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## **II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES**

### **(1) INTRODUCTION**

1. The period since Peru's last Review has been characterized by the consolidation of the far-reaching changes made to the Peruvian legal and institutional framework in the early 1990s. In this regard, a major step was the adoption of the Marrakesh Agreement Establishing the World Trade Organization, which was ratified by Peru in December 1994 and is an integral part of the domestic legislation. Trade policy has also sought to consolidate the process of deregulation and liberalization with the ultimate aim of creating non-distorting incentives to encourage an efficient allocation of resources and foster the development of economic activities according to market signals. In parallel with its participation in the multilateral trading system, Peru takes part in regional integration schemes within the Andean Community and the Latin American Integration Association, as well as in the Asia-Pacific Economic Cooperation forum and the negotiating groups of the Free Trade Area of the Americas.

### **(2) TRADE POLICY FORMULATION AND IMPLEMENTATION**

#### **(i) General legal and institutional framework**

2. Peru's legal and institutional framework underwent extensive modifications in the early 1990s, including the adoption of a new Constitution in 1993. The latter defines Peru as an unitary republic organized under the principle of separation of powers. The legislative power resides in a unicameral Congress elected for a period of five years and comprising 120 representatives. Under the Constitution, the Congress is responsible for drafting and approving laws and legislative resolutions and approving treaties. By legislative decree, the Congress may delegate to the executive power the authority to legislate over particular matters and for a specified period as established in the authorizing law.

3. The President of the Republic is the Head of the State, and is elected by direct suffrage, together with two Vice-Presidents, for five-year terms. The Constitution grants the President the power to direct the general policies of the Government; direct foreign policy, and negotiate and ratify treaties; introduce extraordinary measures in economic and financial matters through emergency decrees that have force of law; and regulate import tariffs. The direction and management of public services are entrusted to the Council of Ministers, and to individual ministers in matters pertaining to their offices. The President of the Republic nominates and removes the President of the Council of Ministers, whose responsibilities include the coordination of ministerial functions and the authorization of legislative decrees, emergency decrees, and other decrees or resolutions as specified in the Constitution and laws.

4. The judicial power is composed of administrative bodies, and jurisdictional organs, namely, the Supreme Court and other courts and tribunals. The President of the Supreme Court is also the President of the judicial power. Judges and prosecutors are nominated by the National Council of Magistrates, an independent organ of the judicial power; justices of the peace are selected by popular election. The Constitution also established an autonomous office of public defender of constitutional rights and fundamental personal rights. The public defender is elected (and removed) by the Congress.

5. With the aim of consolidating the economic reforms introduced in the early 1990s, the Constitution of 1993 included specific articles defining key elements of the Peruvian economic regime. In particular, the Constitution established national treatment for foreign investment, although a reciprocity clause stipulates that if a country adopts discriminatory measures that prejudice national

interests, the State may adopt similar measures. Restrictions apply to foreign investment within fifty kilometres of the border. Under the Constitution, the State guarantees the unrestricted possession and disposal of foreign currency, as well as the protection of free competition, in particular by combatting the abuse of dominant or monopolistic market positions. The Constitution defined the Central Bank as an autonomous entity charged with preserving monetary stability, and gave the Superintendency of Banking and Insurance control over banks, insurance companies, and other entities that receive deposits from the public.

6. Departing for an otherwise generally neutral institutional framework, the Constitution stipulated that the State must grant preferential support to agrarian development, and promote small businesses in all forms. The Constitution also stipulated that, with the exception of tariffs, taxes and exonerations may be established, modified or derogated exclusively by law or by legislative decree. The Constitution gives the executive power the right to modify tariffs rates through supreme decrees, without Congressional involvement.

## **(ii) Trade policy objectives and formulation**

7. Within the context of the macroeconomic and structural reforms, implemented since the early 1990s, Peru's trade policy has been aimed at consolidating the process of deregulation and liberalization of the trade regime. As such, the stated goal of trade policy formulation has been to create non-distorting incentives that allow an efficient allocation of resources and foster the development of economic activities according to market signals. Through its participation in regional and multilateral agreements, Peru has tried to enhance access to international markets so as to generate economies of scale and specialization.

