origin provided for in section 203  
18 of the United States-Peru Trade Promotion Agree-  
19 ment Implementation Act. The procedures and pen-  
20 alties of this section that apply to a violation of sub-  
21 section (a) also apply to a violation of this sub-  
22 section.

23 “(2) PROMPT AND VOLUNTARY DISCLOSURE OF  
24 INCORRECT INFORMATION.—No penalty shall be im-  
25 posed under this subsection if, promptly after an ex-

1       porter or producer that issued a PTPA certification  
2       of origin has reason to believe that such certification  
3       contains or is based on incorrect information, the ex-  
4       porter or producer voluntarily provides written no-  
5       tice of such incorrect information to every person to  
6       whom the certification was issued.

7               “(3) EXCEPTION.—A person shall not be con-  
8       sidered to have violated paragraph (1) if—

9               “(A) the information was correct at the  
10       time it was provided in a PTPA certification of  
11       origin but was later rendered incorrect due to  
12       a change in circumstances; and

13               “(B) the person promptly and voluntarily  
14       provides written notice of the change in cir-  
15       cumstances to all persons to whom the person  
16       provided the certification.”.

17       (b) DENIAL OF PREFERENTIAL TARIFF TREAT-  
18       MENT.—Section 514 of the Tariff Act of 1930 (19 U.S.C.  
19       1514) is amended by adding at the end the following new  
20       subsection:

21               “(i) DENIAL OF PREFERENTIAL TARIFF TREATMENT  
22       UNDER THE UNITED STATES–PERU TRADE PROMOTION  
23       AGREEMENT.—If the Bureau of Customs and Border Pro-  
24       tection or the Bureau of Immigration and Customs En-  
25       forcement of the Department of Homeland Security finds

1 indications of a pattern of conduct by an importer, ex-  
2 porter, or producer of false or unsupported representa-  
3 tions that goods qualify under the rules of origin provided  
4 for in section 203 of the United States-Peru Trade Pro-  
5 motion Agreement Implementation Act, the Bureau of  
6 Customs and Border Protection, in accordance with regu-  
7 lations issued by the Secretary of the Treasury, may sus-  
8 pend preferential tariff treatment under the United  
9 States-Peru Trade Promotion Agreement to entries of  
10 identical goods covered by subsequent representations by  
11 that importer, exporter, or producer until the Bureau of  
12 Customs and Border Protection determines that represen-  
13 tations of that person are in conformity with such section  
14 203.”.

15 **SEC. 206. RELIQUIDATION OF ENTRIES.**

16 Subsection (d) of section 520 of the Tariff Act of  
17 1930 (19 U.S.C. 1520(d)) is amended in the matter pre-  
18 ceding paragraph (1)—

19 (1) by striking “or”; and

20 (2) by striking “for which” and inserting “, or  
21 section 203 of the United States-Peru Trade Pro-  
22 motion Agreement Implementation Act for which”.

23 **SEC. 207. RECORDKEEPING REQUIREMENTS.**

24 Section 508 of the Tariff Act of 1930 (19 U.S.C.  
25 1508) is amended—

1 (1) by redesignating subsection (h) as sub-  
2 section (i);

3 (2) by inserting after subsection (g) the fol-  
4 lowing new subsection:

5 “(h) CERTIFICATIONS OF ORIGIN FOR GOODS EX-  
6 PORTED UNDER THE UNITED STATES-PERU TRADE  
7 PROMOTION AGREEMENT.—

8 “(1) DEFINITIONS.—In this subsection:

9 “(A) RECORDS AND SUPPORTING DOCU-  
10 MENTS.—The term ‘records and supporting  
11 documents’ means, with respect to an exported  
12 good under paragraph (2), records and docu-  
13 ments related to the origin of the good,  
14 including—

15 “(i) the purchase, cost, and value of,  
16 and payment for, the good;

17 “(ii) the purchase, cost, and value of,  
18 and payment for, all materials, including  
19 indirect materials, used in the production  
20 of the good; and

21 “(iii) the production of the good in  
22 the form in which it was exported.

23 “(B) PTPA CERTIFICATION OF ORIGIN.—  
24 The term ‘PTPA certification of origin’ means  
25 the certification established under article 4.15

1 of the United States-Peru Trade Promotion  
2 Agreement that a good qualifies as an origi-  
3 nating good under such Agreement.

4 “(2) EXPORTS TO PERU.—Any person who  
5 completes and issues a PTPA certification of origin  
6 for a good exported from the United States shall  
7 make, keep, and, pursuant to rules and regulations  
8 promulgated by the Secretary of the Treasury,  
9 render for examination and inspection all records  
10 and supporting documents related to the origin of  
11 the good (including the certification or copies there-  
12 of).

