PERU

TRADE SUMMARY

The U.S. goods trade deficit with Peru was $2.8 billion in 2005, an increase of $1.2 billion from $1.6 billion in 2004. U.S. goods exports in 2005 were $2.3 billion, up 9.0 percent from the previous year. Corresponding U.S. imports from Peru were $5.1 billion, up 38.3 percent. Peru is currently the 43rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Peru in 2004 was $3.9 billion, up from $3.7 billion in 2003. U.S. FDI in Peru is concentrated largely in the mining sector.

FREE TRADE NEGOTIATIONS

In May 2004, the United States initiated free trade negotiations with Colombia, Ecuador, and Peru. To date, the United States has concluded free trade agreements with Peru and Colombia. Negotiations with Ecuador will resume in late March 2006. Bolivia has participated as an observer and could become part of the agreement at a later stage. The United States has significant economic ties to the region. Total two-way goods trade with the Andean countries of Peru, Colombia, and Ecuador was approximately $24 billion in 2004. The stock of U.S. foreign direct investment in these countries in 2004 was $7.7 billion.

IMPORT POLICIES

Tariffs

Peru applies tariffs to virtually all goods exported from the United States, although the Government of Peru has consistently lowered tariff rates since the early 1990s. Peru's average applied rate is approximately 10 percent. Currently, most imported goods are subject to tariff rates of four percent, 12 percent, or 20 percent. The government also maintains a five percent "temporary" tariff surcharge on agricultural goods to protect local production and domestic investment in the sector.

Certain sensitive agricultural products, including 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.

Once the free trade agreement between the U.S. and Peru enters into effect, 80 percent of U.S. exports of industrial goods will become duty-free immediately, with the remaining tariffs phased out over 10 years. More than two-thirds of current U.S. farm exports will become duty-free immediately, with most of the remaining tariffs phased out over 15 years, and the remainder in 17 years. Additionally, Peru will eliminate barriers to trade for U.S. 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 and shoes (except as charitable donations, which are subject to the 19 percent VAT), used tires, remanufactured goods, 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. The free trade agreement between the U.S. and Peru will remove the import ban on remanufactured goods.

For textile and apparel products and footwear, Peru requires that in addition to the name of the manufacturer, the label must also include the name and address of the importer or distributor. Industry reports that such information is difficult if not impossible to know during the construction process when permanent labels are attached. Re-labeling of products upon entry to meet these requirements results in additional costs and delays.

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. Currently, U.S. poultry and poultry products are allowed except from the states of California, Connecticut, Rhode Island, Pennsylvania, Texas, Delaware, New Jersey and Maryland due to Avian Influenza. Additionally, in October 2004 SENASA revised its import requirements, which brought imports from the U.S. to a halt. Currently Food Safety Inspection Service (FSIS) is working with SENASA to implement a list of requirements acceptable to both countries.

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

--Pork: In November 2004, SENASA revised its import requirements, effectively stopping trade. Since then FSIS has been working with SENASA to agree on a set of requirements that would satisfy both parties.

--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.

In the context of the free trade negotiations, Peru agreed to accept imports of beef and poultry products from the United States, when accompanied by an Export Certificate of Wholesomeness, no later than March 1, 2006. Peru also undertook to apply to imports of U.S. rice standards no less favorable than those applied to domestically produced rice and confirmed that it had eliminated certain decrees to the contrary.

The United States and Peru have also worked to resolve sanitary and phytosanitary (SPS) barriers to agricultural trade, including: fully complying with the WTO regarding imports of beef and poultry products, recognizing the U.S. meat inspection system as equivalent to Peru's, modifying Peru's import permit requirements for the import of pork and poultry and agreeing to apply fair standards for Peru's import of rice. Under the free trade agreement, an SPS Committee will be established to expedite resolution of technical issues.