8. Since Peru's previous Review, there have been no significant changes to the structure of trade policy formulation. The Ministry of Economy and Finance (MEF) is in charge of formulating and implementing economic policy in general, and trade policy in particular. The Ministry of External Relations represents Peru in international forums, in coordination with other ministries and state agencies. Other state bodies supporting the implementation of trade policy include the Customs Superintendency, in charge of supervising trade operations and administrating and collecting all taxes related to external trade; the Ministry of Industry, Tourism, Integration and International Trade Negotiations (MITINCI), responsible for international trade negotiations and regional integration policy; and the National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI), in charge of monitoring enacted legislation to preserve free and fair competition conditions. INDECOPI is also the main agency responsible for the protection of intellectual property rights and implementing contingency measures. Two state agencies are involved in the promotion of Peruvian exports: PROMPERU and PROMPEX (Chapter III(3)(vi)).

9. The role of the private sector in policy formulation has remained unchanged since Peru's last Review, its participation is still largely channelled through professional associations representing different enterprises. These associations participate on an ad-hoc basis in coordination meetings with the relevant ministries and agencies.

## **(iii) Main trade laws and regulations**

10. The Constitution is supreme over all other statutes. Congressional approval and presidential ratification are required for the entry into force of international treaties that affect national sovereignty, financial obligations or taxes, such as the WTO Agreement and certain regional arrangements. Once approved and ratified, international treaties become an integral part of the Peruvian legislation and thus do not require further legislative implementation to be applied or invoked before the domestic courts.

11. In addition to Constitutional articles defining key principles of economic management, Legislative Decree No. 668 of 14 September 1991 established the general framework for domestic commerce and external trade. It requires the State to guarantee the freedom to: engage in commerce and trade as a fundamental condition for Peru's development; hold and use foreign currency, as well as the free convertibility of the national currency under a single exchange rate regime; and engage in foreign trade unimpaired by prohibitions or non-tariff restrictions except when, for reasons such as safety or security, approved by the Council of Ministers and endorsed by the Ministry of Economy and Finance. Legislative Decree No. 668 also requires the State to ensure that standards and technical regulations do not constitute an obstacle to the free flow and use of goods and services in external and domestic transactions, and prohibits any type of exclusive right or other monopolistic restriction affecting the production or marketing of goods and services.

12. Peru's trade regime is complemented by a liberalized investment regime and by several regulations enacted since Peru's previous Review including in the areas of customs procedures, competition policy, intellectual property and government procurement.

### **(3) FOREIGN INVESTMENT REGIME**

13. As mentioned earlier, the Constitution of 1993 established equal treatment for foreign and national investment unless an exception is required to ensure reciprocity. This reflects provisions in Legislative Decree No. 662 of 29 August 1991 on foreign investment promotion, which granted equal treatment to national and foreign capital, permitting foreign investment in any sector without prior authorization. Once made, foreign investment must be registered with the CONITE, which is charged with proposing and executing national policy on foreign investment.

14. Legislative Decree No. 662 guarantees foreign investors non-discriminatory treatment; free remittance of profits and dividends, once applicable taxes have been paid; free capital repatriation; unrestricted access to domestic credit; acquisition of technology and royalty remittance; freedom to acquire shares owned by nationals; freedom to contract abroad insurance for investments in Peru; and the possibility of protecting such investment through law stability agreements concluded with the State. These agreements have contract-law status and abide by the general provisions on contracts established in the Civil Code.

15. Within the framework of the foreign investment promotion law, CONITE is entitled to conclude, on behalf of the State and before the investment and related registration is made, law stability agreements with foreign investors and the receiving company. The Law for the Growth of Private Investment (Legislative Decree No. 757 of 8 November 1991) extended this possibility to national investors. Benefits granted through these agreements extend for a ten-year period (or longer in the case of concessions, to cover the entire period of the concession) and involve mainly a pledge by the State that the investment covered will not be affected by changes to: national treatment; to the income tax regime in force on the date the agreement is signed; or to the regime of free availability of foreign currency and of unrestricted remittance of profits, dividends, capital and other income received by the investor.

