

## PERU

### TRADE SUMMARY

In 2001, the U.S. trade deficit with Peru was \$273 million, a decrease of \$62 million from the U.S. trade deficit of \$335 million in 2000. U.S. goods exports to Peru were approximately \$1.6 billion, a decrease of \$93 million (5.6 percent) from the level of U.S. exports to Peru in 2000. Peru was the United States' 46<sup>th</sup> largest export market in 2001. U.S. imports from Peru were about \$1.8 billion in 2001, a decrease of \$155 million (7.8 percent) from the level of imports in 2000.

The stock of U.S. foreign direct investment (FDI) in Peru in 2000 was an estimated \$3.3 billion, an increase of 22.6 percent over the 1999 level. U.S. FDI in Peru was principally in the finance, petroleum and manufacturing sectors.

### IMPORT POLICIES

#### Tariffs

Peru's most recent tariff reform went into effect in May 2001, lowering the overall average tariff rate from 13.5 percent to 11.8 percent. A five percent "temporary" tariff on agricultural goods implemented in April 1997 remains in effect.

Under the current system, a 12 percent tariff applies to more than 90 percent (by value) of goods imported into Peru. A four percent tariff applies to most capital goods, a 20 percent tariff to other goods; and, with the "temporary" additional tariff, some agricultural products are assessed rates of up to 25 percent.

Peru also has applied another set of variable "temporary" import levies since 1991 on four basic commodities: 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. The Government

eliminated a similar surcharge on wheat in 1998.

At the Andean President's Council held 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. While the agreement calls for the free trade zone to be established by June 2002, 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. The CET reportedly will be zero duty on capital goods, five percent on industrial goods and raw materials, ten percent on manufactured goods with some exceptions, and twenty percent on "ultra-sensitive goods."

Within the framework of the Latin American Integration Association (ALADI), Peru has signed bilateral trade agreements with Argentina, Brazil, Chile, Cuba, Mexico, Paraguay and Uruguay. Although tariff concessions under most of these agreements are relatively limited, Peru's 1998 agreement with Chile calls for the elimination of all trade barriers by the year 2016, with most tariffs removed by the year 2020.

#### 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, some of which may be questioned: several insecticides, fireworks, used clothing, used shoes, used tires, radioactive waste, cars over five years old, and trucks over eight years old. Those imported used cars and trucks that are permitted 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

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(since these can be diverted to illegal narcotics production), ammonium nitrate fertilizer, wild plant and animal species, and some radio and communications equipment.

### GOVERNMENT PROCUREMENT

There is no limitation on foreign participation in 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 temporarily raised the point preference an additional five points, for a total of 20. 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, Berne Convention, Rome Convention, Geneva Phonograms Convention, Brussels Satellites Convention and Universal Copyright Convention, and the WIPO Copyright Treaty. The U.S. Trade Representative moved Peru to the "Special 301" Watch List in April 2001, after two years on the Priority Watch List, because of improvements in Peru's IPR laws, the funding of an IPR-specific government attorney and the creation of a joint public/private organization that participates with police on raids and shares information with them. However, concerns remain about the adequacy of IPR law

enforcement, particularly with respect to the relatively weak penalties that have been imposed on IPR violators.

Since late 1999, the government has been increasingly proactive in promoting and protecting intellectual property rights for domestic and foreign interests. Increased enforcement efforts have yielded results, although piracy remains significant. Industry data shows that piracy in the software and motion picture industries has declined sharply since the mid-1990s. The Business Software Alliance (BSA) estimates that software piracy fell from 86 percent of the market in 1994 to 61 percent in 2001. Through 2001, BSA has registered the legal use of software by 6,800 companies, and helped 4,000 more legalize or begin legalizing their software. The International Intellectual Property Alliance (IIPA) estimates that video piracy fell from 75 percent of the market in 2000 to 50 percent in 2001. IIPA estimates that during the same period, piracy of sound recordings continued to rise, reaching 97 percent of the market.

In April 1996, Peru passed two new laws to improve its intellectual property rights (IPR) protection regime and bring its national laws into conformity with Andean Community decisions and other international obligations on intellectual property. Although the new laws were an improvement, they contained several deficiencies. The Peruvian Government had hoped that the Andean Community's September 2000 adoption of Decision 486 as the IPR regime for the region would resolve Peru's outstanding discrepancies with the WTO TRIPS Agreement. However, U.S. pharmaceutical companies are concerned that Decision 486 is not sufficiently explicit regarding the protection of data that is included in marketing approval applications, thereby opening the way to the possible erosion of such protection. They also express concern regarding an Andean Tribunal decision against Peru, Venezuela and

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Ecuador during 2001 that a company that had patented a compound for one use cannot subsequently patent a second use of that compound. This decision would put the Andean Community at odds with international norms and possibly with the WTO TRIPS Agreement. The Peruvian Government is reviewing the court's decision before taking further action.

Domestically, Peru's 1996 Industrial Property Rights Law provides an effective term of protection for patents and prohibits devices that decode encrypted satellite signals, along with other improvements. Peruvian law does not provide for pipeline protection for patents or protection from parallel imports. Although Peruvian law provides for effective trademark protection, counterfeiting of trademarks and imports of pirated merchandise are still widespread.

Peru's Copyright Law is generally consistent with the WTO TRIPS Agreement. However, textbooks, books on technical subjects, audiocassettes, 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 in Peru.

### 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

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. The U.S. Government is monitoring this situation very closely.

### 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 won complaints through this process. 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.

Peru has notified the WTO of certain measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS). 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. Although Peru no longer applies these measures in practice and the government was to have formally eliminated the measures before January 1, 2000, the measures have not yet been formally eliminated. The United States is working in the WTO to

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ensure that WTO members meet these obligations.

### ANTICOMPETITIVE PRACTICES

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, and 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 that state-owned commercial operations play a subsidiary role to private firms, various state entities compete in a number of sectors. Components of the military, in particular, have come under scrutiny for their commercial operations in road construction, air transport and maintenance, printing, and other sectors, which generally undercut private suppliers. Finally, 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.

The government that took office in July 2001 has been receptive to U.S. company complaints and has begun to address a number of these issues. However, in one recent case, the government has yet to facilitate resolution of conflict of interest issues in the Lima Chamber of Commerce Arbitration Body which are preventing a U.S. investor from achieving a fair hearing in its dispute with Telefonica.

### 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 SIGNIFICANT 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 government inaugurated in July 2001 has begun to address institutional weaknesses in the executive branch and is laying the foundations for judicial reform.