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## **BUILDING COMPETITIVE MARKETS IN PERU: THE CASE FOR INDECOPI\***

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*"INDECOPI is a passionate concept, a new idea ...  
that overcomes many traditional ways of doing things."*  
Douglass C. North

### **INTRODUCTION**

The 'Washington Consensus' policies prescribed by the international monetary community, adopted by most Latin American countries since the 1980s, stressed that good economic performance required liberalized trade, macroeconomic stability, getting prices right and minimum State intervention.<sup>1</sup> Over the last decades, a new consensus has gradually emerged concerning fundamental issues neglected by these prescriptions. In particular, there is now greater awareness that macroeconomic policies, per se, may not necessarily lead to long-term economic growth. In addition, making markets work requires sound financial regulation, competition policies, and the establishment of clear property rights, to name but a few fundamental issues neglected by the original consensus. Likewise, policy designers and academics today increasingly recognize the importance of parallel institutional reforms, without which these policies and regulations could not be successfully implemented.

The study of institutional reforms and policy implementation in Latin America is still in a rather embryonic stage, though noteworthy contributions have begun to be made.<sup>2</sup> Accordingly, the broad purpose of this paper is to present a case study of an important Peruvian experience in this field -particularly related to competition and trade policies and intellectual property protection-, from which policy-analysts and policy-makers may

derive conceptual and practical insights into the conditions under which future reforms may succeed.

By the summer of 1999, President Fujimori's constitutionally questionable bid for a second re-election was well under way. Around that time, it was widely believed in Peru that most public institutions, as well as many private ones, had been captured by the Executive's electoral machinery. Surprisingly, as widespread mistrust of the Government reigned, an independent opinion poll among top businessmen revealed that INDECOPI, a 'Fujimorian' regulatory agency, was the country's most trusted institution, ahead of the Catholic Church.<sup>3</sup>

Following the debacle of the Fujimori regime, the transitory Government set up to lead the country to new elections exposed the extent of the corruption and 'politisation' of the Peruvian bureaucracy during the latter half of the 90s. Consequently, in the April 2001 presidential elections, the parties linked to the Fujimori administration received little over 1% of the popular vote. Yet, while most everyone associated with Fujimori's government was being politically ostracised, four key high-ranking senior officials from INDECOPI were recruited by the transitory Government's Ministry of Economy and Finance to head its team of policy advisors.

What is INDECOPI? How did it come to be? And, how did this start-up agency consolidate and maintain its image of independence in a sea of bureaucratic corruption and public scrutiny? These are a few of the questions we will try to address in the following pages.

INDECOPI is the Spanish acronym for Peru's National Institute for the Defence of Competition and for the Protection of Intellectual Property, a multiple registry of intellectual property rights and an administrative court for competition related issues, charged with being both the promoter and the arbitrator of the economic model adopted at the turn of the 90s. At first sight, INDECOPI seems an awkward looking patchwork of

regulatory powers, for it comprises under a common administration a series of very different functions loosely connected by the common denominator that they all aim to encourage and strengthen the development of a well functioning market economy. Commonly, in most western countries, such regulatory powers are dispersed among different Government entities. Thus, for example, INDECOPI encompassed responsibilities shared in the United States by the Department of Commerce, the National Institute of Standards and Technology, the Patent and Trademark Office, the Department of Justice Antitrust Division, the Federal Trade Commission, the Bankruptcy Courts, the Court of Federal Claims and the Court of Appeals for the Federal Circuit.

In this paper we will attempt to explain how this 'hybrid' agency developed and positioned itself as an independent technocratic public institution. On the road to its institutionalisation, several factors, including the wisdom of its design, luck, resourceful leadership and management, and a lot of 'learning-by-doing', contributed to this result.

