

PERU

TRADE BARRIERS

The U.S. trade deficit with Peru was \$1.6 billion in 2004, an increase of \$895 million from \$710 million in 2003. U.S. goods exports in 2004 were \$2.1 billion, up 23.4 percent from the previous year. Corresponding U.S. imports from Peru were \$3.7 billion, up 53.6 percent. Peru is currently the 42nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Peru in 2003 was \$2.7 billion, down from \$2.8 billion in 2002. U.S. FDI in Peru is concentrated largely in the mining sector.

FREE TRADE NEGOTIATIONS

In May 2004, the United States initiated free trade agreement (FTA) negotiations with three Andean nations -- Colombia, Peru and Ecuador. Bolivia is participating as an observer and is expected to become part of the agreement at a later stage. The U.S. Government will seek to address the issues described in this chapter within the context of these negotiations. The four Andean countries collectively represented a market of about \$8.5 billion for U.S. exports in 2004, and were home to about \$7.2 billion in U.S. foreign direct investment.

IMPORT POLICIES

Tariffs

Peru applies tariffs to virtually all goods exported from the United States, although the Government of Peru has lowered tariff rates in the past few years. Currently, 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 a five percent “temporary” tariff surcharge on agricultural goods to protect local production and domestic investment in the sector. The United States is seeking the elimination of Peru’s duties on U.S. exports in the FTA negotiations, upon entry into force of the agreement where possible and over time for the most sensitive products.

Certain sensitive agricultural products – e.g., corn, rice, sugar and powdered milk – are subject to a Peru-specific “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 adjustment for insurance, freight and other factors.

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The U.S. Government is seeking through the FTA negotiation to eliminate Peru's barriers to trade in our agricultural products, while providing reasonable adjustment periods and safeguards for producers of import sensitive agricultural products.

Non-Tariff Measures

The Government of Peru has eliminated almost all non-tariff barriers, including subsidies, import licensing requirements, import prohibitions and quantitative restrictions. However, the following imports are banned: used clothing, used shoes, used tires, remanufactured machine parts, cars over five years old and heavy trucks (weighing three tons or more) over eight years old. Used cars and trucks that are granted import permits 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, and wild plant and animal species.

SENASA, the Peruvian plant and animal health agency, imposes several significant trade barriers (which include bans, import requirements and sanitary permits) on agricultural products, including poultry, live animals and animal genetic material. Among the affected products are:

--Poultry Products: The Peruvian government lifted its ban on U.S. poultry products in July 2004. Peru began importing small amounts of American poultry in November 2004.

--Beef and beef products: SENASA enacted a ban on U.S. beef products in March 2004, due to BSE.

--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. SENASA has not indicated when it will make a final decision.

GOVERNMENT PROCUREMENT

In 2000, in an effort to support national companies, Peru began adding 15 percent (on its rating scale of 100) to bids by Peruvian firms on government procurement contracts. In January 2002, the government raised the point preference an additional five percent, to a total of 20 percent, 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. In 2001 Peru began distinguishing between national and international bidding processes, reserving certain solicitations for participation by domestic firms only. In November 2004, the Peruvian government eliminated this distinction for the

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majority of products, applying it only to construction works. Peru is not a signatory to the WTO Agreement on Government Procurement. In the FTA negotiations the U.S. Government is seeking opportunities for U.S. companies to bid on Peruvian 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 imposed on IPR violators by the criminal justice courts. Although the Peruvian government recently increased the minimum penalty for piracy to a four-year sentence, there have yet to be any convictions under the new law.

The United States is currently negotiating IPR provisions under the ongoing Andean FTA negotiations to improve protection and strengthen enforcement of IPR. The U.S. Government is seeking to address specific U.S. industry concerns related to the protection and enforcement of copyrights and related rights, patents, proprietary data for pharmaceutical and agricultural products, trademarks and geographical indications.

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. The National Association of Music Publishers continues to criticize Indecopi's enforcement, claiming that its members are not receiving the royalties due to them.