16. As a counterpart to the above benefits, foreign investors engage to invest at least US\$2 million within two years; or not less than US\$500,000, provided that either 20 jobs or more are created, or not less than US\$2 million in exports are generated within three years after the date the agreement is signed. The stability regime applies to the receiving company for the same term as the investor and includes the guarantee of stability of conditions for labour hiring, export promotion schemes, and the income tax regime. The stability regime applies to new investments or capital expansion as well as to privatizations or concessions by the State. As at December 1999, some

332 stability agreements had been concluded covering investments worth some US\$8 billion, of which some 86% corresponded to foreign investment (investment patterns are described in Chapter I(4)).

17. Peru's general investment framework is complemented by sectoral or regional provisions, including a law to promote investment in the Amazon (Chapter III(4)(iv)); a law to promote private investment in telecommunications (Chapter IV(6)(iii)); a law for the promotion of the agricultural sector (Chapter III(4)(iv)); a general mining law (Chapter III(4)(iv) and Chapter IV(4)); a banking and insurance law (Chapter IV(6)(ii)); and a regulation promoting private investment in public infrastructure and other public services (Supreme Decree 059-96-PCM of 27 December 1996).

18. Peru's investment framework is also complemented by bilateral, regional, and multilateral arrangements granting guarantees and protection to foreign investment. In April 1991, the Congress ratified Peru's adhesion to the Convention Establishing the Multilateral Investment Guarantee Agency (MIGA) of the World Bank. Peru has also accepted the Convention Establishing the International Center for the Settlement of Investment Disputes (ICSID), allowing investment-related disputes involving the Peruvian State to be settled within the ICSID framework.

19. In the context of the Andean Community, Peru has adopted several provisions to promote investment within the subregion, including Andean Decision 40, which approved the agreement among Andean countries to avoid double taxation and the standard agreement for executing agreements on double taxation with third countries; and Decision 291, which established a common regime for the treatment of foreign capital and trade-marks, patents, licensing agreements, and royalties.

20. As at December 1999, Peru concluded bilateral agreements for the promotion and protection of investments with the following countries: Argentina, Australia, Bolivia, Chile, China, Colombia, the Czech Republic, Denmark, Ecuador, El Salvador, Finland, France, Germany, Italy, Malaysia, the Netherlands, Norway, Paraguay, Portugal, the Republic of Korea, Romania, Spain, Sweden, Switzerland, Thailand, the United Kingdom, and Venezuela. Agreements with other countries were under negotiation in early 2000. In addition, the Financial Agreement on Investment Incentives was concluded with the United States in December 1992, allowing the Overseas Private Investment Corporation (OPIC) to issue insurance, re-insurance or guarantees to cover U.S. investments in Peru.

#### **(4) INTERNATIONAL RELATIONS**

##### **(i) World Trade Organization**

21. The Marrakesh Agreement Establishing the WTO was ratified by the Peruvian Congress on 18 December 1994 through Legislative Resolution No. 26407. As stated in the Constitution, WTO agreements are ranked as law in national legislation and may be invoked before national courts. As required by the Marrakesh Agreement, Peru has made several notifications to the WTO (Table AII.1).

22. Various domestic regulations have been enacted or amended to harmonize them with Peru's international obligations and thus facilitate their application. Domestic regulations concerning the WTO Agreement on Implementation of Article VI of the GATT 1994 and the Agreement on Subsidies and Countervailing Measures were adopted through Supreme Decree No. 043-97-EF of 29 April 1997. Similarly, the Agreement on Safeguards and the Agreement on Textiles and Clothing were regulated through the adoption of Supreme Decree No. 020-98 of 18 December 1998. With respect to the Agreement on Implementation of GATT Article VII (on customs valuation), Peru

requested a waiver from its obligation from 1 April 1999 to 1 April 2000, which was granted under specific terms (Chapter III(2)(ii)).

