

PERU

TRADE SUMMARY

The United States' trade deficit with Peru was \$700 million in 2003, an increase of \$323 million from \$377 million in 2002. U.S. goods exports in 2003 were \$1.7 billion, up 9.2 percent from the previous year. Corresponding U.S. imports from Peru were \$2.4 billion, up 24.1 percent from 2002. Peru is currently the 46th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Peru in 2002 was \$3.2 billion, up from \$3.1 billion in 2001. U.S. FDI in Peru is primarily in the mining sector.

Free Trade Area Negotiations

In November 2003, the United States announced its intention to begin free trade negotiations with Colombia, Peru, Ecuador and Bolivia, the four Andean Trade Preference Act beneficiary countries. The negotiations will begin on May 18, 2004 with Colombia, as well as any of the other countries that has demonstrated its readiness to begin. The Andeans collectively represented a market of about \$7 billion for U.S. exports in 2003, and are home to about \$4.5 billion in U.S. foreign direct investment. A free trade agreement with these countries would extend the list of countries in the Americas with which the United States has completed free trade agreements. The negotiation will complement the goal of completing a Free Trade Area of the Americas (FTAA). The U.S. Government will seek to address the issues described in this chapter within the context of our bilateral free trade agreement negotiations.

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. Under the current system, a 12 percent tariff applies to 45 percent of the products imported into Peru; four percent and seven percent tariffs apply to about 23 percent and 15 percent of goods, respectively; and, 17 percent and 20 percent tariffs apply to most of the rest. The government maintains some "temporary" tariff surcharges on agricultural goods to protect local production and domestic investment in the sector. In 2002, the tariff rate for most capital goods was reduced from 20 percent and 12 percent to seven percent. On December 31, 2003, the Ministry of Economy and Finance announced the reduction of tariffs from seven percent to four percent for more than one thousand capital goods, which account for 95 percent of the items previously set at the seven percent level.

Certain sensitive agricultural products – *e.g.*, corn, rice, sugar and powdered milk – are subject to a "price band," or variable levy, which fluctuates to ensure that the import prices of such products equal a predetermined minimum import price. This levy is the difference between the minimum import price and an international reference price plus an unpublished adjustment for insurance, freight and other factors. A top U.S. agricultural market access priority is the elimination of this price band system.

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: used clothing, used shoes, used tires, remanufactured vehicle parts, 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

PERU

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.

Among the affected products are:

- **Poultry Products:** Peru established an import ban on U.S. poultry products due to the presence of Avian Influenza and Newcastle disease. Recently, it eliminated the ban on chicks and hatching eggs, except from the eight states. Government action on poultry meat is pending.
- **Beef and beef products:** SENASA now requires that products be certified to have been born, raised and slaughtered in the country of origin.
- **Paddy Rice:** Peru has a ban on paddy rice imports from the United States. SENASA is currently conducting a Pest Risk Assessment that if successful will result in lifting the ban. However, a decision is overdue.

GOVERNMENT PROCUREMENT

In 2000, in an effort to support national companies, Peru 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 and medical equipment firms have raised concerns about this practice with regard to bidding on Health Ministry purchases. U.S. firms contend that the 20 point margin is excessive, giving unfair advantage to Peruvian competitors that would otherwise lose these bids on cost or technical grounds. Since 2001, Peru has also distinguished between national and international bidding processes, reserving certain solicitations for participation by domestic firms only. Peru is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Peru is a member of the World Intellectual Property Organization (WIPO). It is also a member of the Paris Convention, Berne Convention, Rome Convention, Geneva Phonograms Convention, Brussels Satellites Convention, Universal Copyright Convention, the WIPO Copyright Treaty (WCT), and the WIPO Performances and Phonograms Treaty (WPPT). Peru remains on the U.S. Trade Representative's "Special 301" Watch List. 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.

Copyrights

Peru's 1996 Copyright Law is generally consistent with the TRIPS Agreement. Peru joined the WCT in July 2001 and the WPPT in February 2002. Although most of the provisions of these two WIPO treaties are included in Peru's 1996 Copyright Law, officials at Indecopi, the IPR administrative agency, have acknowledged the need for additional legislation in order to clarify the rights of artists and producers. Indecopi's enforcement has recently come under fire by a national association of music publishers, which claims that their members are not receiving royalties due them.

Despite Peruvian government efforts to increase enforcement, including increased raids on large-scale

PERU

distributors and users of pirated material, piracy remains widespread. The International Intellectual Property Alliance estimates that piracy levels in Peru for recorded music reached 98 percent in 2003 with damage to U.S. industry estimated at \$87 million, while motion picture piracy declined slightly to 45 percent of the market for a loss of an estimated \$4 million.

Patents and Trademarks

Peru's 1996 Industrial Property Rights Law provides the framework for more effective protection for patents. In 1997, based on an agreement reached with the U.S. Government, Peru resolved several inconsistencies with the WTO TRIPS Agreement provisions on patent protection and most-favored nation treatment for patents.

However, the U.S. pharmaceutical and agrochemical industries continue to have concerns about Peru's protection of patents. Government of Peru health authorities approved the commercialization of new drugs which were the bioequivalents of already approved drugs, thereby denying the originator companies the exclusive use of their data. In effect, the government of Peru is allowing the test data of registered drugs from originator companies to be used by others seeking approval for their own pirate version of the same product. Also, U.S. companies are concerned that the government of Peru is implementing a policy that a company that had patented a compound for one use cannot subsequently patent a second use of that compound, putting Peru at odds with international norms. Although Peruvian law provides the means for effective trademark protection, counterfeiting of trademarks and imports of pirated merchandise remain widespread.

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 in 1998. Peru is continuing the process of developing a competitive telecommunications market and lowered its interconnection rates for most types of telephones in 2001. However, concerns remain about the independence and strength of the government regulatory body established to oversee the sector and monitor the former monopoly. In addition, U.S. industry has complained 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. Several U.S. companies have processed complaints through this procedure with mixed results.

Peruvian law restricts the majority ownership of broadcast media to Peruvian citizens. Foreigners are also restricted from owning land within 50 kilometers of a border but can operate within those areas through special authorization. National 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

PERU

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

Several U.S. firms have complained 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 is a particular problem. Commercial disputes that end up in the Peruvian judicial system often languish, may be tried in competing jurisdictions, and can have unpredictable outcomes. The Toledo Administration has begun to address institutional weaknesses in the executive branch and is laying the foundations for judicial reform.