

# PERU

## TRADE SUMMARY

The U.S. goods trade deficit with Peru was \$2.1 billion in 2011, an increase of \$386 million from 2010. U.S. goods exports in 2011 were \$8.3 billion, up 23.2 percent from the previous year. Corresponding U.S. imports from Peru were \$6.2 billion, up 23.3 percent. Peru is currently the 30th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Peru was \$7.9 billion in 2009 (latest data available), up from \$5.6 billion in 2009. U.S. FDI in Peru is led by 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 resulted in significant liberalization of trade in goods and services between the United States and Peru which the Parties will continue in the future. 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.

In December 2009, the United States announced its intention to enter into an Asia-Pacific trade agreement called the Trans-Pacific Partnership (TPP), with the objective of shaping a high standard, broad-based regional agreement. This agreement will create a potential platform for economic integration across the Asia-Pacific region, a means to advance U.S. economic interests with the fastest-growing economies in the world, and a tool to expand U.S. exports, which are critical to U.S. economic recovery and the creation and retention of high-paying, high-quality jobs in the United States. In addition to Peru, the TPP negotiating partners currently include Australia, Brunei, Chile, Malaysia, New Zealand, Singapore, and Vietnam. Japan, Canada, and Mexico also have expressed interest in joining the negotiations.

## IMPORT POLICIES

### Tariffs

Under the PTPA, more than 80 percent of U.S. exports of consumer and industrial products now enter Peru duty free. All remaining tariffs on these goods will be phased out by 2018. More than two-thirds of current U.S. agricultural exports enter Peru duty free and remaining tariffs on U.S. agricultural exports to Peru will be completely phased out by 2026. As a result of commitments made in the PTPA, Peru has eliminated its price band system on trade with the United States.

### 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), used tires, cars over five years old, and heavy trucks (weighing three tons or more) over eight years old. The value-added tax does not apply to charitable donations, although this charitable exemption requires prior registration by the importer with APCI (the Peruvian Government's Agency for International Cooperation). A 45 percent excise tax applies to used cars and trucks receiving import permits (compared to 20 percent for a new car). However, if these used cars and trucks undergo refurbishment in an industrial center in the south of the country (located in Ilo, Matarani, or Tacna) after importation, no excise tax applies.

### **Remanufactured Goods**

Under the PTPA, Peru may not adopt or maintain prohibitions or restrictions on trade in certain remanufactured goods, and Peru 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.

In November 2010, Peru enacted a measure that, among other things, requires exporters of remanufactured automotive parts to provide documentation from the original manufacturer consenting to the remanufacture and exportation of the automotive part. The United States has engaged the government of Peru regarding the consistency of this measure with Peru's obligations under the PTPA.

### **GOVERNMENT PROCUREMENT**

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 can bid on procurements of most Peruvian central government entities on the same basis as Peruvian suppliers. This includes procurements by state-owned enterprises, such as Peru's oil company and Peru's public health insurance agency. The anticorruption provisions in the PTPA require Peru's domestic law to treat bribery related to trade and investment, including in government procurement, as a criminal offense or subject it to non-criminal penalties where criminal responsibility is not applicable.

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

### **INTELLECTUAL PROPERTY RIGHTS PROTECTION**

USTR listed Peru on its 2011 Special 301 Watch List. As a result of the PTPA, Peru enhanced its intellectual property rights (IPR) legal framework and continued to implement its National Strategic Plan to combat counterfeiting and piracy. Among other improvements, Peru continued to strengthen its IPR enforcement efforts, including through significant raids and seizures at ports and well-known markets. Notwithstanding the improvements to Peru's IPR legal regime, piracy and counterfeiting rates remain high. Inadequate resources for law enforcement and the need for improvements at Peru's border and in its judicial system are evident. Piracy over the Internet is a growing problem, especially with respect to music. There is also a continuing need for measures to correct widespread government use of unlicensed software. A further concern is the lack of issuance of deterrent penalties in criminal IPR cases and against businesses found to have engaged in infringing activity. In addition, Peru needs to clarify its system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval of agricultural chemical products. Peru must also clarify its protections for biotechnologically-derived pharmaceutical products, in accordance with provisions of the PTPA.

## **SERVICES BARRIERS**

### **Telecommunications**

In August 2010, Peru's telecommunications regulator (OSIPTEL) established a "glide path" plan to gradually lower the mobile termination rates for all carriers by October 2013. This created a more favorable competitive environment for smaller carriers. While U.S.-affiliated companies were pleased that the final rate in 2013 will be significantly lower, they remain concerned that this rate is based on a historical cost structure that may not reflect current costs, given the downward trend in per-call network costs. Mobile termination rates affect U.S.-affiliated carriers because these companies have a smaller market share in Peru and therefore terminate more calls on another carrier's network. The United States will continue to monitor the rates and to urge OSIPTEL to consider revising rates to reflect up-to-date costs.

### **INVESTMENT BARRIERS**

The PTPA establishes a secure and predictable legal framework for U.S. investors operating in Peru. Under the PTPA, Peru accords U.S. investors and their investments national and most favored nation treatment, and Peru permits U.S. investors 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. Peruvian law also restricts foreigners from owning land or investing in natural resources located within 50 kilometers of its border, although the Peruvian government may grant special authorization to operate within those areas. 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.

Both U.S. and Peruvian 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. and Peruvian investors have also complained about the reinterpretation of rules and the imposition of disproportionate fines by Peru's tax agency, *Superintendencia Nacional de Administracion Tributaria*.