Despite Peruvian government efforts to increase enforcement, including increased raids on large-scale distributors and users of pirated material, piracy remains widespread. The International Intellectual Property Alliance estimates that piracy levels in Peru for recorded music was 98 percent in 2003-2004 with damage to U.S. industry estimated at \$90 million, while motion picture piracy accounts for 60 percent of the market for a loss of an estimated \$5.5 million. Indecopi estimates that software piracy levels have decreased from 60 percent in 2003 to 56 percent in 2004.

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Patents and Trademarks

Peru's 1996 Industrial Property Rights Law provides the framework for patent protection. In 1997, based on an agreement reached with the U.S. Government, Peru addressed 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 confidential test data. Peruvian government 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 some companies to be used by others seeking approval for their own pirate version of the same product. U.S. companies also are concerned that the Peruvian government does not provide patent protection to second uses, which would allow a company with a patented compound for one use to subsequently patent a second use of that compound. Although Peruvian law provides the means for effective trademark protection, counterfeiting of trademarks and imports of counterfeit merchandise remain widespread.

SERVICES BARRIERS

The U.S. Government is seeking through the FTA negotiations to secure greater access for U.S. providers of cross-border services to the Peruvian market, including in the areas of financial and telecommunications services.

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 is continuing the process of developing a competitive telecommunications market and lowered its interconnection rates for most types of telephones in 2001. Termination rates for calls to mobile networks, however, remain one of the highest in the world. This issue has become particularly acute as a result of the recent acquisition by Telefonica of the second largest wireless provider in the country, thereby increasing Telefonica's market share in the wireless sector to over 70 percent. Other suppliers claim that unconstrained pricing by the dominant supplier has created significant barriers to competition in the wireless sector. In addition, some concerns remain about the independence and strength of the government regulatory body established to oversee the sector. In particular, U.S. industry has complained about the lack of transparency in the regulatory decision-making process.

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INVESTMENT BARRIERS

National treatment for foreign investors is guaranteed under Peru's 1993 constitution. Prior approval is not required for investment by foreign or domestic persons, except in banking and defense-related industries. There are no limitations on the repatriation of capital or profits. Arbitration is available for disputes between foreign investors and the Government of Peru. Several U.S. companies have chosen to pursue claims through arbitration, with mixed results.

Peruvian law restricts majority ownership of broadcast media to Peruvian citizens. Foreigners are also restricted from owning land or investing in natural resources within 50 kilometers of a border, but they can operate within those areas with special authorization. National air and water transportation are restricted to domestic operators. In July 2001, inter-urban land transportation was also reserved for Peruvian carriers.

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 Peruvian persons) or more than 30 percent of the total company payroll, although some exemptions apply. Newly established companies, multinational service providers, banks and transportation companies are all granted exemptions. Additionally, foreign companies do not have limitations on the number of foreign management officers they may hire.

Several U.S. firms complain that executive branch ministries, regulatory agencies, the tax agency and the judiciary lack the resources, expertise and impartiality necessary to carry out their respective mandates. Peru's weak judicial branch is a particular problem. Commercial disputes that end up in Peruvian courts are often delayed and can yield results that are not foreseeable based on a review of relevant precedents. The tax agency, with its retroactive reinterpretation of rules and disproportionate fines, has also created additional investment and trade barriers. The Toledo Administration has tried to address institutional weaknesses in the executive branch and has offered plans for judicial reform. The U.S. Government has worked with the Government of Peru both before and in parallel with the FTA negotiations to ensure a fair resolution of U.S. investor disputes, consistent with Peruvian law. Some of those disputes have been resolved while others remain pending.

The U.S. Government is seeking through the FTA negotiations a range of protections with respect to the treatment of U.S. investors, as well as a guaranteed right for those investors to have recourse to international arbitration in the event of disputes with the Peruvian government.

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. The U.S. is seeking in the FTA negotiations to include rules

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prohibiting duties on and discrimination against digital products, such as computer programs, videos, images, and sound recordings, based on where they are made or the nationality of the firms or persons making them.