23. New regulations have also been enacted to incorporate into domestic regulations Peru's international obligations concerning intellectual property rights (Chapter III(4)(viii)). The authorities indicated that Andean Decision 344, which is part of the Peruvian legislation, was under revision in early 2000 to assure its consistency with the provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, and was scheduled to be approved at an Andean Ministerial Meeting in April 2000.

24. In a statement prepared for this Review, the Peruvian authorities indicated that the conclusion of the Uruguay Round and the establishment of the World Trade Organization contributed to the consolidation of the unilateral liberalization and economic reforms initiated in Peru in the early 1990s. In this context, Peru welcomed, especially, the resulting strengthening of the multilateral trading system and its increased transparency and predictability. However, the authorities noted that in some areas actual results did not meet the expectations generated at the conclusion of the Uruguay Round. In particular, in sectors such as agriculture or textiles and clothing, they were concerned about the limited level of liberalization achieved so far. The authorities also noted that weak disciplines with respect to the adoption of anti-dumping measures were resulting in the abuse of this instrument for protectionist purposes.

25. Peru has been involved in only a few cases under the WTO dispute settlement mechanism. In January 1998, Brazil requested consultations with Peru concerning a Peruvian subsidy investigation against imports of buses from Brazil<sup>1</sup>; consultations with Brazil took place in Lima, and INDECOPI's Dumping and Subsidies Commission decided not to impose countervailing duties (Chapter III(2)(vi)). Peru applied to join consultations requested by Hong Kong, China to consider Turkey's restrictions on imports of textiles and clothing products as well as consultations requested by the European Union with Chile concerning the Special Sales Tax on spirits.<sup>2</sup> In 1995, Peru requested consultations with the European Union regarding the trade description of scallops<sup>3</sup>; this case was solved through the adoption of a new French order.<sup>4</sup>

## **(ii) Preferential agreements**

26. Despite Peru's long-standing participation in the regional integration processes within Latin America, the share of reciprocal preferential trade in total trade remains relatively modest. In 1998, less than one third of Peru's total imports originated in members of the Latin American Integration Association (LAIA), including those in the Andean Community, and less than 20% of that total was granted preferential treatment. The share of Peruvian exports benefiting from negotiated preferential arrangements was lower: only around 18% of Peru's total exports destined to LAIA countries (Chart II.1).

27. As at July 1999, tariff preferences granted by Peru to other Andean Community countries were substantial; in particular, imports from Bolivia were almost completely liberalized (Tables II.1 and AII.2). Although preferences covered a wide product range, Peru's actual imports from its Andean partners remained relatively concentrated, with some 45% of all imports taking the form of mineral fuels and oils (HS 27). In contrast, with the exception of preferences granted to Chile, Peru's integration efforts with other LAIA countries appeared relatively modest.

<sup>1</sup> WTO document WT/DS112/1 of 9 January 1998.

