

PERU

TRADE SUMMARY

The U.S. goods trade deficit with Peru was \$2.9 billion in 2006, an increase of \$140 million from \$2.8 billion in 2005. U.S. goods exports in 2006 were \$2.9 billion, up 26.8 percent from the previous year. Corresponding U.S. imports from Peru were \$5.9 billion, up 14.8 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 2005 was \$3.9 billion (latest data available), up from \$3.4 billion in 2004. U.S. FDI in Peru is concentrated largely in the mining sector.

United States-Peru Trade Promotion Agreement (PTPA)

In May 2004, the United States entered into free trade negotiations with Colombia, Ecuador and Peru. To date, the United States has concluded free trade agreements with Peru and Colombia. The United States-Peru Trade Promotion Agreement (PTPA) was signed on April 12, 2006. The Peruvian Congress approved the PTPA by a vote of 79 to 14 on June 28, 2006. The United States will seek bipartisan congressional support for the agreement in 2007.

IMPORT POLICIES

Tariffs

Peru applies tariffs to virtually all goods exported from the United States with an average applied rate of 10 percent. Most imported goods are subject to tariff rates which range from 4 percent to 20 percent. There is an additional 5 percent “temporary” tariff surcharge on many agricultural goods. Peru has also applied a “price band” or variable levy on the following sensitive agricultural products: rice, corn, sugar, and dairy products.

Under the PTPA, 80 percent of U.S. exports of consumer and industrial products will become duty-free immediately upon entry into force of the agreement. Within five years, an additional 6 percent will become duty-free and another 4 percent within seven years. Duties on the remaining 10 percent will be phased out over 10 years. Peru also agreed to join the World Trade Organization (WTO) Information Technology Agreement, removing tariffs and non-tariff barriers to information technology products. In addition, more than two-thirds of current U.S. farm exports to Peru will become duty-free immediately. Peru will also immediately eliminate its price band system on trade with the United States, which will enable the United States to compete with regional and MERCOSUR countries. Tariffs on other agricultural products will be eliminated gradually, most within 5 years to 15 years. Within 17 years, all U.S. agricultural exports will enter the Peruvian market duty-free.

Non-Tariff Measures

The government of Peru has eliminated many non-tariff barriers, and under the PTPA will subject remaining measures including subsidies and import licensing requirements to agreed disciplines. Peru currently restricts imports of certain used goods, including used clothing and shoes (except as charitable donations, which are subject to the 19 percent value added tax), used tires, cars over 5 years old and heavy trucks (weighing three tons or more) over 8 years old. Used cars and trucks that are granted import

FOREIGN TRADE BARRIERS

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. Additionally, Peru’s prohibitions on the importation of used goods apply to U.S. remanufactured goods. Under the PTPA, Peru affirmed that it would not adopt or maintain prohibitions or restrictions on trade in remanufactured goods, and those certain existing prohibitions on trade in used goods would not apply to remanufactured goods. Upon entry into force of the agreement, this commitment will provide new and significant export opportunities for firms involved in remanufactured products such as engines, automotive parts, mining and construction equipment, transportation machinery, medical equipment and computers.

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. The re-labeling of products upon entry to meet these requirements results in additional costs and delays.

SENASA (Servicio Nacional de Sanidad Agraria), the national plant and animal health agency, is responsible for protecting Peru from the introduction of non-native animal and plant health diseases. SENASA establishes the import requirements for agricultural products including meat, live animals and animal genetics. U.S. exports are eligible for entry into Peru provided that proper certification is obtained and accompanies each shipment.

In 2006, the United States Government and the government of Peru resolved a number of significant sanitary and phytosanitary (SPS) and technical standards issues. Specifically, the two governments reached agreements addressing Peru’s bans or restrictions on imports of U.S. beef and beef products (related to Bovine Spongiform Encephalopathy), poultry and poultry products (related to avian influenza), pork and pork products, and rice. The government of Peru has implemented these agreements through a series of resolutions and decrees. For example, in October 2006, Peru issued a Supreme Decree permitting the importation of all U.S. beef and beef products, except high risk materials, when accompanied by a sanitary certificate issued by the U.S. Department of Agriculture’s Food Safety and Inspection Service. In addition, Peru formalized its recognition of the equivalence of the U.S. meat and poultry inspection systems, and eliminated a rice quality standard that discriminated against imports of U.S. rice.

With regard to Peru’s importation of U.S. paddy rice, the government of Peru is nearing completion of its pest risk assessment on this product.

GOVERNMENT PROCUREMENT

In 2002, in an effort to support national companies, Peru began adding 20 points (on its rating scale of 100) to bids by Peruvian firms on government procurement contracts. U.S. pharmaceutical and medical equipment firms raised concerns about this practice with regard to bidding on Health Ministry purchases, as did companies operating in other sectors. U.S. firms contended that the 20-point margin was excessive, giving unfair advantage to Peruvian competitors that would otherwise lose these bids on cost or technical grounds. Once the PTPA enters into force, Peru will not be able to apply preferences to procurement covered by the PTPA.

The PTPA will provide for fair, non-discriminatory, and transparent opportunities for U.S. companies to bid on contracts from Peruvian government procurement contracts. The PTPA covers the purchases of

FOREIGN TRADE BARRIERS

most Peruvian central government entities, including state owned enterprises, Peru's oil company, and its public health insurance agency.