13 “(3) RETENTION PERIOD.—The person who  
14 issues a PTPA certification of origin shall keep the  
15 records and supporting documents relating to that  
16 certification of origin for a period of at least 5 years  
17 after the date on which the certification is issued.”;  
18 and

19 (3) in subsection (i), as so redesignated—

20 (A) by striking “(f) or (g)” and inserting  
21 “(f), (g), or (h)”; and

22 (B) by striking “either such subsection”  
23 and inserting “any such subsection”.

1 SEC. 208. ENFORCEMENT RELATING TO TRADE IN TEXTILE  
2 OR APPAREL GOODS.

3 (a) ACTION DURING VERIFICATION.—

4 (1) IN GENERAL.—If the Secretary of the  
5 Treasury requests the Government of Peru to con-  
6 duct a verification pursuant to article 3.2 of the  
7 Agreement for purposes of making a determination  
8 under paragraph (2), the President may direct the  
9 Secretary to take appropriate action described in  
10 subsection (b) while the verification is being con-  
11 ducted.

12 (2) DETERMINATION.—A determination under  
13 this paragraph is a determination of the Secretary  
14 that—

15 (A) an exporter or producer in Peru is  
16 complying with applicable customs laws, regula-  
17 tions, and procedures regarding trade in textile  
18 or apparel goods; or

19 (B) a claim that a textile or apparel good  
20 exported or produced by such exporter or  
21 producer—

22 (i) qualifies as an originating good  
23 under section 203, or

24 (ii) is a good of Peru,  
25 is accurate.



1 (b) APPROPRIATE ACTION DESCRIBED.—Appropriate  
2 action under subsection (a)(1) includes—

3 (1) suspension of preferential tariff treatment  
4 under the Agreement with respect to—

5 (A) any textile or apparel good exported or  
6 produced by the person that is the subject of a  
7 verification under subsection (a)(1) regarding  
8 compliance described in subsection (a)(2)(A), if  
9 the Secretary determines that there is insuffi-  
10 cient information to support any claim for pref-  
11 erential tariff treatment that has been made  
12 with respect to any such good; or

13 (B) the textile or apparel good for which a  
14 claim of preferential tariff treatment has been  
15 made that is the subject of a verification under  
16 subsection (a)(1) regarding a claim described in  
17 subsection (a)(2)(B), if the Secretary deter-  
18 mines that there is insufficient information to  
19 support that claim;

20 (2) denial of preferential tariff treatment under  
21 the agreement with respect to—

22 (A) any textile or apparel good exported or  
23 produced by the person that is the subject of a  
24 verification under subsection (a)(1) regarding  
25 compliance described in subsection (a)(2)(A), if

1 the Secretary determines that the person has  
2 provided incorrect information to support any  
3 claim for preferential tariff treatment that has  
4 been made with respect to any such good; or

5 (B) the textile or apparel good for which a  
6 claim of preferential tariff treatment has been  
7 made that is the subject of a verification under  
8 subsection (a)(1) regarding a claim described in  
9 subsection (a)(2)(B), if the Secretary deter-  
10 mines that a person has provided incorrect in-  
11 formation to support that claim;

12 (3) detention of any textile or apparel good ex-  
13 ported or produced by the person that is the subject  
14 of a verification under subsection (a)(1) regarding  
15 compliance described in subsection (a)(2)(A) or a  
16 claim described in subsection (a)(2)(B), if the Sec-  
17 retary determines that there is insufficient informa-  
18 tion to determine the country of origin of any such  
19 good; and

20 (4) denial of entry into the United States of  
21 any textile or apparel good exported or produced by  
22 the person that is the subject of a verification under  
23 subsection (a)(1) regarding compliance described in  
24 subsection (a)(2)(A) or a claim described in sub-  
25 section (a)(2)(B), if the Secretary determines that

1 the person has provided incorrect information as to  
2 the country of origin of any such good.

3 (c) ACTION ON COMPLETION OF A VERIFICATION.—

4 On completion of a verification under subsection (a), the  
5 President may direct the Secretary to take appropriate ac-  
6 tion described in subsection (d) until such time as the Sec-  
7 retary receives information sufficient to make the deter-  
8 mination under subsection (a)(2) or until such earlier date  
9 as the President may direct.

10 (d) APPROPRIATE ACTION DESCRIBED.—Appro-  
11 priate action under subsection (c) includes—

12 (1) denial of preferential tariff treatment under  
13 the agreement with respect to—

14 (A) any textile or apparel good exported or  
15 produced by the person that is the subject of a  
16 verification under subsection (a)(1) regarding  
17 compliance described in subsection (a)(2)(A), if  
18 the Secretary determines that there is insuffi-  
19 cient information to support, or that the person  
20 has provided incorrect information to support,  
21 any claim for preferential tariff treatment that  
22 has been made with respect to any such good;  
23 or

24 (B) the textile or apparel good for which a  
25 claim of preferential tariff treatment has been

1           made that is the subject of a verification under  
2           subsection (a)(1) regarding a claim described in  
3           subsection (a)(2)(B), if the Secretary deter-  
4           mines that there is insufficient information to  
5           support, or that a person has provided incorrect  
6           information to support, that claim; and  
7           (2) denial of entry into the United States of  
8           any textile or apparel good exported or produced by  
9           the person that is the subject of a verification under  
10          subsection (a)(1) regarding compliance described in  
11          subsection (a)(2)(A) or a claim described in sub-  
12          section (a)(2)(B), if the Secretary determines that  
13          there is insufficient information to determine, or  
14          that the person has provided incorrect information  
15          as to, the country of origin of any such good.