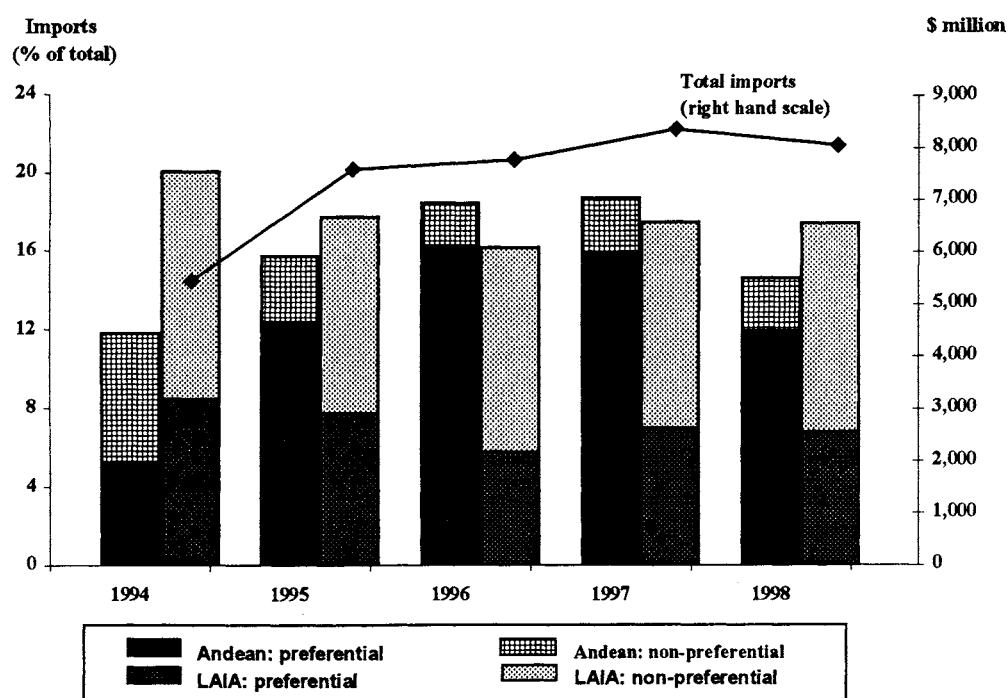
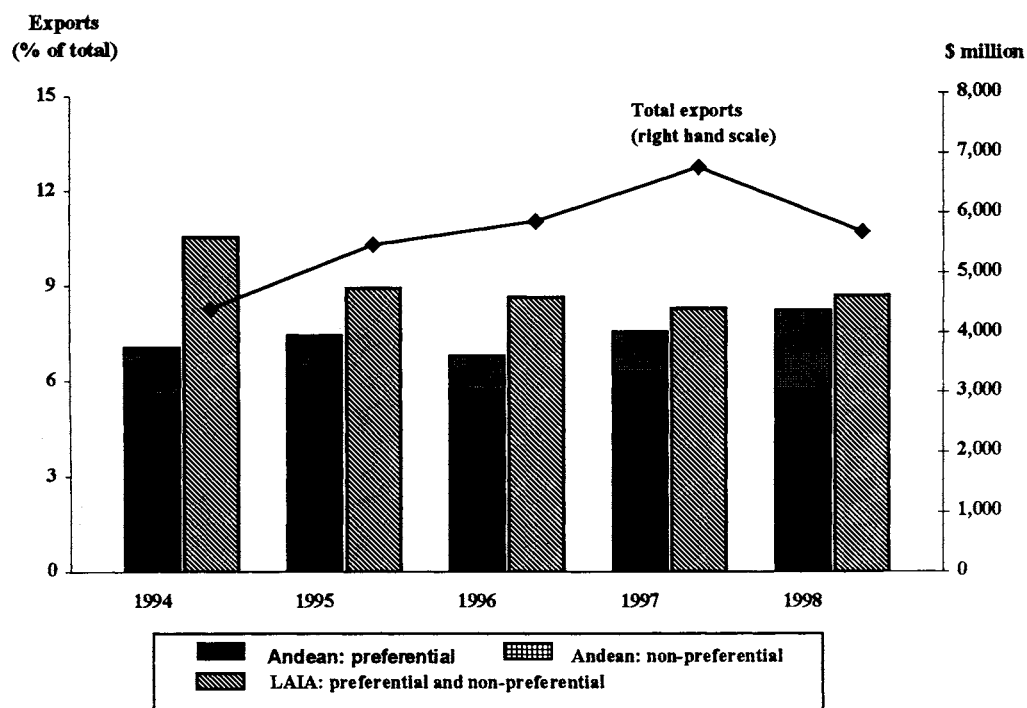
<sup>2</sup> WTO document WT/DS29/4 of 28 February 1996 and WT/DS87/2 of 30 June 1997.

<sup>3</sup> WTO document WT/DS12/1 of 25 July 1995.

<sup>4</sup> WTO document WT/DS12/12 of 19 July 1996.

Chart II.1

Trade with LAIA and Andean Community countries, 1994-98



Source: ADUANAS, *Boletín Estadístico Intercambio Comercio del Perú con los Países de ALADI y CAN*, various issues.

