

PERU

In 1998, the U.S. trade surplus with Peru was \$79 million, a decrease of \$108 million from the U.S. trade surplus of \$187 million in 1997. U.S. merchandise exports to Peru were approximately \$2.1 billion, an increase of \$96 million (4.9 percent) from the level of U.S. exports to Peru in 1997. Peru was the United States' 41st largest export market in 1998. U.S. imports from Peru were about \$2.0 billion in 1998, a increase of \$205 million (11.6 percent) from the level of imports in 1997. The stock of U.S. foreign direct investment in Peru in 1997 was \$2.6 billion, an increase of 23.9 percent from 1996.

IMPORT POLICIES

Tariffs

Peru's most recent tariff reform 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 current 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 five basic commodities: wheat, rice, corn, sugar and milk products, although in July 1998, the Government eliminated the surcharge on wheat. 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.

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 of the remaining tariffs will be eliminated by 2002. Peru does not adhere to the Andean Community's common external tariff. In April 1998, the Andean Community signed a framework agreement with MERCOSUR to establish a free trade area after the year 2000. In June 1998, Peru signed a free trade agreement with Chile, which will be phased in over a number of years. Peru also has partial free trade agreements which grant tariff preferences to most Latin American countries under the Latin American Integration Association (ALADI) and is negotiating a free trade agreement with Mexico.

Nontariff Measures

Almost all non-tariff barriers, including subsidies, import licensing requirements, import prohibitions, and quantitative restrictions, have been eliminated. However, the following imports are banned: several insecticides, fireworks, used clothing, used shoes, used tires, radioactive waste, cars over five years old, and trucks over eight years old. Imported used cars and trucks that meet these age 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. Import licenses are required for firearms, munitions and explosives, chemical precursors (used in illegal narcotics production), ammonium nitrate fertilizer, wild plant and animal species, and some radio and communications equipment.

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Peru applies a value-added tax (VAT) rate of 18 percent to most products, and special consumption taxes, ranging from 10 to 50 percent, to 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 import shipments above \$5,000 must be pre-inspected by contracted supervising firms to check for possible under-invoicing. The importer pays the cost of these inspections, which reach as much as one percent of the f.o.b. value of the goods. Some U.S. exporters have complained of excessive delays caused by the pre-inspection system, although the problem has recently improved.

GOVERNMENT PROCUREMENT

A new government procurement law was passed in August 1997, and the implementing regulations were published in September 1998. The law created an independent board to oversee government purchases and contracts and authorized special committees to be responsible for new purchases and contracts. Under the new law, public entities must prepare an annual purchasing plan in order to promote transparency in the process. There is no limitation on foreign participation in any government solicitations.

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.

Enforcement of intellectual property rights continues to improve. Although piracy continues to be a serious problem in Peru, two important indexes -- those for video and software piracy -- have dropped significantly in recent years.

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

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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 widespread.

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, audiocassettes, motion picture videos, and software are widely pirated.

Losses to U.S. copyright owners and pharmaceutical companies in Peru are extensive, despite improvement in IPR protection under the new laws and better enforcement. 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 the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) and the courts. However, industry reports long delays by INDECOPI's appellate tribunal in deciding cases. Also, on a number of occasions the appellate tribunal has severely reduced administrative fines imposed by the copyright office. U.S. industry has collaborated actively with the U.S. Embassy in sponsoring conferences and in meeting with the Peruvian Government to raise awareness of the negative economic impact of lax IPR enforcement.

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. Advancing that timetable by almost a year, Peru opened its telecommunications sector as of August 1, 1998. Peru now allows competition in virtually all areas of telecommunications, meeting all of its commitments in its WTO offer.

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 reservations Peru maintained in the offer were 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.

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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.