16          (e) PUBLICATION OF NAME OF PERSON.—The Sec-  
17          retary may publish the name of any person that the Sec-  
18          retary has determined, in accordance with article 3.2.6 of  
19          the Agreement—

20               (1) is engaged in circumvention of applicable  
21               laws, regulations, or procedures affecting trade in  
22               textile or apparel goods; or

23               (2) has failed to demonstrate that it produces,  
24               or is capable of producing, textile or apparel goods.

1 **SEC. 209. REGULATIONS.**

2 The Secretary of the Treasury shall prescribe such  
3 regulations as may be necessary to carry out—

4 (1) subsections (a) through (n) of section 203;

5 (2) the amendment made by section 204; and

6 (3) any proclamation issued under section  
7 203(o).

8 **TITLE III—RELIEF FROM**  
9 **IMPORTS**

10 **SEC. 301. DEFINITIONS.**

11 In this title:

12 (1) **PERUVIAN ARTICLE.**—The term “Peruvian  
13 article” means an article that qualifies as an origi-  
14 nating good under section 203(b).

15 (2) **PERUVIAN TEXTILE OR APPAREL ARTI-**  
16 **CLE.**—The term “Peruvian textile or apparel arti-  
17 cle” means a textile or apparel good (as defined in  
18 section 3(4)) that is a Peruvian article.

19 (3) **RELEVANT PERUVIAN ARTICLE.**—The term  
20 “relevant Peruvian article” means the Peruvian arti-  
21 cle with respect to which a petition has been filed  
22 under section 311(a).

1     **Subtitle A—Relief From Imports**  
2     **Benefiting From the Agreement**

3     **SEC. 311. COMMENCING OF ACTION FOR RELIEF.**

4         (a) **FILING OF PETITION.**—A petition requesting ac-  
5     tion under this subtitle for the purpose of adjusting to  
6     the obligations of the United States under the Agreement  
7     may be filed with the Commission by an entity, including  
8     a trade association, firm, certified or recognized union, or  
9     group of workers, that is representative of an industry.  
10    The Commission shall transmit a copy of any petition filed  
11    under this subsection to the United States Trade Rep-  
12    resentative.

13         (b) **INVESTIGATION AND DETERMINATION.**—Upon  
14    the filing of a petition under subsection (a), the Commis-  
15    sion, unless subsection (d) applies, shall promptly initiate  
16    an investigation to determine whether, as a result of the  
17    reduction or elimination of a duty provided for under the  
18    Agreement, a Peruvian article is being imported into the  
19    United States in such increased quantities, in absolute  
20    terms or relative to domestic production, and under such  
21    conditions that imports of the Peruvian article constitute  
22    a substantial cause of serious injury or threat thereof to  
23    the domestic industry producing an article that is like, or  
24    directly competitive with, the imported article.

1 (c) APPLICABLE PROVISIONS.—The following provi-  
2 sions of section 202 of the Trade Act of 1974 (19 U.S.C.  
3 2252) apply with respect to any investigation initiated  
4 under subsection (b):

5 (1) Paragraphs (1)(B) and (3) of subsection  
6 (b).

7 (2) Subsection (c).

8 (3) Subsection (i).

9 (d) ARTICLES EXEMPT FROM INVESTIGATION.—No  
10 investigation may be initiated under this section with re-  
11 spect to any Peruvian article if, after the date on which  
12 the Agreement enters into force, import relief has been  
13 provided with respect to that Peruvian article under this  
14 subtitle.

15 **SEC. 312. COMMISSION ACTION ON PETITION.**

16 (a) DETERMINATION.—Not later than 120 days after  
17 the date on which an investigation is initiated under sec-  
18 tion 311(b) with respect to a petition, the Commission  
19 shall make the determination required under that section.

20 (b) APPLICABLE PROVISIONS.—For purposes of this  
21 subtitle, the provisions of paragraphs (1), (2), and (3) of  
22 section 330(d) of the Tariff Act of 1930 (19 U.S.C.  
23 1330(d) (1), (2), and (3)) shall be applied with respect  
24 to determinations and findings made under this section

1 as if such determinations and findings were made under  
2 section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

3 (c) ADDITIONAL FINDING AND RECOMMENDATION IF  
4 DETERMINATION AFFIRMATIVE.—

5 (1) IN GENERAL.—If the determination made  
6 by the Commission under subsection (a) with respect  
7 to imports of an article is affirmative, or if the  
8 President may consider a determination of the Com-  
9 mission to be an affirmative determination as pro-  
10 vided for under paragraph (1) of section 330(d) of  
11 the Tariff Act of 1930 (19 U.S.C. 1330(d)), the  
12 Commission shall find, and recommend to the Presi-  
13 dent in the report required under subsection (d), the  
14 amount of import relief that is necessary to remedy  
15 or prevent the injury found by the Commission in  
16 the determination and to facilitate the efforts of the  
17 domestic industry to make a positive adjustment to  
18 import competition.