Peru is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Concerns remain about the adequacy of IPR law enforcement in Peru, particularly with respect to the relatively weak penalties imposed on IPR violators. At the end of 2006, the Peruvian government assigned intellectual property case responsibilities to four national courts and one appeals court. Peru also now has three special prosecutors' offices that handle intellectual property issues. Public awareness of the importance of IPR protection must be increased.

The provisions agreed to in the PTPA's IPR chapter will bring about a number of important improvements in Peru's protection of IPR, including with respect to: protection of trademarks used in Internet domain names; strengthened measures to prevent the circumvention of technological devices for preventing Internet-based copyright piracy; protection of test data and trade secrets submitted in connection with regulatory approval for pharmaceutical and agricultural chemical products; and provision of deterrent penalties against piracy and counterfeiting.

Copyrights

Peru's 1996 Copyright Law is generally in line with international standards. Peru joined the World Intellectual Property Organization (WIPO) Copyright Treaty in July 2001 and the WIPO Performances and Phonograms Treaty 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.

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 applies a levy on all blank optical discs, which is paid by the manufacturers of blank recording media. The level of pirated software used by government agencies is estimated to reach about 75 percent.

According to the International Intellectual Property Alliance's 2006 estimates, 98 percent of sound recordings and 70 percent of business software in Peru were pirated, representing a loss of \$80.5 million. According to the Business Software Alliance, Peru is in the middle of the pack among Latin American countries in terms of software piracy. According to the Peruvian government, the percentage of central government computers carrying pirated software had been reduced to 41 percent as of the end of 2006. The audiovisual industry estimates a 75 percent piracy rate. Indecopi's Copyrights Office conducted 270 inspections in 2006, 155 of which involved music CDs.

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. U.S. industry representatives are pleased that Indecopi has shifted the burden of proof in patent

FOREIGN TRADE BARRIERS

infringement cases from the patent holder to the alleged copier. Indecopi has issued preliminary injunctions against presumably illegal copies, and in 2006 U.S. pharmaceutical companies won several important patent infringement court cases. However, the U.S. pharmaceutical and agrochemical industries continue to have concerns about Peru's protection of confidential test data submitted in connection with marketing approval procedures. The PTPA contains provisions intended to address these concerns.

Indecopi's Trademarks Office opened 477 infringement cases in 2006 (67 of them *ex officio*), and conducted 423 inspections (30 of them outside of Lima). During the year, the Trademarks Office found that 224 charges were well-founded, issuing 174 fines (totaling almost \$500,000, the highest total ever) and 44 cautions.

Enforcement

Despite some Peruvian government efforts to improve enforcement, including increased raids on large-scale distributors and users of pirated material, piracy remains widespread, due notably to a failure to apply vigorously deterrent penalties. The judicial problems should improve now that Peru has five courts and three prosecutors' offices that can specialize in IPR cases.

SERVICES BARRIERS

Under the services chapter of the PTPA, Peru will assume commitments to provide non-discriminatory treatment and market access in a substantial number of services sectors. These commitments significantly improve upon Peru's WTO commitments in terms of sectors covered and elimination of restrictions in sectors such as advertising, construction and engineering, energy, information, express delivery, and entertainment, including audiovisual and broadcasting. The chapter also commits Peru to increased regulatory transparency and to free transfers associated with the supply of a service.

Financial Services

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.

Telecommunications

Peru is continuing the process of developing a competitive telecommunications market. OSIPTEL, Peru's telecommunications regulator, has established a time frame to lower average mobile termination rates by more than half over a period of four years, from 2005 levels of roughly \$0.21 to under \$0.10 by January 2009. 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 and, increasingly, international arbitration are available for disputes between foreign investors and the government of Peru. Several U.S. companies have chosen to pursue claims through domestic arbitration with mixed results. Under the investment chapter of the PTPA, Peru will assume obligations relating to national treatment and most favored nation

FOREIGN TRADE BARRIERS

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. Foreign carriers can participate in national air and water transportation only if they establish a company within Peru whose initial capital stock is at least 51 percent Peruvian. 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 PTPA, Peru has agreed not to apply most of its nationality-based hiring requirements to U.S. professionals and specialty personnel.

U.S. firms sometimes complain that executive branch ministries, regulatory agencies, the tax agency, and the judiciary often lack the resources, expertise, or impartiality necessary to carry out their respective mandates. Peru's weak judicial branch is a particular problem. The resolution of commercial disputes that end up in Peruvian courts is often delayed, and judicial proceedings can yield results that are not foreseeable based on a review of relevant precedents. U.S. investors have also complained about the reinterpretation of rules and the imposition of disproportionate fines by the tax agency.

The Peruvian government has tried to address institutional weaknesses in the executive branch and has also 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 domestic judicial system. The U.S. Government has worked with the government of Peru both before and in parallel with the PTPA negotiations to ensure the fair resolution of U.S. investor disputes, consistent with Peruvian law. All of the outstanding major disputes have either been resolved or are pending final judicial or arbitration rulings.

ELECTRONIC COMMERCE

The Peruvian government has taken steps to facilitate electronic commerce, including passing laws giving legal status to digital signatures, creating a framework for electronic contracts, and making it illegal to tamper, destroy, or interfere with computer systems or data. The PTPA provides additional commitments Peru will undertake in numerous policy areas related to electronic commerce including rules prohibiting discriminatory treatment of digital products based on their country of origin or the nationality of the firms or persons making them, and the imposition of customs duties on digital products, such as computer programs, videos, images, and sound recordings.

FOREIGN TRADE BARRIERS