In Section I we introduce the reader to the main characteristics of the Peruvian political economy around the time of President Fujimori's surprising electoral victory in 1990, and explain the policies initially undertaken by his administration. We will argue that Fujimori's embrace of neo-liberal reforms, and the ensuing restructuring of the institutionally weak State that he inherited, were the result of political necessity rather than ideological preference. We then explore the initial attempts of the Fujimori Administration at conciliating its populist propensities with the institutional reforms required in order to attain the private sector's confidence in the newly enacted regulatory framework. After detailing the shortcomings of the Government's first experiments at institutional reform, we review the circumstances that surrounded the establishment of INDECOPI around the end of 1992, and the intuitive insights behind its original design. The section concludes with a brief account of INDECOPI's first year and a half of operations and the problems the institution soon faced.

In the latter two sections we chart INDECOPI's evolution from a publicly obscure and internally divided agency to one of Peru's institution-building success stories. Section II discusses the turn of events that succeeded the appointment of INDECOPI's second President, putting particular emphasis on the organisational innovations introduced and the managerial decisions taken by the agency's new administration, as well as its first achievements in regulatory activity.

Section III details the strategies employed by INDECOPI's administration to consolidate the institution. A study of selected cases between 1997 and 2000 will reveal how INDECOPI obtained widespread recognition and, later, proved capable of resisting political pressures during the Executive's re-election bid. We then turn our attention to data relevant to INDECOPI's performance over the last few years that, though scarce, can cast light on the reasons for the agency's relatively thriving institutionalisation and whether or not the institution has succeeded in fostering a competitive market in Peru.

There are many lessons that can be drawn, as well as comparisons that can be made from INDECOPI's experience. On the institutional capacity-building front, several of the managerial strategies adopted by the agency's administration were not peculiar to INDECOPI and, in general, many of the steps taken, as we will show, are observable in other reform processes.

With regards to regulatory institutional design, INDECOPI's organisation is unique and has not been replicated in any other country. Before attempting to determine whether or not the INDECOPI model is 'exportable', we must first discuss if its regulatory design is adequate. These questions are addressed in the Conclusions.

Finally, we conclude by reflecting on the agency's future and the challenges it will face.

## **PART I**

### **INDECOPI: START-UP STAGE (1990-1994)**

#### **THE BACKGROUND: PERU'S INSTITUTIONAL WEAKNESS**

A review of the Peruvian Political Economy before 1990 reveals several trends. On the political front, there is a strong tradition of populism. However, Peruvian populism, unlike that present in other Latin American countries, did not bring about an inward-looking State-led economic development model, at least not until the early 1960s. Instead, the particularly rich variety of Peruvian natural commodities prompted the continuance of a non-interventionist state, reliance on a liberal export-led model and a relatively weak pattern of institutional development.<sup>4</sup> However, while Peru's export-minded experience clearly outlasted that of most Latin American countries, it likewise failed to promote sustainable economic growth.

When moderate reformism began to gain ground in the early 1960s, Peru was almost a full generation behind most of its Latin American counterparts with respect to economic policy-making and management.<sup>5</sup> This policy infancy is perceptible in the naïve industrial promotion activities undertaken by Peruvian governments throughout that decade.<sup>6</sup>

Arguably, the public sector's learning and institutional building processes were disrupted by the radicalisation of the reform and the nationalist-protectionist policies that followed the 1968 military coup. Up to the mid 1970s, Peruvian economic structures were radically altered, as the State became the primary economic player, building-up the international public debt by heavily relying on the cheap sources of credit that were available at that time.<sup>7</sup> The result was an over-arching State, constantly troubled by balance-of-payments and fiscal difficulties, and a public and private sector that inevitably developed the stereotypical negative characteristics attributed to interventionist regimes.<sup>8</sup>

While the 1975 relegation of command within the military Government, and later the return to democracy in 1980, shifted the Peruvian economic orientation increasingly closer to export-minded policies, coherent economic management and fiscal prudence were for the most part subjugated to short-term political and populist goals.<sup>9</sup> The Peruvian State maintained its outsized proportions and continued to abuse the availability of foreign credit until the 1982 debt crisis. Once again, the institutionally weak bureaucracy's mismanagement of the crisis spurred a consensus in favour of nationalist-protectionist policies.<sup>10</sup>

The political style and clientelistic impulses with which the Peruvian heterodox experiments were undertaken between 1985 and 1990 by the García Administration,<sup>11</sup> further accentuated the problems that had haunted the bureaucracy in the previous decade (namely lack of finance, poor policy implementation, lack of coordination between different parts of the bureaucracy, institutional rivalries, lack of accountability and corruption at the upper level, lack of incentives at the lower level, poor morale and inadequate training).<sup>12</sup> Moreover, the economic and social disaster that resulted from these policy prescriptions and their poor implementation, paved the way for a cathartic shift in economic orientation.