19 (2) LIMITATION ON RELIEF.—The import relief  
20 recommended by the Commission under this sub-  
21 section shall be limited to the relief described in sec-  
22 tion 313(c).

23 (3) VOTING; SEPARATE VIEWS.—Only those  
24 members of the Commission who voted in the af-  
25 firmative under subsection (a) are eligible to vote on



1 the proposed action to remedy or prevent the injury  
2 found by the Commission. Members of the Commis-  
3 sion who did not vote in the affirmative may submit,  
4 in the report required under subsection (d), separate  
5 views regarding what action, if any, should be taken  
6 to remedy or prevent the injury.

7 (d) **REPORT TO PRESIDENT.**—Not later than the  
8 date that is 30 days after the date on which a determina-  
9 tion is made under subsection (a) with respect to an inves-  
10 tigation, the Commission shall submit to the President a  
11 report that includes—

12 (1) the determination made under subsection  
13 (a) and an explanation of the basis for the deter-  
14 mination;

15 (2) if the determination under subsection (a) is  
16 affirmative, any findings and recommendations for  
17 import relief made under subsection (c) and an ex-  
18 planation of the basis for each recommendation; and

19 (3) any dissenting or separate views by mem-  
20 bers of the Commission regarding the determination  
21 referred to in paragraph (1) and any finding or rec-  
22 ommendation referred to in paragraph (2).

23 (e) **PUBLIC NOTICE.**—Upon submitting a report to  
24 the President under subsection (d), the Commission shall  
25 promptly make public the report (with the exception of

1 information which the Commission determines to be con-  
2 fidential) and shall publish a summary of the report in  
3 the Federal Register.

4 **SEC. 313. PROVISION OF RELIEF.**

5 (a) **IN GENERAL.**—Not later than the date that is  
6 30 days after the date on which the President receives the  
7 report of the Commission in which the Commission's de-  
8 termination under section 312(a) is affirmative, or which  
9 contains a determination under section 312(a) that the  
10 President considers to be affirmative under paragraph (1)  
11 of section 330(d) of the Tariff Act of 1930 (19 U.S.C.  
12 1330(d)(1)), the President, subject to subsection (b), shall  
13 provide relief from imports of the article that is the subject  
14 of such determination to the extent that the President de-  
15 termines necessary to remedy or prevent the injury found  
16 by the Commission and to facilitate the efforts of the do-  
17 mestic industry to make a positive adjustment to import  
18 competition.

19 (b) **EXCEPTION.**—The President is not required to  
20 provide import relief under this section if the President  
21 determines that the provision of the import relief will not  
22 provide greater economic and social benefits than costs.

23 (c) **NATURE OF RELIEF.**—

1 (1) IN GENERAL.—The import relief that the  
2 President is authorized to provide under this section  
3 with respect to imports of an article is as follows:

4 (A) The suspension of any further reduc-  
5 tion provided for under Annex 2.3 of the Agree-  
6 ment in the duty imposed on the article.

7 (B) An increase in the rate of duty im-  
8 posed on the article to a level that does not ex-  
9 ceed the lesser of—

10 (i) the column 1 general rate of duty  
11 imposed under the HTS on like articles at  
12 the time the import relief is provided; or

13 (ii) the column 1 general rate of duty  
14 imposed under the HTS on like articles on  
15 the day before the date on which the  
16 Agreement enters into force.

17 (2) PROGRESSIVE LIBERALIZATION.—If the pe-  
18 riod for which import relief is provided under this  
19 section is greater than 1 year, the President shall  
20 provide for the progressive liberalization (described  
21 in article 8.2.2 of the Agreement) of such relief at  
22 regular intervals during the period of its application.

23 (d) PERIOD OF RELIEF.—

24 (1) IN GENERAL.—Subject to paragraph (2),  
25 any import relief that the President provides under

1 this section may not be in effect for more than 2  
2 years.

3 (2) EXTENSION.—

4 (A) IN GENERAL.—Subject to subpara-  
5 graph (C), the President, after receiving a de-  
6 termination from the Commission under sub-  
7 paragraph (B) that is affirmative, or which the  
8 President considers to be affirmative under  
9 paragraph (1) of section 330(d) of the Tariff  
10 Act of 1930 (19 U.S.C. 1330(d)(1)), may ex-  
11 tend the effective period of any import relief  
12 provided under this section by up to 2 years, if  
13 the President determines that—

14 (i) the import relief continues to be  
15 necessary to remedy or prevent serious in-  
16 jury and to facilitate adjustment by the do-  
17 mestic industry to import competition; and

18 (ii) there is evidence that the industry  
19 is making a positive adjustment to import  
20 competition.