**Table II.1**  
**Peru's average preferential tariff for LAIA and Andean Community countries**  
 (Per cent)

	Total	Average tariff (%)		
		Agriculture, hunting, forestry & fishing	Mining and quarrying	Manufacturing
		(1)	ISIC Code <sup>a</sup> (2)	(3)
<b>LAIA</b>				
Argentina	13.4	14.5	12.0	13.4
Brazil	13.3	14.8	11.9	13.3
Chile	8.0	6.8	0.9	8.2
Mexico	13.3	14.8	11.8	13.2
Paraguay	13.5	14.5	12.0	13.4
Uruguay	13.5	14.8	11.9	13.5
<b>Andean Community</b>				
Bolivia	0.1	0.3	0.2	0.1
Colombia	3.4	1.4	0.3	3.5
Ecuador	3.3	1.5	0.3	3.5
Venezuela	3.7	1.5	0.3	3.9
<b>No. of tariff lines</b>	<b>6,890</b>	<b>393</b>	<b>114</b>	<b>6,382</b>
<i>Memorandum:</i>				
Average MFN tariff	13.6	14.9	12.0	13.6

a Excluding electricity, gas and water (1 line).

Source: WTO Secretariat estimates, based on data provided by the Peruvian authorities.

(a) The Andean Community

28. Peru is a signatory to the 1969 Cartagena Agreement, which established the basis for the Andean Community. The Community has implemented significant changes over the last six years, including the adoption in 1995 of a new strategic design, which specified three major lines of action: the intensification of the integration process, in particular through the introduction of services in the liberalization agenda; the improvement of the Community's external projection through the adoption of common positions in international forums and in particular in the negotiations of integration processes with other countries or blocks including with MERCOSUR; and the development of a social agenda. The Cartagena Agreement was amended in March 1996 through the adoption of the Trujillo Protocol, which introduced important institutional reforms and led to the addition in June 1997 of three new chapters to the Agreement.<sup>5</sup>

29. In June 1998, the Andean Community adopted a framework of principles and provisions for liberalizing trade in service by the year 2005 (Andean Decision 439). This framework applies to all modes of supply, and to all service categories except services provided in the exercise of governmental authority and air transport services.

30. Peru suspended its participation in the integration process in August 1992 (Decision 321), motivated in part by its reluctance to abandon its two level tariff structure in favour of the four-tiered

<sup>5</sup> Detailed information on the Andean Community integration process may be found online at: <http://www.comunidadandina.org>.

common external tariff (CET).<sup>6</sup> The Decision authorized Peru to subscribe to bilateral agreements with Andean partners in order to maintain trade flow levels. In April 1994, Decision 353 established a programme for Peru's progressive reintegration into the free-trade area (FTA). Although this programme was only partially completed, it allowed the incorporation of one third of tariff items into the FTA. Finally in June 1997, an agreement was reached for Peru's full and gradual incorporation into the FTA by December 2005 (Decision 414), although no time frame or terms were established for Peru's adoption of the CET.

(b) Latin American Integration Association

31. In addition to the Andean integration process, Peru has signed several agreements under the LAIA. Agreements in which all LAIA members participate are designated as regional, while others are classified as partial scope agreements. As of March 2000, six regional agreements were in force: granting preferential access to less developed countries in the region, namely Bolivia, Ecuador and Paraguay (respectively Regional Agreement Nos. 1, 2 and 3); establishing specific preferential tariff concessions within the region (Regional Agreement No. 4); establishing the framework for the development of scientific and technical cooperation (Regional Agreement No. 6); and establishing cultural, educational and scientific cooperation and exchanges (Regional Agreement No. 7).<sup>7</sup>

32. Partial scope agreements signed by Peru include bilateral agreements with Argentina, Brazil, Chile, Cuba, Mexico, Paraguay, and Uruguay. As noted earlier, with the exception of the agreement with Chile, tariff concessions under the LAIA are relatively limited (Tables II.1 and AII.2). The agreement with Chile (LAIA Economic Complementarity Agreement No. 38 of 22 June 1998) is aimed at establishing a free-trade area between the two countries by 2016. It established immediate, complete liberalization for over one third of all tariff items, and a schedule for progressive liberalization of the remaining products over 3, 5, 6, 8, 10, 15, or 18 years. It also included specific provisions for safeguard measures, government procurement, sanitary and phytosanitary measures, and rules of origin.

