

PERU

In 1996, the U.S. trade surplus with Peru was \$505 million, a decrease of \$235 million from the U.S. trade surplus of \$740 million in 1995. U.S. merchandise exports to Peru were nearly \$1.8 billion, a decrease of \$8 million (0.5 percent) from the level of U.S. exports to Peru in 1995. Peru was the United States' forty-second largest export market in 1996. U.S. imports from Peru were nearly \$1.3 billion in 1996, an increase of \$226 million (21.8 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Peru in 1995 was more than \$1.2 billion, an increase of 48.1 percent from the level of U.S. FDI in 1994. U.S. FDI in Peru is concentrated largely in the petroleum and manufacturing sectors.

IMPORT POLICIES

Tariffs

Peru has a two-tier tariff structure with a duty of 15 percent on the vast majority of imports and 25 percent on the rest. The weighted-average applied tariff is less than 16 percent, down from 80 percent when President Fujimori took office in 1990. At the end of January 1997, the government was reportedly considering moving to a scaled tariff structure, with lower duties on primary goods and higher duties on manufactured goods.

Since March 21, 1991, Peru has applied "temporary" surcharges on eighteen categories of agricultural products, covering five basic commodities: wheat, rice, corn, sugar, and milk products. These surcharges are in addition to the 15 percent ad valorem tariff. The surcharges are calculated on a weekly basis, according to prevailing international prices for each commodity, rather than the actual price of the commodities entering Peru. As a condition for disbursement of an Inter-American Development Bank trade sector loan, the Government of Peru agreed to study phasing out the surcharges over a three-year period ending in 1997. The government began reducing the surcharges in increments in April 1994. Because of high prevailing international prices, surcharges were practically non-existent during 1996.

Peru is a member of the Andean Pact but does not fully participate in the Pact's free trade arrangements or abide by the Pact's common external tariff (CET). The Andean Pact free trade zone does not include Peru, which instead maintains bilateral tariff-reduction accords with each of the other Andean Pact countries. As of January 1, 1995, products from other Andean Pact countries that fall under the 5 and 10 percent categories of the Pact's CET enter Peru duty-free. As a result, about 80 percent of goods from other Andean Pact countries enter Peru duty-free. In November 1996, the Andean Pact's executive body petitioned the Andean Pact Tribunal to force Peru to reintegrate into the Pact's CET and free trade zone. Peru has been disinclined to rejoin these Pact structures because of what it regards as trade-distorting practices by its partners, and has maintained instead its own tariff and its bilateral trade accords. Peru is facing an Andean Pact deadline of March 15 to propose how it intends to reintegrate into the Andean Pact's

Peru

common external tariff and free trade area. The Andean Pact Ministers will review that proposal and then make a decision regarding Peru's status.

Peru has partial free trade agreements which grant tariff preferences to most Latin American countries under the Latin American Integration Association (ALADI). Peru is negotiating a free trade agreement with Chile and has initiated similar talks with Mexico. Peru is also involved as a member of the Andean Pact in negotiations with MERCOSUR on a free trade area.

Non-Tariff Measures

Almost all non-tariff barriers, including subsidies, import licensing requirements, import prohibitions, and quantitative restrictions, have been eliminated. Peru applies a value-added tax (VAT) rate of 18 percent to most products, and special consumption taxes, ranging from 10 to 50 percent, on certain items. Peru's methodology of applying a "consolidated rate" to assess special consumption and sales taxes on imported goods is burdensome, since the taxes are applied consecutively.

Peru continues to impose certain quantitative restrictions that appear to be incompatible with its WTO obligations. Some used goods are prohibited from importation, while others (such as used cars) face restriction which are not imposed on similar domestic products.

Under a 1992 customs reform, most imported cargo must be pre-inspected by contracted supervising firms to check for possible under-invoicing. The cost of these inspections -- as much as one percent of the f.o.b. value of the goods -- is paid by the importer. Some U.S. exporters have complained of excessive delays caused by the pre-inspection system. In particular, the Peruvian requirement that shipments be inspected by the Government of Peru-authorized inspection agencies offers U.S. exporters no guarantee that certified pricing and details of the inspection will be accepted by Peruvian customs authorities. Such practices make U.S. exporters less competitive than local suppliers. The United States has urged Peru to adopt predictable customs inspection procedures and to meet its obligations under the WTO Agreement on Pre-Shipment Inspection.

Peru applies software valuation guidelines that cause difficulties because of the multiple tiers and different valuation standards for "types of software deliveries" not tied to a tariff classification. This often leads to discriminatory and arbitrary treatment at the border and the lack of ability by the exporter to know what tariff treatment will be assessed on each shipment. The Peruvian customs system retains a price model with set "floor pricing valuation" that is not updated. The actual transaction between the exporter and importer is discarded and arbitrary valuation is assigned based on out-of-date or non-transactional data. The United States has urged Peru to adopt software valuation practices based on the WTO Agreement on Customs Valuation.

GOVERNMENT PROCUREMENT

Government procurement is normally handled by public international tender. Contracts above a specified minimum value -- currently about \$100,000 for purchases of goods and services and \$250,000 for public works -- must be adjudicated by competitive bid. There is no statutory requirement to buy Peruvian goods

or services. Interested companies must purchase bid documents, however, and bidders must have a local office or representative to qualify. Peru is not a signatory to the WTO Government Procurement Agreement.