21 (B) ACTION BY COMMISSION.—

22 (i) INVESTIGATION.—Upon a petition  
23 on behalf of the industry concerned that is  
24 filed with the Commission not earlier than  
25 the date that is 9 months, and not later

1 than the date that is 6 months, before the  
2 date on which any action taken under sub-  
3 section (a) is to terminate, the Commission  
4 shall conduct an investigation to determine  
5 whether action under this section continues  
6 to be necessary to remedy or prevent seri-  
7 ous injury and whether there is evidence  
8 that the industry is making a positive ad-  
9 justment to import competition.

10 (ii) NOTICE AND HEARING.—The  
11 Commission shall publish notice of the  
12 commencement of any proceeding under  
13 this subparagraph in the Federal Register  
14 and shall, within a reasonable time there-  
15 after, hold a public hearing at which the  
16 Commission shall afford interested parties  
17 and consumers an opportunity to be  
18 present, to present evidence, and to re-  
19 spond to the presentations of other parties  
20 and consumers, and otherwise to be heard.

21 (iii) REPORT.—The Commission shall  
22 submit to the President a report on its in-  
23 vestigation and determination under this  
24 subparagraph not later than 60 days be-  
25 fore the action under subsection (a) is to

1 terminate, unless the President specifies a  
2 different date.

3 (C) PERIOD OF IMPORT RELIEF.—Any im-  
4 port relief provided under this section, including  
5 any extensions thereof, may not, in the aggre-  
6 gate, be in effect for more than 4 years.

7 (e) RATE AFTER TERMINATION OF IMPORT RE-  
8 LIEF.—When import relief under this section is termi-  
9 nated with respect to an article—

10 (1) the rate of duty on that article after such  
11 termination and on or before December 31 of the  
12 year in which such termination occurs shall be the  
13 rate that, according to the Schedule of the United  
14 States to Annex 2.3 of the Agreement, would have  
15 been in effect 1 year after the provision of relief  
16 under subsection (a); and

17 (2) the rate of duty for that article after De-  
18 cember 31 of the year in which such termination oc-  
19 curs shall be, at the discretion of the President,  
20 either—

21 (A) the applicable rate of duty for that ar-  
22 ticle set forth in the Schedule of the United  
23 States to Annex 2.3 of the Agreement; or

24 (B) the rate of duty resulting from the  
25 elimination of the tariff in equal annual stages

1 ending on the date set forth in the Schedule of  
2 the United States to Annex 2.3 of the Agree-  
3 ment for the elimination of the tariff.

4 (f) ARTICLES EXEMPT FROM RELIEF.—No import  
5 relief may be provided under this section on—

6 (1) any article that is subject to import relief  
7 under—

8 (A) subtitle B; or

9 (B) chapter 1 of title II of the Trade Act  
10 of 1974 (19 U.S.C. 2251 et seq.); or

11 (2) any article on which an additional duty as-  
12 sessed under section 202(b) is in effect.

13 **SEC. 314. TERMINATION OF RELIEF AUTHORITY.**

14 (a) GENERAL RULE.—Subject to subsection (b), no  
15 import relief may be provided under this subtitle after the  
16 date that is 10 years after the date on which the Agree-  
17 ment enters into force.

18 (b) EXCEPTION.—If an article for which relief is pro-  
19 vided under this subtitle is an article for which the period  
20 for tariff elimination, set forth in the Schedule of the  
21 United States to Annex 2.3 of the Agreement, is greater  
22 than 10 years, no relief under this subtitle may be pro-  
23 vided for that article after the date on which that period  
24 ends.

1 **SEC. 315. COMPENSATION AUTHORITY.**

2 For purposes of section 123 of the Trade Act of 1974  
3 (19 U.S.C. 2133), any import relief provided by the Presi-  
4 dent under section 313 shall be treated as action taken  
5 under chapter 1 of title II of such Act (19 U.S.C. 2251  
6 et seq.).

7 **SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.**

8 Section 202(a)(8) of the Trade Act of 1974 (19  
9 U.S.C. 2252(a)(8)) is amended in the first sentence—

10 (1) by striking “and”; and

11 (2) by inserting before the period at the end “,  
12 and title III of the United States-Peru Trade Pro-  
13 motion Agreement Implementation Act”.

14 **Subtitle B—Textile and Apparel**  
15 **Safeguard Measures**

16 **SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.**

17 (a) **IN GENERAL.**—A request for action under this  
18 subtitle for the purpose of adjusting to the obligations of  
19 the United States under the Agreement may be filed with  
20 the President by an interested party. Upon the filing of  
21 a request, the President shall review the request to deter-  
22 mine, from information presented in the request, whether  
23 to commence consideration of the request.

