

5-26-2006

Peru-U.S. Free Trade Agreement

Ricardo Y. Sallis

Follow this and additional works at: <https://digitalcommons.law.byu.edu/ilmr>



Part of the [International Trade Law Commons](#)

Recommended Citation

Ricardo Y. Sallis, *Peru-U.S. Free Trade Agreement*, 2 BYU Int'l L. & Mgmt. R. 347 (2006).

Available at: <https://digitalcommons.law.byu.edu/ilmr/vol2/iss2/6>

This Other is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Brigham Young University International Law & Management Review by an authorized editor of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

PERU-U.S. FREE TRADE AGREEMENT

*Ricardo Y. Solis**

After nineteen months of negotiations, Peru and the United States concluded their bilateral Free Trade Agreement (FTA) on December 7, 2005.¹ As Peru's main commercial partner, the United States represents twenty-six percent of Peru's exports² and nineteen percent of its imports.³ In the specific case of agriculture, the United States represents thirty-two percent of the destination market in Peruvian exports; and more impressively in Peru's high quality clothing and textiles industry, the United States represents seventy-seven percent of the total value of those exports.⁴ Similar favorable commercial levels in Peru resulted in an estimated US\$4.3 billion trade surplus in 2005—Peru's exports rose thirty-three percent from 2004.⁵

Likewise, the United States is an important source of foreign investment for Peru. From 1994 to 2001, U.S. foreign investment in

* Ricardo Y. Solis is a Partner in the International and Corporate Section of Manini, Padron & Associates Law Firm in Lima, Perú. He received his Law degree from San Marcos University, Lima, Perú (2001) where he received a Jury Recommendation for the publication of his thesis "The Trial of Socrates." He received an LL.M. from Brigham Young University J. Reuben Clark Law School (2004) and worked as an International Associate Intern, Kirton & McConkie, Salt Lake City, Utah (2004). Mr. Solis is a member of the Lima Bar and Founder and Chairman of the J. Reuben Clark Law Society Lima Perú Chapter.

¹ Press Release, Office of the U.S. Trade Rep., United States and Peru Conclude Free Trade Agreement (Dec. 7, 2005), available at http://www.ustr.gov/assets/Document_Library/Press_Releases/2005/December/asset_upload_file744_8518.pdf. A Free Trade Agreement (FTA) is a commercial agreement between two or more countries of obligatory execution that seeks to eliminate commercial exchange obstacles. *See id.*

² *See* Ministerio de Relaciones Exteriores, *La Oportunidad de Hoy: Tratado de Libre Comercio Entre el Perú y Estados Unidos [The Opportunity of Today: The Free Trade Treaty Between Peru and the United States]*, Lima, Perú (Mar. 2005), at 9, available at <http://www.tlperu-ccuu.gob.pe/downloads/documento/TLC%20La%20oportunidad.pdf>.

³ *Tratado de libre comercio Perú-EE.UU., El Mercado de Estados Unidos en el 2003 [The Market of the United States in 2003]*, <http://www.tlperu-ccuu.gob.pe/index.php?ncategoria1=101&ncategoria2=103> (last visited Apr. 7, 2006).

⁴ *See id.*

⁵ U.S. Dep't of St., *Background Note: Peru*, <http://www.state.gov/r/pa/ei/bgn/35762.htm>.

Peru increased from US\$754 million to more than US\$1.96 billion.⁶ Peru had an impressive 160% expansion in a short period of seven years.⁷

The FTA is an ambitious agreement for the Peruvian government because of the differences in size and development between the U.S. and Peruvian economies. The highly developed market of the United States is 180 times larger than the Peruvian economy (US\$10.45 million of Internal Net Product) with an income per capita equivalent to seventeen times the Peruvian per capita income.⁸ Competition with such an economic giant is an ambitious conquest for Peru, which is in the process of development. The desire and ability to compete with the United States implies great economic growth as well as continued improvement in the elimination of commercial barriers.

The FTA is great news for Peru, as well as a challenge for its government leaders. During negotiations, the flexibility of the U.S. trade team allowed products like paprika, asparagus, and grapes to enter the U.S. market free of tariffs and duties.⁹ If the success Peru experienced with the negotiations continues, the closure of this agreement implies bigger benefits than costs for Peru.

It is worth noting that, as with every negotiation, one party must yield in some aspects in order to gain in others. In the FTA agreement, Peru has yielded in the areas of health, intellectual property, and biodiversity.¹⁰ To compensate local sectors for these possible losses, Peru has arranged an annual grant of US\$150

⁶ Tratado de libre comercio Perú-EE.UU., *supra* note 3.

