

PERU

TRADE SUMMARY

The U.S. trade deficit with Peru was \$375 million in 2002, an increase of \$96 million from \$279 million in 2001. U.S. goods exports in 2002 were \$1.6 billion, down 0.5 percent from the previous year. Corresponding U.S. imports from Peru were \$1.9 billion, up 4.8 percent. Peru is currently the 45th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Peru in 2001 was \$3.6 billion, up from \$3.5 billion in 2000. U.S. FDI in Peru is primarily in the finance, petroleum and manufacturing sectors.

IMPORT POLICIES

Tariffs

Tariffs apply to virtually all goods exported from the United States to Peru, although rates have been lowered over the past few years. Peru continued to reduce its overall average tariff rate in 2001-2002, from 13.5 percent to 10.9 percent. The government maintains some “temporary” tariff surcharges on agricultural goods in an effort to protect local production, assure fiscal revenues, and promote domestic investment in the sector. Under the current system, a 12 percent tariff applies to more than 65 percent of the products imported into Peru; a 4 percent tariff applies to about 20 percent of goods, and a 20 percent tariff applies to most of the rest. A few products, mostly agricultural, are assessed rates (because of the additional “temporary” tariffs) of up to 25 percent. In March 2002, the tariff rate for most capital goods was reduced from 20 percent and 12 percent to 7 percent. In an effort to promote exports and maximize benefits under the Andean Trade Promotion and Drug Eradication Act, Peru further reduced the tariff rate for 178 capital goods items from 7 percent to 4 percent in August 2002. The tariff rate for cigarette items was raised from 12 percent to 25 percent (including the five percent “temporary” tariff) in August 2002.

An additional surcharge on some agricultural products is the variable levy, which is a fluctuating tax that assures that the import prices of specific commodities, after payment of the levy, will equal a predetermined minimum import price. This tax, which is imposed on certain “sensitive” products such as corn, rice, sugar, and powdered milk, is expressed in dollars per metric ton. The levy is the difference between the minimum import price and the international reference price plus an

unpublished adjustment for insurance, freight and other factors.

At the Andean President’s Council meeting on January 31, 2002, the five member countries of the Andean Community agreed to establish an Andean free trade zone, a common external tariff (CET), and a customs harmonization policy by January 2004. Peru received an exception for petroleum and fuels until the end of 2003 and for agricultural products until the end of 2005. The CET agreement establishes a unified tariff schedule that will come into effect at the end of 2003. In the second half of 2002, the Andean members started to negotiate the CET and initially reached agreement on 62 percent of tariff items.

Some non-U.S. exporters to Peru have preferential access to the Peruvian market because of Peru’s bilateral tariff reduction agreements.

Non-tariff 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 for a variety of reasons: several insecticides, fireworks, used clothing, used shoes, used tires, radioactive waste, cars over five years old, and trucks over eight years old. Used cars and trucks that are permitted to be imported 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, in which case they are exempted entirely from the excise tax. Import licenses are required for firearms, munitions and explosives, chemical precursors (since these can be diverted to illegal narcotics production), ammonium nitrate fertilizer, wild plant and animal species, and some radio and communications equipment.

There are still significant trade barriers imposed by SENASA, the Government of Peru’s animal and plant health agency, on agricultural products including poultry, live animals and animal genetic material.

Imports are also assessed an 18 percent Value-Added Tax on top of any tariffs; domestically-produced goods generally pay the same tax as well. The Government of Peru exempts certain domestic agricultural products from the VAT.

GOVERNMENT PROCUREMENT

There is no limitation on foreign participation in

PERU

any government solicitations. In 2000, however, in an effort to support national companies, the government began adding 15 points (on its rating scale of 100) to Peruvian firms bidding on government procurement contracts. In January 2002, the government raised the point preference an additional five points, for a total of 20, until 2005. U.S. pharmaceutical firms have raised concerns about this practice with regard to bidding on the Health Ministry's pharmaceutical purchases. U.S. firms contend that the 20 percent margin is excessive, giving unfair advantage to Peruvian competitors that would otherwise lose these bids on cost or technical grounds. Peru is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Peru belongs to the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO). It is also a signatory to the Paris Convention, Bern Convention, Rome Convention, Phonograms Convention, Satellites Convention, Universal Copyright Convention, and the Film Register Treaty. Peru remains on the U.S. Trade Representative's "Special 301" Watch List. In December 2001, the Public Ministry created the first office of a special prosecutor for the enforcement of intellectual property rights (IPR). This move has increased the efficiency and the number of IPR enforcement actions. In August 2002, the Interior Ministry entered into an agreement with the IPR administrative agency, INDECOPI, to facilitate greater interagency cooperation on IPR enforcement actions, including police raids. Nevertheless, concerns remain about the adequacy of IPR law enforcement, particularly with respect to the relatively weak penalties that have been imposed on IPR violators by the criminal justice courts. For instance, a major branded U.S. apparel manufacturer has complained that damage awarded by the courts do not reflect the commercial injury suffered. U.S. industry estimated trade losses related to piracy of U.S. copyrighted materials remained relatively constant over the last two years, totaling \$85 million in 2000 and \$84 million in 2001.