24 (b) **PUBLICATION OF REQUEST.**—If the President de-  
25 termines that the request under subsection (a) provides  
26 the information necessary for the request to be considered,



1 the President shall publish in the Federal Register a no-  
2 tice of commencement of consideration of the request, and  
3 notice seeking public comments regarding the request. The  
4 notice shall include a summary of the request and the  
5 dates by which comments and rebuttals must be received.

6 **SEC. 322. DETERMINATION AND PROVISION OF RELIEF.**

7 (a) DETERMINATION.—

8 (1) IN GENERAL.—If a positive determination is  
9 made under section 321(b), the President shall de-  
10 termine whether, as a result of the elimination of a  
11 duty under the Agreement, a Peruvian textile or ap-  
12 parel article is being imported into the United States  
13 in such increased quantities, in absolute terms or  
14 relative to the domestic market for that article, and  
15 under such conditions as to cause serious damage,  
16 or actual threat thereof, to a domestic industry pro-  
17 ducing an article that is like, or directly competitive  
18 with, the imported article.

19 (2) SERIOUS DAMAGE.—In making a deter-  
20 mination under paragraph (1), the President—

21 (A) shall examine the effect of increased  
22 imports on the domestic industry, as reflected  
23 in changes in such relevant economic factors as  
24 output, productivity, utilization of capacity, in-  
25 ventories, market share, exports, wages, em-

1           ployment, domestic prices, profits and losses,  
2           and investment, no one of which is necessarily  
3           decisive; and

4                   (B) shall not consider changes in consumer  
5           preference or changes in technology in the  
6           United States as factors supporting a deter-  
7           mination of serious damage or actual threat  
8           thereof.

9           (b) PROVISION OF RELIEF.—

10                   (1) IN GENERAL.—If a determination under  
11           subsection (a) is affirmative, the President may pro-  
12           vide relief from imports of the article that is the  
13           subject of such determination, as provided in para-  
14           graph (2), to the extent that the President deter-  
15           mines necessary to remedy or prevent the serious  
16           damage and to facilitate adjustment by the domestic  
17           industry.

18                   (2) NATURE OF RELIEF.—The relief that the  
19           President is authorized to provide under this sub-  
20           section with respect to imports of an article is an in-  
21           crease in the rate of duty imposed on the article to  
22           a level that does not exceed the lesser of—

23                           (A) the column 1 general rate of duty im-  
24           posed under the HTS on like articles at the  
25           time the import relief is provided; or

1 (B) the column 1 general rate of duty im-  
2 posed under the HTS on like articles on the  
3 day before the date on which the Agreement en-  
4 ters into force.

5 **SEC. 323. PERIOD OF RELIEF.**

6 (a) **IN GENERAL.**—Subject to subsection (b), the im-  
7 port relief that the President provides under section  
8 322(b) may not be in effect for more than 2 years.

9 (b) **EXTENSION.**—

10 (1) **IN GENERAL.**—Subject to paragraph (2),  
11 the President may extend the effective period of any  
12 import relief provided under this subtitle for a pe-  
13 riod of not more than 1 year, if the President deter-  
14 mines that—

15 (A) the import relief continues to be nec-  
16 essary to remedy or prevent serious damage  
17 and to facilitate adjustment by the domestic in-  
18 dustry to import competition; and

19 (B) there is evidence that the industry is  
20 making a positive adjustment to import com-  
21 petition.

22 (2) **LIMITATION.**—Any relief provided under  
23 this subtitle, including any extensions thereof, may  
24 not, in the aggregate, be in effect for more than 3  
25 years.

1 **SEC. 324. ARTICLES EXEMPT FROM RELIEF.**

2 The President may not provide import relief under  
3 this subtitle with respect to an article if—

4 (1) import relief previously has been provided  
5 under this subtitle with respect to that article; or

6 (2) the article is subject to import relief  
7 under—

8 (A) subtitle A; or

9 (B) chapter 1 of title II of the Trade Act  
10 of 1974 (19 U.S.C. 2251 et seq.).

11 **SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.**

12 On the date on which import relief under this subtitle  
13 is terminated with respect to an article, the rate of duty  
14 on that article shall be the rate that would have been in  
15 effect, but for the provision of such relief.

16 **SEC. 326. TERMINATION OF RELIEF AUTHORITY.**

17 No import relief may be provided under this subtitle  
18 with respect to any article after the date that is 5 years  
19 after the date on which the Agreement enters into force.

20 **SEC. 327. COMPENSATION AUTHORITY.**

21 For purposes of section 123 of the Trade Act of 1974  
22 (19 U.S.C. 2133), any import relief provided by the Presi-  
23 dent under this subtitle shall be treated as action taken  
24 under chapter 1 of title II of such Act (19 U.S.C. 2251  
25 et seq.).