## **THE RETURN TO ORTHODOXY**

By 1990, economic crisis and increasing violence had led to a widespread belief that Peru was becoming ungovernable. In the economic field, the new Administration would inherit a monthly inflation rate of around 30% and an official negative GDP growth of 11,6% in 1989.<sup>13</sup>

The second round run-off of the 1990 presidential election pitted Mario Vargas Llosa, the internationally acclaimed author, against an unknown mathematics professor, Alberto Fujimori. In December 1989 Vargas Llosa, a relative newcomer in politics, had

announced his intentions of applying a drastic macroeconomic stabilisation programme upon reaching office, coupled with an equally dramatic structural reform and opening of the economy.<sup>14</sup> In the debates preceding the run-off, Fujimori played on the fears of such 'shock' treatment, offering a gradual heterodox liberalisation of the economy.

In the months following his victory, and before taking office, Fujimori actually had two economic teams working in parallel, one based in Lima preparing the promised heterodox programme and one in Miami designing an orthodox policy package. Ultimately, despite his promises to the contrary, Fujimori would decide on the latter, leading Peru down the road of orthodoxy with a vengeance.

### **Fujimori: Political Populism and Economic Liberalism**

During his decade in power, Fujimori followed the populist path that has long been a trait of Peruvian politics. During the 90s, Fujimori emerged as the personification of political power and reaffirmed the Executive Branch's hegemony over the rest of the State, often using the resources at his disposal to build-up his own personal standing with the electorate.<sup>15</sup> However, at the beginning of his administration, the new government's legitimacy was weak and fragile, having been elected in part as a result of unprecedented tactical voting,<sup>16</sup> lacking a political party to support it and having only a minority in the Congress.

Thus, from the start, the new Administration rushed to consolidate and sustain public support by restoring both the economic and social order absent during a great part of the previous decade. From this perspective, Fujimori's economic policies were not a result of his personal ideological preferences, but rather a pragmatic political decision. He had no time to spare testing heterodox formulas. Confronted with an urgent need of financial resources, international reserves having been depleted by the García Administration, and quick economic results to booster support, the 'Washington Consensus' package was the natural, if not the only, choice.

At first sight, macroeconomic stabilisation and structural adjustment in Peru after 1990 appear to be radical in nature. However, one can argue that the reform process itself began in the mid 1970s, in a rather timid, gradual and contradictory form, only to be disrupted during the García Administration's extremely interventionist heterodox experiments.<sup>17</sup> García's resounding economic policy failure removed the final obstacles to implementation of the neo-liberal reform package,<sup>18</sup> as post-electoral surveys revealed that Vargas Llosa's defeat at the polls did not necessarily imply a rejection of the economic agenda that Fujimori would soon embrace as his own.<sup>19</sup>

The increase in social spending, designed to make the 'Fujishock' politically viable,<sup>20</sup> and the speed with which the policies began to yield results, helped ease public unrest.<sup>21</sup> As hyperinflation was controlled and economic growth picked up, so too did Fujimori's popularity,<sup>22</sup> a correlation he was well aware of. Thus, as long as the economic programme adopted showed results, he would be unwilling to tamper with its prescriptions. This 'pacific coexistence' between political populism and economic liberalism is crucial for understanding institutions that developed and withered under the Fujimori regime.

