

# PERU

In 1997, the U.S. trade surplus with Peru was \$187 million, a decrease of \$318 million from the U.S. trade surplus of \$505 million in 1996. U.S. merchandise exports to Peru were \$2.0 billion, an increase of \$193 million (10.9 percent) from the level of U.S. exports to Peru in 1996. Peru was the United States' forty-first largest export market in 1997. U.S. imports from Peru were \$1.8 billion in 1997, an increase of \$512 million (40.6 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Peru in 1996 was about \$2.1 billion, an increase of 62.2 percent from the level of U.S. FDI in 1995. U.S. FDI in Peru is concentrated largely in the manufacturing and petroleum sectors.

## IMPORT POLICIES

### Tariffs

A new tariff structure went into effect in April 1997, lowering the average tariff rate from 16 to 13 percent but raising tariffs on agricultural products and imposing an additional "temporary" tariff on agricultural goods. Under the new system, a 12 percent tariff applies to more than 95 percent (by value) of goods imported into Peru; a 20 percent tariff to most of the rest; while a few products are assessed rates (because of the additional "temporary" tariffs) of up to 25 percent.

In addition to the "temporary" tariffs on agricultural goods, Peru has applied another set of "temporary" import surcharges since 1991 on eighteen categories of agricultural products, covering five basic commodities: wheat, rice, corn, sugar, and milk products. These surcharges are in addition to any applicable 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 began in 1994 to reduce the surcharges. Because of high prevailing international prices, surcharges were practically non-existent during 1997.

On August 1, 1997, Peru officially rejoined the Andean Community's free trade area (FTA) -- from which it had been absent since 1992 -- but will not fully participate in the FTA until 2005. A large proportion of trade between Peru and the other Andean Community members, however, is already tariff-free, and most tariffs will be eliminated by 2002. Peru does not adhere to the Andean Community's common external tariff.

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 Community in negotiations with MERCOSUR on a free trade area.

### Non-Tariff Measures

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Almost all non-tariff barriers, including subsidies, import licensing requirements, import prohibitions, and quantitative restrictions, have been eliminated. However, the following imports are banned: fireworks, used clothing, used shoes, used tires, cars over five years old, and trucks over eight years old. (Note: imported used cars and trucks that meet these time limits must pay a 45 percent excise tax -- compared to 20 percent for a new car -- unless they are refurbished in an industrial center in the south of the country upon entry.)

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.

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 can 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.

### **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, however, receive rebates of a portion 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 five percent rebate, subject to certain restrictions.

### **LACK OF INTELLECTUAL PROPERTY PROTECTION**

Peru does not yet provide adequate and effective protection of intellectual property rights (IPR). Peru passed two laws in April 1996 which improved the country's IPR regime and brought national laws into conformity with Andean Community decisions; and, in June 1997, the government issued an executive decree improving several aspects of its industrial property rights law. However, the government will still need to make further improvements to these laws -- to be in compliance with the WTO's Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) -- by the year 2000, when the transition period for developing countries ends. Peru has been on the "Watch List" under the Special 301 provisions of the 1988 Trade Act since 1992.

The enforcement of intellectual property rights in Peru in 1997 showed mixed results. The special criminal prosecutor for IPR crimes received and acted upon 30 percent more complaints than in 1997; U.S. companies successfully worked with federal prosecutors to fight piracy of their products; and the customs service and the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) -- the government's specialized IPR office -- improved cooperation on fighting the importation of contraband merchandise. Shortcomings in enforcement, however, continued to exist. Of special concern to U.S. companies, the administrative court within INDECOPI repeatedly lowered to meaningless levels fines on pirates which had been imposed by INDECOPI's front-line IPR offices. Piracy remains a serious problem in Peru.

### **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. In June 1997, based on an agreement reached with the U.S. Government, the Government of Peru published an executive decree resolving several inconsistencies in the patent area between its 1996 industrial property law and the TRIPs agreement. The government has also introduced legislation confirming its decree. Peruvian law does not provide for transitional ("pipeline") protection for pharmaceutical product patents or protection against parallel imports.

Trademark violations are also prevalent, although several cases involving counterfeiting of U.S. trademarked goods that were prominent in the early 1990s have been resolved. In 1997, U.S. trademark owners also had notable success working with Peru's criminal prosecutors to defend their trademarks.

### **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. Textbooks, books on technical subjects, audio cassettes, motion picture videos, and software are widely pirated.

Losses to U.S. copyright owners and pharmaceutical companies in Peru are extensive, despite some improvement in IPR enforcement under the new laws and enforcement institutions. Industry estimates that in 1997, total revenue lost to copyright piracy was \$77 million. U.S. companies have become more active in defending their interests in Peru by retaining local representation, conducting anti-piracy campaigns and investigations, and filing complaints with INDECOPI and the courts.

## **SERVICES BARRIERS**

### **Basic Telecommunications Services**

In the WTO negotiations on basic telecommunications services, concluded in March 1997, Peru made commitments on all basic telecommunications services, with full market access and national treatment to be provided as of June 1999. Peru adopted the reference paper on regulatory commitments.

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### **Financial Services**

In the WTO negotiations on financial services, concluded in December 1997, Peru made broad-based market access commitments in financial services -- in banking, securities, insurance and other financial services. Peru allows 100 percent foreign ownership in subsidiaries and branches in the sector and guarantees national treatment. The only restrictions Peru currently maintains are with respect to cross border provision of financial services, with the sole exception being cross-border provision of financial data.

### **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 whereby the Government of Peru guarantees tax, foreign exchange and regulatory stability for a period of ten years. Investors in the mining and petroleum sectors are also entitled to several tax benefits. 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 as well as several other international dispute settlement agreements.

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 has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures. The measures deal with local content requirements in the milk and milk products sector. Proper notification allows developing-country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. Peru therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO members meet these obligations.