The government is generally proactive in promoting and protecting intellectual property rights for domestic and foreign interests. However, despite efforts to increase enforcement, piracy remains widespread. Industry data show that piracy in the software and motion picture industries has declined since the mid-1990s. The Business Software Alliance (BSA) estimates that

software piracy fell from 79 percent in 1996 to 60 percent in 2001. The International Intellectual Property Alliance (IIPA) estimates that motion picture piracy fell from 60 percent in 1996 to 50 percent in 2001. The greatest increase in piracy occurred in the area of sound recordings, where piracy levels rose from 80 percent to 97 percent between 1996 and 2001. The recording industry reports that Peru has one of the highest levels of audio piracy in the world. In 2001, estimated trade losses due to piracy in the sound recording industry grew to \$58 million. IIPA's estimates for trade losses in all other sectors remained the same or fell slightly during the period from 1996 through 2001.

Peru's 1996 Industrial Property Rights Law provides the framework for effective protection for patents and moves Peru closer to conformity with international obligations. In 1997, based on an agreement reached with the U.S. Government, Peru resolved several inconsistencies with the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS Agreement) provisions on patent protection and most-favored nation treatment for patents. However, the U.S. pharmaceutical industry continues to have concerns about Peru's protection of patents. In August 2002, Peru succumbed to Andean Community pressure and revoked a patent that it had issued to a U.S. pharmaceutical company for a "second-use" innovation. The Andean Community had previously ruled that the issuance of second-use patents violates Community norms. U.S. companies are also concerned that Peru does not provide sufficient protection for data submitted to regulatory authorities in connection with marketing approval for pharmaceutical products. Peru does not provide for a fixed period of data exclusivity for pharmaceutical producers. Although Peruvian law provides for effective trademark protection, counterfeiting of trademarks and imports of pirated merchandise are widespread.

Peru's 1996 Copyright Law is generally consistent with the TRIPS Agreement. However, sound recordings, textbooks, books on technical subjects, motion picture videos and software are widely pirated. While the government, in coordination with the private sector, has conducted numerous raids over the last few years on large-scale distributors and users of pirated goods and has increased other types of enforcement, piracy continues to be a significant problem for legitimate owners of copyrights. Peru signed the World Intellectual Property Organization Copyright Treaty in July 2001 and the

PERU

Performances and Phonograph Treaty in February 2002. The two treaties will together strengthen Peru's IPR laws and provide protection to domestic and foreign companies alike.

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, the government and the dominant telecommunications services provider reached an agreement to end the monopoly of the former state-owned telephone companies on August 1, 1998. Peru is continuing the process of developing a competitive telecommunications market, and lowered its interconnection rates for most types of telephones on September 15, 2001. However, concerns remain about the independence of the government regulatory body established to oversee the sector and monitor the former monopoly. In addition, complaints have been received about the lack of transparency in the regulatory decision making process, and the persistently high interconnection rates for calls to mobile networks.

INVESTMENT BARRIERS

National treatment for foreign investors is guaranteed under Peru's 1993 constitution. Foreign investment does not require prior approval, except in banking and defense-related industries.

Arbitration is a constitutionally guaranteed alternative to the courts, and several U.S. companies have successfully processed complaints through this procedure. In two recent cases, however, the firms faced opposition within the Peruvian Congress to arbitration with the government on tax matters, even though it was stipulated as an option in contracts.

Peruvian law restricts the majority ownership of broadcast media to Peruvian citizens. Foreigners are also restricted from owning land within 50 kilometers from a border, but can operate within those areas through special authorization. Air and water transportation are restricted to domestic operators, although some flexibility applies. In July 2001, inter-urban land transportation was also reserved to Peruvian carriers. There are no

prohibitions on the repatriation of capital or profits. Under current law, foreign employees may not comprise more than 20 percent of the total number of employees of a local company (whether owned by foreign or national interests) or more than 30 percent of the total company payroll, although some exemptions apply.

ANTICOMPETITIVE PRACTICES

U.S. telecommunications firms have complained that Peruvian Government regulatory oversight has been insufficient, allowing the former monopoly provider, owned by Spain's Telefonica, to engage in unfair practices that hinder competition.

ELECTRONIC COMMERCE

The Peruvian Government is moving to put in place legislation that will facilitate electronic commerce. It has already passed laws giving legal status to digital signatures, creating a framework for electronic contracts, and making it illegal to tamper with, destroy or interfere with computer systems or data.

OTHER BARRIERS

Among the most significant barriers to trade and investment in Peru is the weakness of government institutions. U.S. firms continue to complain that executive branch ministries, regulatory agencies and the judiciary lack the resources, expertise and independence necessary to carry out their respective duties. Peru's weak judicial sector, which is subject to influence by both the government and private sector actors, is a particular problem. Commercial disputes that end up in the Peruvian judicial system often languish, may be tried in competing jurisdictions and have unpredictable outcomes that often bear little relation to Peruvian law. The Toledo administration has begun to address institutional weaknesses in the executive branch and is laying the foundations for judicial reform.

In the last few years of the Fujimori government, interference in some markets increased. U.S. firms in the electricity generation and distribution sector believed the government was changing regulatory processes to favor state-owned generators and distributors. The Fujimori government also used state-owned oil refineries to subsidize oil prices. U.S. firms continue to be concerned about direct sales by the refineries to informal wholesalers, rather than through formal wholesalers. Although the constitution requires

PERU

that state-owned commercial operations play a subsidiary role to private firms, various state entities compete in a number of sectors. The Toledo Administration has been receptive to U.S. company complaints and has begun to address a number of these issues.