### **Rewriting the Rules of the Game**

In a nutshell, Fujimori's macroeconomic stabilisation and structural adjustment policies led to the almost overnight abandonment of all forms of ISI, eliminated price controls, freed the exchange rate and interest rates, dramatically liberalised trade, gave equal treatment to foreign investors and initiated a comprehensive tax-reform.<sup>23</sup>

A 180° shift in policy orientation required rewriting the rules of the game. While some 'stage one' reforms, such as price and trade liberalisation, could be carried out directly by the Executive, a drastic legislative overhaul was nonetheless needed.

Initially, after the 'Fujishock' was announced, the Administration was able to strike a temporary alliance with Vargas Llosa's former congressional coalition, thus assuring a relative majority in both chambers of Congress. However, legislative inertia made the enactment of the new legal framework sluggish, leading the Executive to lobby for, and successfully obtained, a delegation of law-making powers to legislate in the fields of 'peacemaking', 'employment promotion' and 'growth of private investment'.<sup>24</sup> As a result, in November 1991 the Peruvian official gazette published an unprecedented amount of Legislative Decrees enacted by the Executive (84 in all), virtually rewriting the legal system. The broad delegation allowed the Fujimori Administration to legislate on a large number of issues, including labour relations and worker's compensation, incentives for private investment, equal treatment of foreign and local investment, banking regulations and capital markets, tax reform, taxation stability regimes, privatisation of State-owned enterprises, among other 'stage two' reforms.

The Executive's audaciousness was not well received by the Congress, which quickly began to revise Fujimori's decrees. The tensions that built-up between the Executive and the Congress, as well as between the Executive and the Constitutional Tribunal and the Judiciary –after the latter two began to analyse the constitutionality of the reforms– would result in Fujimori's auto-coup on April 5 1992. Between that date and January 1 1993, when the newly elected Constitutional Congress would begin to function, the Executive was free to legislate at will, and it was not shy in doing so, enacting a total of 724 Decree Laws (204 in the month of December 1992 alone).

In summary, between November 1991 and late 1992, the Executive swiftly enacted the legal framework necessary to carry out most of the conventional 'stage two' structural adjustment reforms prescribed by the international monetary community. Crucial to our narrative, these reforms included the enactment of new antitrust, consumer protection, commercial advertisement, unfair competition and corporate restructuring laws. The

regulatory capacities contained in the new statutes were largely dramatic innovations to the Peruvian legal system.

### **Populist Propensities and Institutional Reform**

After the initial stabilisation and structural adjustment policies were implemented, the goals of reinstating Peru's international creditworthiness and rebuilding an adequate environment for investment, foreign and local alike, moved to the top of the Government's agenda. The regime was aware that a mere formal change in legislation was not enough to solve its fundamental underlying dilemma: how to restore the private sector's confidence in a public sector that over the preceding two decades had, by and large, well-earned its distrust? In answering this question, Fujimori would appeal to his trademark, populist efficiency-minded pragmatism.

The enforcement of the newly enacted pro-market and competition legislation, as well as the regulatory capacities contained therein, had to be entrusted to the public sector. The natural choice in a rights based system would be, to a large extent, the Judiciary as the institution called to defend the public interest. In the Peruvian case, however, this did not turn out to be the case.

It should not come as a surprise that at the turn of the 90s the Peruvian Judiciary suffered from very low public esteem and a chronic lack of public confidence.<sup>25</sup> Over the years, successive populist regimes had built up the Executive's powers, undermining the Judiciary's political autonomy, interfering in the appointment of judges, providing inadequate funding and furnishing inappropriate infrastructure.<sup>26</sup> As a result, corruption, inefficiency and incompetence were common traits of the Judicial Branch.<sup>27</sup>

Arguably, in order to gain the private sector's confidence in Peru's economic orientation, the delegation of the enforcement of new legal framework to the Judiciary would have required a parallel and monumental institutional overhaul. This not only would have

proven extremely costly, but also time-consuming. The Fujimori Administration needed rapid results, and funding was not a readily available commodity. Thus, the Government initially would decide to create new agencies to which it could entrust the recent legislation. Other political factors probably influenced this decision.