GOVERNMENT PROCUREMENT

In 2002, in an effort to support national companies, Peru began adding 20 percent (on its rating scale of 100) to bids by Peruvian firms on government procurement contracts. 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 reserving certain procurements for domestic firms. In November 2004, the Peruvian government eliminated this distinction for the majority of products, applying it only to construction works. Peru is not a signatory to the WTO Agreement on Government Procurement. The free trade agreement between the U.S. and Peru will provide for fair, non-discriminatory, and transparent opportunities for U.S. companies to bid on Peruvian government procurement contracts.

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 provisions agreed to in the IPR chapter of the free trade agreement between the U.S. and Peru should improve protection and strengthen enforcement of IPR in Peru.

Copyrights

Peru's 1996 Copyright Law is generally in line with international standards. 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.

In July 2004, the Peruvian government published a Supreme Decree establishing the Law of Artists, Interpreters, and Music to protect the interests and rights of those involved in the creative arts, including performers and producers of musical recordings and motion pictures, from acts of piracy. The decree stated that blank optical media was being used for "private copies" and piracy of media and software, violating copyright laws. Under the law, the Peruvian Artists Association will apply a levy on all blank optical discs, to be paid by the manufacturers of blank recording media. All imports of blank optical discs since November 2004 are subject to the levy. Imported blank CDs are subject to a $0.25 fee per unit, with imported blank DVDs subject to a $1.20 levy per unit. These fees represent between 200 percent and 300 percent of product cost. Indecopi, the Lima Chamber of Commerce and several companies are working with the Peruvian Artists Association to lower the levy to a more reasonable rate.

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 are approving the commercialization of new drugs that are bioequivalent of already approved drugs, without appropriate protection for the innovative drugs. In the free trade agreement between the U.S. and Peru, Peru agreed to provide adequate protection for innovative drugs. Therefore, entry into force of this agreement should rectify this situation.

Enforcement

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 2004-2005 with damage to U.S. industry estimated at $100 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 remained the same in 2005, at 56 percent.

SERVICES BARRIERS

Under the services chapter of the free trade agreement between the U.S. and Peru, Peru will assume commitments to provide non-discriminatory treatment and market access in almost all services sectors. The chapter also commits Peru to increased regulatory transparency and to free transfers associated with the supply of a service.

The financial services chapter also provides secure access and nondiscriminatory treatment across most banking, insurance and securities sectors, and improves U.S. companies' ability to provide portfolio advice and certain kinds of insurance on a cross border basis.

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 among of the highest in the world. OSIPTEL, Peru's telecommunications regulator, is working to establish its model to lower mobile termination rates. This model, according to the OSIPTEL timeframe, should lower these rates over a period of 4 years, from its current levels of roughly $0.21 to approximately $0.11, depending on the carrier. Suppliers claim that unconstrained pricing by the dominant supplier has created significant barriers to competition in the wireless sector. Continued oversight and review of these rates by OSIPTEL will be important to achieving progress in addressing concerns raised by suppliers.

INVESTMENT BARRIERS

National treatment for foreign investors is guaranteed under Peru's 1993 constitution. There are no limitations on the repatriation of capital or profits. Domestic 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. Under the investment chapter of the free trade agreement between the U.S. and Peru, Peru will assume obligations relating to national treatment and most favored nation (MFN) treatment, the right of U.S. investors to make financial transfers freely and without delay, international law standards for expropriation and compensation, and access to binding international arbitration.

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. New licensing for passenger transportation within Peru is suspended for both nationals and foreign suppliers.

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. Under the free trade agreement between the U.S. and Peru , Peru has agreed not to apply most of these nationality-based hiring requirements to U.S. professionals and specialty personnel.

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 has also created additional investment and trade barriers through its reinterpretation of rules and its imposition of disproportionate fines. The Toledo Administration has tried to address institutional weaknesses in the executive branch and has offered plans for judicial reform. In July 2005, the Supreme Court issued an edict stating that final binding arbitration awards cannot be disputed in the judiciary. The U.S. Government has worked with the Government of Peru both before and in parallel with the free trade negotiations to ensure a fair resolution of U.S. investor disputes, consistent with Peruvian law. Several of those disputes have been resolved, while others remain pending.

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 free trade agreement between the U.S. and Peru includes rules 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.