

# PERU

## TRADE SUMMARY

The U.S. goods trade deficit with Peru was \$733 million in 2009, an increase of \$363 million from 2008. U.S. goods exports in 2009 were \$4.9 billion, down 20.3 percent from the previous year. Corresponding U.S. imports from Peru were \$4.2 billion, down 27.9 percent. Peru is currently the 36th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Peru was \$8.5 billion in 2008 (latest data available), up from \$7.6 billion in 2007. U.S. FDI in Peru is primarily concentrated in the mining sector.

## TRADE PROMOTION AGREEMENT

The United States and Peru signed the United States-Peru Trade Promotion Agreement (PTPA) on April 12, 2006. Peru's Congress ratified the Agreement in June 2006 and a protocol of amendment in June 2007. On December 14, 2007, the PTPA Implementation Act became law, and the PTPA entered into force on February 1, 2009.

The PTPA is a comprehensive free trade agreement that has significantly liberalized and will continue to liberalize trade in goods and services between the United States and Peru. Under the PTPA, Peru immediately eliminated most of its tariffs on U.S. exports, with all remaining tariffs phased out over defined time periods. The PTPA also includes important disciplines relating to: customs administration and trade facilitation; technical barriers to trade; government procurement; services; investment; telecommunications; electronic commerce; intellectual property rights; transparency; and labor and environmental protection.

## IMPORT POLICIES

### Tariffs

Upon entry into force of the PTPA in February 2009, 80 percent of U.S. exports of consumer and industrial products entered Peru duty free immediately, with the remaining tariffs on these goods phased out within 10 years. More than two-thirds of current U.S. agricultural exports also gained immediate duty-free access to Peru. Tariffs on most of the remainder of U.S. agricultural products will be phased out within 15 years, with all tariffs eliminated in 17 years. Peru also agreed to eliminate its price band system on trade with the United States upon entry into force of the PTPA.

### Nontariff Measures

The government of Peru already has eliminated many nontariff barriers, and, under the PTPA, is subjecting remaining measures, including subsidies and import licensing requirements, to additional 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 five years old, and heavy trucks (weighing three tons or more) over 8 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 after importation, in which case they are exempted entirely from the excise tax. Under the PTPA, Peru may not adopt or maintain prohibitions or restrictions on trade in remanufactured goods, and may not apply to remanufactured goods certain existing prohibitions on trade in used goods. This commitment opens 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.

## **GOVERNMENT PROCUREMENT**

Since 2002, Peru has applied a 20 percent price preference to bids by Peruvian firms in government procurement. The price preference may no longer be applied against U.S. companies bidding in procurement covered by the PTPA. The PTPA requires that procuring entities use fair, nondiscriminatory, and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Also, under the PTPA, U.S. suppliers are permitted to bid on procurements of most Peruvian central government entities, including state-owned enterprises, such as Peru's oil company and Peru's public health insurance agency, on the same basis as Peruvian suppliers. The anticorruption provisions in the PTPA require Peru to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

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

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Peru was listed on the Watch List in the 2009 Special 301 report. As a result of the PTPA, Peru enhanced its IPR legal framework significantly to strengthen IPR protection and enforcement. Among the many improvements, Peru amended its law on industrial property, as well as related laws and regulations to put in place state-of-the-art protections for trademarks and patents. For instance, Peru has developed an online system for registering and maintaining trademarks. Peru also ensures that the first person to acquire a right to a trademark or a geographical indication (GI) has priority and exclusivity with respect to that trademark or GI. Notwithstanding the improvements to Peru's IPR legal regime, piracy rates are high and the problem of counterfeit clothing and toys continues due to inadequate enforcement.

## **SERVICES BARRIERS**

### **Telecommunications**

In recent years, U.S. companies have complained that Peru's telecommunications regulator (OSIPTEL) has not done enough to lower the average mobile termination rates in the country, which has resulted in significant barriers to competition in the wireless sector. The current maximum rate scale, which U.S. companies claim is well above cost, expired at the end of 2009. In mid-2009, OSIPTEL began the process through which it will establish new rates, but due to several administrative and legal delays, the process has not yet been completed and new rates for 2010 have not yet been established. Continued oversight and review of these rates by OSIPTEL will be important to achieving progress in addressing concerns raised by suppliers. The United States will urge OSIPTEL to establish new rates as soon as possible.

## **INVESTMENT BARRIERS**

The PTPA establishes a secure and predictable legal framework for U.S. investors operating in Peru. Under the PTPA, U.S. investors and their investments are accorded national and most favored nation treatment, and U.S. investors are permitted to make financial transfers freely and without delay. The PTPA applies international legal standards for expropriation and compensation, and provides for binding international arbitration for the resolution of investment disputes. In most circumstances, the PTPA

guarantees U.S. investors the right to establish, acquire, and operate investments in Peru on an equal footing with domestic investors.

Peruvian law prohibits majority foreign ownership in the broadcast media sector. Foreigners are also restricted from owning land or investing in natural resources located within 50 kilometers of its border, though special authorization to operate within those areas may be granted. 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 agreed not to apply most of its nationality-based hiring requirements to U.S. professionals and specialty personnel.

U.S. firms remain concerned 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. 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 made efforts at 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.