1 **SEC. 328. CONFIDENTIAL BUSINESS INFORMATION.**

2 The President may not release information received  
3 in connection with an investigation or determination under  
4 this subtitle which the President considers to be confiden-  
5 tial business information unless the party submitting the  
6 confidential business information had notice, at the time  
7 of submission, that such information would be released by  
8 the President, or such party subsequently consents to the  
9 release of the information. To the extent a party submits  
10 confidential business information, the party shall also pro-  
11 vide a nonconfidential version of the information in which  
12 the confidential business information is summarized or, if  
13 necessary, deleted.

14 **Subtitle C—Cases Under Title II of**  
15 **the Trade Act of 1974**

16 **SEC. 331. FINDINGS AND ACTION ON GOODS OF PERU.**

17 (a) **EFFECT OF IMPORTS.**—If, in any investigation  
18 initiated under chapter 1 of title II of the Trade Act of  
19 1974 (19 U.S.C. 2251 et seq.), the Commission makes an  
20 affirmative determination (or a determination which the  
21 President may treat as an affirmative determination under  
22 such chapter by reason of section 330(d) of the Tariff Act  
23 of 1930), the Commission shall also find (and report to  
24 the President at the time such injury determination is sub-  
25 mitted to the President) whether imports of the article of  
26 Peru that qualify as originating goods under section

1 203(b) are a substantial cause of serious injury or threat  
2 thereof.

3 (b) **PRESIDENTIAL DETERMINATION REGARDING IM-**  
4 **PORTS OF PERU.**—In determining the nature and extent  
5 of action to be taken under chapter 1 of title II of the  
6 Trade Act of 1974 (19 U.S.C. 2251 et seq.), the President  
7 may exclude from the action goods of Peru with respect  
8 to which the Commission has made a negative finding  
9 under subsection (a).

## 10 **TITLE IV—PROCUREMENT**

### 11 **SEC. 401. ELIGIBLE PRODUCTS.**

12 Section 308(4)(A) of the Trade Agreements Act of  
13 1979 (19 U.S.C. 2518(4)(A)) is amended—

- 14 (1) by striking “or” at the end of clause (v);  
15 (2) by striking the period at the end of clause  
16 (vi) and inserting “; or”; and  
17 (3) by adding at the end the following new  
18 clause:

19 “(vii) a party to the United States—  
20 Peru Trade Promotion Agreement, a prod-  
21 uct or service of that country or instru-  
22 mentality which is covered under that  
23 agreement for procurement by the United  
24 States.”.

109TH CONGRESS  
2D SESSION

# S. 3495

To authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Vietnam.

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## IN THE SENATE OF THE UNITED STATES

JUNE 13, 2006

Mr. BAUCUS (for himself, Mr. SMITH, Mr. MCCAIN, Mr. KERRY, Mr. HAGEL, Mr. LUGAR, Ms. MURKOWSKI, and Mr. CARPER) introduced the following bill; which was read twice and referred to the Committee on Finance

---

## A BILL

To authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Vietnam.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS.**

4 Congress finds the following:

5 (1) In July 1995, President Bill Clinton an-  
6 nounced the formal normalization of diplomatic rela-  
7 tions between the United States and Vietnam.

8 (2) Vietnam has taken cooperative steps with  
9 the United States under the United States Joint

1 POW/MIA Accounting Command (formerly the  
2 Joint Task Force-Full Accounting) established in  
3 1992 by President George H. W. Bush to provide  
4 the fullest possible accounting of MIA and POW  
5 cases.

6 (3) In 2000, the United States and Vietnam  
7 concluded a bilateral trade agreement that included  
8 commitments on goods, services, intellectual prop-  
9 erty rights, and investment. The agreement was ap-  
10 proved by joint resolution enacted pursuant to sec-  
11 tion 405(c) of the Trade Act of 1974 (19 U.S.C.  
12 2435(c)), and entered into force in December 2001.

13 (4) Since 2001, normal trade relations treat-  
14 ment has consistently been extended to Vietnam pur-  
15 suant to title IV of the Trade Act of 1974.

16 (5) Vietnam has undertaken significant market-  
17 based economic reforms, including the reduction of  
18 government subsidies, tariffs and nontariff barriers,  
19 and extensive legal reform. These measures have  
20 dramatically improved Vietnam's business and in-  
21 vestment climate.

22 (6) Vietnam is in the process of acceding to the  
23 World Trade Organization. On May 31, 2006, the  
24 United States and Vietnam signed a comprehensive  
25 bilateral agreement providing greater market access



1 for goods and services and other trade liberalizing  
2 commitments as part of the World Trade Organiza-  
3 tion accession process.

4 **SEC. 2. TERMINATION OF APPLICATION OF TITLE IV OF**  
5 **THE TRADE ACT OF 1974 TO VIETNAM.**

6 (a) **PRESIDENTIAL DETERMINATIONS AND EXTEN-**  
7 **SION OF NON-DISCRIMINATORY TREATMENT.**—Notwith-  
8 standing any provision of title IV of the Trade Act of 1974  
9 (19 U.S.C. 2431 et seq.), the President may—

10 (1) determine that such title should no longer  
11 apply to Vietnam; and

12 (2) after making a determination under para-  
13 graph (1) with respect to Vietnam, proclaim the ex-  
14 tension of nondiscriminatory treatment (normal  
15 trade relations treatment) to the products of that  
16 country.