33. In April 1998, Peru and its Andean partners, along with MERCOSUR countries, agreed on a framework for negotiations to create a free-trade area.<sup>8</sup> Although the overall negotiations between the two blocks came to a standstill, they resulted in a new partial scope agreement between the Andean Community and Brazil, which entered into force in Peru on 15 August 1999.<sup>9</sup> The agreement established mutual tariff concessions, and incorporated provisions covering rules of origin, customs valuation, anti-dumping and countervailing measures, safeguards, technical barriers to trade, sanitary measures, and dispute settlement. The Peruvian authorities indicated that through this agreement Peru obtained preferential treatment for some 98% of its exports to Brazil, while 44% of Peruvian imports from Brazil were granted preferential treatment.

(c) Other integration processes

34. Peru has participated in the Asia-Pacific Economic Cooperation forum (APEC) for several years and was fully incorporated into the forum in November 1998. Through its participation, Peru is seeking greater access to APEC markets as well as the promotion of its image to attract Asian and

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<sup>6</sup> GATT (1994).

<sup>7</sup> A comprehensive description of LAIA's integration processes may be found online at: <http://www.aladi.org>.

<sup>8</sup> Partial Scope Agreement under Article 14 of the Montevideo Treaty No. 11, 16 April 1998.

<sup>9</sup> Partial Scope Agreement of Economic Complementarity No. 39, 12 August 1999.



Pacific investors.<sup>10</sup> Peru also participates in the various negotiating groups of the Free Trade Area of the Americas (FTAA).<sup>11</sup>

**(iii) Other arrangements**

35. In addition to the negotiated integration schemes, Peru benefits from unilateral concessions granted by certain countries through Generalized System of Preferences schemes. GSP is granted to Peruvian exports by Australia, Bulgaria, Canada, the Czech Republic, the European Union, Hungary, Japan, New Zealand, Poland, Russia, the Slovak Republic, Switzerland and the United States. The Peruvian authorities indicated that these schemes have contributed to the diversification of Peru's export supply although, as noted in Chapter I(3)(i), the bulk of Peruvian exports, included those covered under GSP schemes, is made up of primary and processed primary products. The Peruvian authorities highlighted the importance of the concessions granted by the European Union, Japan, and the United States.

36. In addition to their general GSP regimes, the European Union and the United States have established special regimes to promote alternatives to coca cultivation and production by offering Andean countries broader access to their markets. The Andean Trade Preference Act appears to have contributed to the significant increase of Peruvian exports to the United States (Table AI.4). In 1998, among the ten principal Peruvian exports to the United States, eight products received special treatment under the ATPA regime, including manufacturing products (mainly jewellery), agricultural and agro-industrial products (coffee, tea, and fish) and mining products. The ATPA offers three main advantages over the U.S. general GSP: it covers more tariff categories; imports under ATPA are not subject to GSP competitive-need and country-income restrictions; and qualifying rules for individual products are more liberal in terms of local-content requirements.

37. Between 1994 and 1997, some 93% of Peruvian exports to the European Union were granted duty-free treatment, of which 34% corresponded to special concessions under the EU Andean GSP scheme and 59% corresponded to MFN duty-free rates. Peruvian products benefiting from the EU import regime are mainly primary resources and agricultural products. The Peruvian authorities indicated that these preferences have resulted in a substantial diversification of Peruvian exports; the number of products exported increased from 865 items in 1993 to 1,322 in 1997. The agriculture sector was the main beneficiary of the EU GSP as, according to Peruvian estimates, some 85% of agricultural exports took place under the scheme.

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<sup>10</sup> Information on APEC activities and Peru's Individual Action Plan may be found online at: <http://www.apecsec.org.sg>.

<sup>11</sup> Information on the integration process of the Western Hemisphere may be found online at: <http://www.ftaa-alca.org>.