⁷ *Id.*

⁸ TRATADO DE LIBRE COMERCIO PERÚ-EEUU, TLC Y AGRO: TODO LO QUE EL PRODUCTOR Y EL TRABAJADOR AGRARIO DEBEN SABER SOBRE EL TLC [FTA AND AGRICULTURE: EVERYTHING THE AGRICULTURAL PRODUCER AND WORKER SHOULD KNOW ABOUT THE FTA] 3 (Ministerio de Comercio Exterir y Turismo 2005), available at <http://www.tlcperu-eeuu.gob.pe/downloads/documento/folleto%20mince tur.pdf>.

⁹ See generally Paul Blustein, *U.S., Peru Strike Free-Trade Agreement: Administration Hopes to Include Colombia, Ecuador*, WASH. POST, Dec. 8, 2005, at D06, available at <http://www.washingtonpost.com/wpdyn/content/article/2005/12/07/AR2005120702791.html> (President of Peru stating that in the FTA "Peru came out the winner...practically all our products" enter the U.S. market duty-free).

¹⁰ See *IP Standards in the US-Peru FTA: Health and Environment*, BRIDGES, Jan./Feb. 2006, at 17, available at <http://www.ictsd.org/monthly/bridges/BRIDGES 10-1.pdf>.

million.¹¹ Additionally, the Agriculture Ministry has committed to cover losses that the FTA will generate for cotton, corn, sugar, and rice producers.¹² Furthermore, the Peruvian government will dedicate resources to attenuate the price of medications, which may increase in price.¹³ Other negatively affected sectors will also receive compensation from the government.

These costs are low in comparison to the potential growth that both Peru and the United States hope to attain through the FTA.¹⁴ For example, the FTA will increase Peruvian agrarian sector exports, which represents the most essential sector for employment and improvement in Peru's economy.¹⁵ Peru can contribute to the U.S. market with the provision of agricultural production. The United States can also benefit Peru by improving its level of technology.¹⁶

OBJECTIVES OF THE FREE TRADE AGREEMENT:¹⁷

1. To increase and diversify exports; eliminate distortions caused by tariffs, import quotas, subsidies, and tariff barriers; and keep in mind the level of competitiveness of the country.
2. To attract a flow of national and foreign private investment, propitiate the development of scale economies, increase the

¹¹ See Alvaro Quijandria, *Si Peru Cede en el TLC. Algunas Medicinas Subirían hasta 14%* [If Peru Yields in FTA. Some Medicines Could Raise its Price to 14%], *GESTIÓN*, Apr. 14, 2005, at 17, available at <http://www.gestion.com.pe>.

¹² Tratado de libre comercio Perú-EE.UU., *Acuerdos en Tema Agrícola Consolidan Beneficios del ATPDEA* [Agreements with an Agricultural Theme Consolidate Benefits from the ATPDEA], Feb. 2, 2006, http://www.tlperu-eeuu.gob.pe/index.php?id_noticia=330.

¹³ Quijandria, *supra* note 11, at 17.

¹⁴ See generally Press Release, *supra* note 1; Tratado de libre Comercio Perú-EE.UU., <http://www.tlperu-eeuu.gob.pe/index.php>.

¹⁵ Centro de Comercio Exterior de la CCL, *Dice Empresario de Law Industria Alimentaria: Estados Unidos Demanda del Perú Productos Agrícolas* [Says Businessman from Food Law Industry: U.S. Demands Agricultural Products from Peru], *EMPRESAS & NEGOCIOS*, Jan. 23, 2006, at 5 [hereinafter *Dice Empresario*].

¹⁶ See Ministerio de Relaciones Exteriores, *supra* note 2.

¹⁷ See Tratado de libre comercio PERÚ-EE.UU., *Beneficios del TLC* [Benefits of the FTA], <http://www.tlperu-eeuu.gob.pe/index.php?ncategoria1=101&ncategoria2=104&ncontenido=37> (last visited Apr. 8, 2006). For more references of the Peru-U.S. Free Trade Agreement, see <http://www.mincetur.gob.pe>.

degree of economic specialization, and increase the efficiency in the assignment of productive factors.