EXPORT SUBSIDIES

Peru does not provide any direct payment upon export. Exporters can receive rebates of the tariffs and value-added taxes paid on their inputs. In June 1995, the government approved a simplified drawback scheme which allows small exporters to claim a flat 5 percent rebate, subject to certain restrictions. The government announced plans in November 1996 to increase the duty drawback to 8 percent and expand its application to fuels, but has not yet promulgated the legislation to implement these plans.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Peru does not yet provide adequate and effective protection of intellectual property rights (IPR). While two decrees, enacted in April 1996, on industrial property and copyrights clarify Peru's intellectual property regime, they contain several deficiencies and provisions which appear to violate Peru's current "standstill" and most-favored-nation (MFN) commitments under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). In addition, while enforcement has been stepped up, piracy remains widespread. Peru has been on the "Watch List" under the "Special 301" provision of the 1988 Trade Act since 1992. Peru has ratified, but not yet fully implemented, the provisions of the TRIPs Agreement. The United States and Peru have held talks on U.S. concerns related to Peru's new intellectual property regime.

Patents and Trademarks

Peru's April 1996 Industrial Property Decree provides an effective term of protection for patents, prohibits devices that decode encrypted satellite signals, and contains other improvements, such as increasing the term of protection for industrial designs. However, the decree excludes from patent protection several areas previously covered by Peru's IPR regime: processes for making or using already known products, patented pharmaceutical products on the World Health Organization (WHO) Model List of Essential Medicines, elements existing in nature (where isolated and purified), and inventions involving computer programs.

The decree also contains working requirements such that a patent owner must "make use" of the patented invention in Peru, but also provides that use in any Andean Pact country satisfies this requirement. This differential treatment between Andean Pact countries and other WTO countries appears to violate the MFN provisions in Article 4 of the TRIPs Agreement. The decree also contains reciprocity clauses in the areas of patents and trademarks which appear to violate Peru's MFN obligations. Other deficiencies in the Industrial Property Decree include overly broad compulsory licensing requirements, the lack of transitional ("pipeline") protection, and the lack of protection against parallel imports.

Counterfeiting of trademarks in Peru is prevalent. Enforcement has improved in recent years at the administrative level, but at times the local courts have failed to back efforts to clear up injustices committed under the past regime. Some U.S. companies have spent years in fruitless litigation attempting to secure protection for their trademarks in Peru.

Peru

Copyrights

Peru's 1996 Copyright Decree is generally consistent with TRIPs; however, it also contains provisions covering reciprocity, which appear to violate the MFN provisions in Article 4 of the TRIPs Agreement.

Copyright owners have yet to employ fully new enforcement options available to them, allowing copyrights to remain widely disregarded. Textbooks and books on technical subjects are rampantly copied, and illegal copies of audio cassettes are widely available. Pirated copies of motion picture videos constitute the inventories of many video rental outlets, although the arrival in 1996 of a U.S.-based video store chain has increased the market for legitimate videos. Pirated computer software accounts for more than 80 percent of the market.

The National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI), established at the end of 1992, has conducted numerous raids over the last few years on large-scale software users, as well as on distributors of pirated software, books, videos, and sound recordings. Merchandise has been seized, administrative fines imposed, and cases referred to the judiciary for prosecution. The police have supported those copyrights owners willing to pursue piracy and INDECOPI maintains that the level of piracy has been reduced as a result of these efforts. INDECOPI has made an admirable effort; however, it lacks the resources to deal with the scale of the piracy problem in Peru.

Losses to U.S. copyright owners and pharmaceutical companies in Peru are extensive, although IPR enforcement is improving under the new law and enforcement institutions. In addition, U.S. companies have become more active in defending their interests in Peru by retaining local representation, conducting investigations, and preparing complaints to be filed with INDECOPI.

SERVICES BARRIERS

Basic Telecommunications Services

In the recently concluded WTO negotiations on basic telecommunications services, Peru made commitments on all basic telecom services, with phase-in of some commitments. It will provide market access and national treatment for all telecom services as of June 1999. Peru adopted the reference paper on regulatory commitments.

INVESTMENT BARRIERS

Peru has greatly liberalized its investment regime since 1990. National treatment for foreign investors is guaranteed in the 1993 constitution. Foreign investment does not require prior approval, except in banking and defense-related industries. "Juridical stability agreements" are available to foreign investors in the mining and petroleum sectors, guaranteeing tax, foreign exchange, and regulatory stability for a period of ten years. There are no restrictions on remittances of profits, dividends, royalties, or capital.

Arbitration is a constitutionally guaranteed alternative to the courts. The September 1993 establishment of the Lima Chamber of Commerce's International Arbitration Center has helped to institutionalize this

option. Peru also is a signatory to the New York Agreement on the Enforcement of International Arbitral Awards.

Rules regarding hiring foreign personnel have been liberalized, although foreign employees still may not make up more than 20 percent of the workforce of a company established in Peru -- whether owned by foreign or national interest -- and their combined salaries may not account for more than 30 percent of the total payroll. Services companies, including banks, and free trade zones are exempted from these hiring limitations. In addition, a company may apply for exemption from the limitations for foreign managerial or technical personnel.

Peru