17 (b) **TERMINATION OF THE APPLICABILITY OF TITLE**  
18 **IV.**—On and after the effective date of the extension of  
19 nondiscriminatory treatment to the products of Vietnam  
20 under subsection (a), title IV of the Trade Act of 1974  
21 shall cease to apply to that country.

○

**Opening Statement of Chairman Chuck Grassley  
Senate Finance Committee Markup of S. 3495:  
A bill to authorize the extension of nondiscriminatory  
treatment to the products of Vietnam  
Thursday, July 27, 2006**

The Committee will now convene in open executive session to consider favorably reporting S.3495, a bill to authorize the extension of nondiscriminatory treatment to the products of Vietnam. This treatment is also referred to as permanent normal trade relations. The Committee held a hearing on July 12<sup>th</sup> to examine the benefits of Vietnam's accession to the World Trade Organization. And those benefits are significant. With respect to agriculture, we'll realize significant reductions in duties on our exports of beef, pork, soybean, fruit, and dairy products, among others.

With respect to manufactured goods, more than 94 percent of U.S. exports will face duties of 15 percent or less. And with respect to services, Vietnam will provide significant market access opportunities across the entire services spectrum. Key areas include banking, insurance, telecommunications, energy, express delivery, distribution, and computer and related services. So the commercial merits of Vietnam's accession to the World Trade Organization are amply demonstrated. To reap the commercial benefit of Vietnam's commitments, we need to extend permanent normal trade relations. And that means graduating Vietnam from application of the Jackson-Vanik amendment in our trade laws. That's exactly what S.3495 would authorize the President to do.

But the Committee's hearing raised other important concerns. In particular, Vietnam's poor track record on protecting human rights and religious freedoms was highlighted. The Committee heard testimony from Administration witnesses, the private sector, and non-governmental organizations. And one common theme became clear. While the Government of Vietnam has made important improvements in the protection of human rights and religious freedoms over the past few years, much more work remains to be done. I've been thinking about this issue quite a bit. I've asked for more information from the Vietnamese Embassy, and I received a prompt response.

I've also received a letter from the Vietnamese Ambassador reaffirming the Government of Vietnam's commitment, in terms of both policy and practice, to respect its peoples' right to religious freedom and faith. The Ambassador also reaffirmed the Government of Vietnam's commitment to continue a constructive bilateral dialogue with the United States on issues of human rights and religious freedoms. The question is, will we see the same type of commitment once Vietnam accedes to the World Trade Organization? Now, the State Department already issues an annual International Religious Freedom Report that specifically addresses Vietnam.

The State Department also issues an annual report on Human Rights Practices that specifically addresses Vietnam. And, we have a bilateral Human Rights Dialogue with Vietnam that was resumed this past February after a four-year suspension. So I think we have the infrastructure in place to monitor and engage Vietnam regarding our concerns

over human rights and religious freedoms. And I expect the Administration to continue to utilize that infrastructure. The Government of Vietnam should be under no illusion. Accession to the World Trade Organization is just the first step in deepening our ongoing relationship.

I expect we will continue to raise concerns regarding human rights and religious freedoms, because things don't change overnight. And when we do raise them, I expect Vietnam to engage in constructive dialogue to address those concerns. This is not a matter of interfering in the internal affairs of Vietnam. For us, it's a matter of engaging on a fundamental national priority that serves the interests of the Vietnamese people as well.

In September 2004, we designated Vietnam a country of particular concern under the International Religious Freedom Act of 1998. That designation is given to countries that tolerated particularly severe violations of religious freedom. Since then, the Vietnamese government has revised its legal framework to expressly guarantee the right of freedom of belief and religion. In May 2005, we concluded an agreement under the International Religious Freedom Act to further promote freedom of religion in Vietnam. And since then, there are signs of greater acceptance of various types of religious activities, including house churches. I'm encouraged by such positive developments. But reports of violations continue with respect to both religious freedoms and human rights, particularly in the Northwest Highlands and the Central Highlands. These reports cannot go unanswered. I expect the Administration to remain diligent in raising legitimate concerns with the Vietnamese government. And chief among these concerns is the uneven implementation of Vietnam's commitments at the provincial and local level. I urge the Administration to monitor such implementation efforts closely. On the whole, I believe our recent experiences demonstrate that engagement with Vietnam produces positive results. I believe we need to enhance that engagement by supporting Vietnam's entry into the World Trade Organization.

By bringing Vietnam into the community of trading nations, we will help promote the internal reform process and enhance accountability and respect for the rule of law. And we will bolster progressive elements within the Vietnamese government. As I said, this is but a first step. This is as much about our relationship with Vietnam a generation from now as it is about increasing trade flows over the next few years. We need to take this step today. I urge my colleagues to join me in supporting this important legislation.