3. To contribute to the improvement of the quality of people's lives through access to cheaper and better quality and variety of products, expand employment offerings, and increase real wages in the export sector.
4. To establish clear and permanent rules for the trade of goods and services as well as investments in order to strengthen the institutionalism, the competitiveness, and the best managerial practices in Peru.
5. To create mechanisms in order to defend Peruvian commercial interests in the United States and vice versa; and define clear, transparent, and effective mechanisms to solve possible conflicts of commercial character.
6. To reinforce economic policy and institutional stability as well as to improve the classification of country-risk (what will contribute to reduce the cost of credit and to consolidate the stability of capital markets).
7. To reduce the vulnerability of the economy to external financial crisis and to increase the stability of Peru's macroeconomic indicators while creating bonds with one of the most stable economies in the world.
8. To elevate the productivity of Peruvian companies while acquiring more modern technologies at lower prices that promote the export of manufactured goods and services with added value.

Overall, both Peru and the United States can attest that the FTA is a good, favorable agreement for both countries.¹⁸ Both countries entered negotiations focusing on potential benefits for the countries as a whole, not just a particular sector. Although certain Peruvian sectors may generate losses, they are small sacrifices that the State

¹⁸ See generally Press Release, *supra* note 1; Tratado de libre Comercio Perú-EE.UU., *supra* note 14.

will assume in order to achieve the desired economic and commercial growth.

Now, in accordance with the Peruvian Constitution, the Congress will ratify the FTA in April 2006.¹⁹ Peru's Congress will not only consider the FTA, but also a policy of compensation measures, which will accompany the FTA. Following the Peruvian ratification, the FTA will go before the U.S. Congress for its approbation.

Most Peruvian parliamentary groups are approaching the FTA cautiously. In Peru, two political parties will support the FTA's ratification when it comes before the Peruvian Congress. The remaining parliamentary groups will demand extra information before they will give their support. These parties insist that the government supply more details about the negotiations, especially the negotiations regarding health, intellectual property, and biodiversity issues.²⁰ They also want more information about state compensation for currently productive sectors that will suffer from the entrance of U.S. products.²¹ Lastly, these parties require information on the government policies that will induce Peruvian companies' competitiveness.²²

This Free Trade Agreement will pave the way for the establishment of free trade agreements throughout the region. For instance, Brazil is interested in investing in the U.S. agricultural sector because there is a great demand among the U.S. Hispanic consumers to buy Latin products.²³ In the United States, more than 40 million Latino people spend US\$600 million per year purchasing Latin products.²⁴ Therefore, the FTA will not only

¹⁹ Rosella Brevetti, *Peru's Envoy Cites Narrow Window for Approval of Peruvian FTA Before Fall*, BNA, Feb. 13, 2006, available at http://www.americas.org/item_25104.

²⁰ Maruicio Mulder, *APRA Ratifica que el TLC Finalizará Su Negociación en el Próximo Gobierno* [APRA Ratifies that the FTA Will Finalize its Negotiation in the Next Government], GESTIÓN, Nov. 28, 2005, at 24, available at <http://www.gestion.com.pe>.

²¹ Alfredo Ferrero, *Gobierno Empezó Dialogo con Partidos Politicos Acerca del Progreso del TLC* [Government Started Dialogue with Political Parties About the FTA's Achievements], GESTIÓN, Nov. 9, 2005, at 16, available at <http://www.gestion.com.pe>.

²² Alan García, *Presidente Toledo Quiere Firmar Como Sea Y Lo que Sea* [President Toledo Wants to Sign As Is], GESTIÓN, Nov. 23, 2005, at 18, available at <http://www.gestion.com.pe>.

²³ See *Dico Empresario*, *supra* note 15, at 5.

²⁴ See *id.*

benefit Peru and the United States, but has potential to benefit the entire Latin American region.

CONCLUSION

Peru's current balance of profits indicates that Peru is in a commercially productive and promising position. In 2006, Peru expects to export over US\$10 billion, which includes US\$1 billion in agricultural exports.²⁵

By accepting the FTA, Peru takes a step towards true export expansion. Through the FTA, Peru can obtain the necessary fuel to provide national producers and industry with the external markets that Peru requires to expand. According to the previous experience of other countries, the FTA with the United States will lead to more exports, more export companies (mostly small), better paid jobs, and more product diversification of exportable goods.

The FTA, however, does not bear automatic benefits. Therefore, when negotiating, it is necessary to prepare the public and private sectors to the challenges of an open and global economy. The public and private sectors must continue to overcome Peru's structural problems and elevate their companies' competitiveness with the purpose of maximizing the potential benefits of the FTA.

²⁵ Tratado de libre comercio PERÚ-EE.UU., *Importancia del TLC* [Importance of the FTA], <http://www.tlperu-eeuu.gob.pe/index.php?ncategoria1=101&ncategoria2=134> (last visited Apr. 7, 2006).