True to his populist style, upon taking office Fujimori echoed the public's concerns regarding the Judiciary, openly criticizing it and stressing the fact "that judges were incompetent, partisan and even accomplices in terrorism".<sup>28</sup> Ultimately, this argument would repeatedly be used to justify the overwhelmingly popular 1992 auto-coup. Though Fujimori offered to reform the Judiciary,<sup>29</sup> his populist propensities clearly were accompanied by a dislike for a strong, assertive, counter-balancing power. Thus, the judicial reform became an instrument to subdue the Judiciary.<sup>30</sup> Delegating the enforcement of the new legal framework to the Judicial Branch would therefore have been counterproductive and largely ineffectual.

## **THE MULTIPLE AGENCIES EXPERIMENT**

Setting up new government agencies with a clean record sheet was the initial Fujimorian approach to regulatory enforcement. However, this rather simplistic approach would soon prove inadequate.

The three newly enacted statutes intended to regulate market competition contained provisions regarding the formation, organisation, powers and procedures of specialized bureaux within the existing Ministry of Industry. In turn, each of these bureaux was to be in charge of enforcing the general provisions of the statute that had created them. Thus, the Antitrust Law gave origin to the 'Multisectoral Free Competition Commission';<sup>31</sup> the Commercial Advertisement Law created the 'National Commission for the Supervision of Advertisement';<sup>32</sup> and the Consumer Protection Law gave birth to the 'Consumer Protection Commission'.<sup>33</sup>

In general, each of these commissions was conceived as a cross between a court and a district attorney, with quasi-judicial powers. They would solve disputes between private actors, granting injunctions but not awarding damages (a function left to the Judiciary), and impose fines on those that infringed the statutes under their area of supervision. Likewise, they could, at their discretion, prosecute and fine actors that they discovered to be infringing these laws. In turn, their decisions could be appealed to the head of their administrative sector -that is, the Minister of Industry. Ultimately, the Minister's decisions could be challenged before the Judiciary.

Several shortcomings can be deduced from the implementation of this 'multiple agencies' approach to regulatory enforcement. First of all, creating new bureaux within a pre-existing Ministry that had often been a key agency used by former State-interventionist regimes, which still loomed in the public's mind, was incongruent with a more general goal of building a favourable pro-market public sector image. Secondly, the institutional weakness that had characterised the administrative bureaucracy during the previous decades obviously had carried over to the new regime; so expanding the Ministry's functions without a parallel broader-ranging State reform just reinforced these weaknesses. Thirdly, since these new bureaux were directly under the control of the Minister of Industry, the 'depolitisation' of the decision-making process was not secured, particularly if the Minister had the power to review and overturn the commissions' rulings. Finally, each commission had different powers, fining capacities and procedures, thus complicating -rather than facilitating- the general public's awareness and understanding of the new legal framework.

On a more positive note, these entities were conceived as 'multisectorial' tribunals; that is to say, they were to be integrated by commissioners with different professional and academic backgrounds. Unlike the Judiciary, where decision-makers are exclusively lawyers, these commissions potentially could produce comprehensive multidisciplinary

rulings. Secondly, the fact that the commissions were new entities implied that their workload was non-existent and would grow over time, while at that time a typical Judge in Lima could be burdened with a backlog of up to 5,000 cases.<sup>34</sup> Lastly, the delegation of the enforcement of a single statute to each commission potentially could yield a 'comparative advantage' in the decision-making process as a result of its specialisation.

Overall, the disadvantages of the 'multiple agencies' approach to policy enforcement seem to outweigh its potential benefits. In addition, it could be argued that the 'virtues' resulting from a reduced workload and specialisation could equally be reproduced within the Judiciary by simply creating new courts, and appointing more judges, exclusively dedicated to enforcing the new legislation. Thus, the advantages of the initial Fujimorian strategy would seem to be even more diluted.

Succeeding events reveal that Fujimori's team of policy-designers quickly became aware of their initial strategy's shortcomings, for within a year they would abandon the 'multiple agencies' experiment in favour of a more comprehensive institutional building approach.

### **THE MULTIPLE-HEADED WATCHDOG APPROACH**

As previously mentioned, in the weeks before legislative powers were to be handed over to the newly elected Constitutional Congress, the Executive rushed to enact a series of Decree Laws that 'fine-tuned' the reforms initiated in 1991. It was during this second legislative spree that the architects of the Government's reforms envisioned the creation of a single autonomous regulatory agency with multiple watchdog functions to enforce the new pro-market and competition statutes. It is revealing to note that one of the persons who pushed for the approval of this new legislation was the then Minister of Industry, Jorge Camet.<sup>35</sup> Carlos Boloña, at the time Minister of Economy and leader of the ultra-orthodox reform process, years later would often publicly state that he signed

the INDECOPI legislation between 'midnight and the cock-crow of the rooster', without giving too much thought to the project.<sup>36</sup>

### **The Underlying Intuition**

The evidence suggests that INDECOPI was a result of a series of improvisations whose logic was probably clearer some time after their adoption. This comment, however, does not seek to underscore the intuitive wisdom that INDECOPI's blueprints would over time bring to light.

Several facts support the thesis that INDECOPI was a result of strong intuitive improvisation rather than thoroughly thought-out design. First of all, an Exposición de Motivos, the customary accompanying statement detailing the purposes of the new legislation, did not follow the publication of INDECOPI's incorporation statute. In fact, the first official publication explaining the logic behind INDECOPI's creation did not come until April 1996, at the time when INDECOPI's legislation was substantially revised.

Secondly, the wide array of functions delegated to INDECOPI, and the manner in which these occurred, is most revealing. The original idea seems to have been to remove the commissions created in November 1991 from the Ministry of Industry and to consolidate them, together with other regulatory capacities related to promoting international trade (antidumping and subsidies legislation and elimination of technical barriers to trade), in a single and more autonomous agency. At some point it was decided that INDECOPI would also absorb INTINTEC's functions -the administrative 'white elephant' from previous regimes in charge of measurements, standards, trademarks, patents and foreign technology. Since INDECOPI was already receiving intellectual property related powers, it was determined that the authority of the Copyright Office, that worked out of the National Library, should also be transferred. Thus, INDECOPI's incorporation statute proclaimed it an agency to 'protect intellectual property' and to 'defend competition'.<sup>37</sup>

However, to facilitate the future expansion of its functions, INDECOPI's charters included an open-ended clause designating "other (roles) to be assigned".<sup>38</sup>

Between the date INDECOPI's by-laws were published and the date when the new Constitutional Congress was to begin functioning, the former was modified twice.<sup>39</sup> Among the 'patches' that were 'sown on' to the institution, the recently created 'Repression of Unfair Competition Commission' was charged with enforcing a new statute that was, to a great extent, redundant and conflicted with the already existing antitrust, consumer protection, commercial advertisement, trademark, copyright and patents legislation.<sup>40</sup> Another curious example of 'patchwork' was the creation of the 'Market Entry and Exit Commission' charged with the extremely dissimilar roles of eliminating bureaucratically created barriers to entry into the marketplace and enforcing the new bankruptcy and corporate restructuring regimes.

Finally, the procedures, powers and fining capabilities of the different entities that were placed under the acronym 'INDECOPI' were not revised, contributing to making the institution an incomprehensible haven for bureaucracy.

Not surprisingly, by the time INDECOPI opened its doors in March of 1993, Boloña himself thought that the final product "resembled 'a Frankenstein' or an 'octopus' with an enormous potential for interventionism".<sup>41</sup>

In spite of these oddities, the underlining intuition of the reformers was that consolidating several regulatory capacities spread throughout the bureaucracy under a single autonomous institution would be cost efficient. It was probably also considered a step in the direction of restoring the private sector's confidence in the bureaucracy by attempting to secure a greater level of autonomy in the decision-making process.

## **The Basic Design**

From the outset, INDECOPI was conceived as regulatory agency with “technical, economic, budgetary and administrative autonomy”.<sup>42</sup> Despite the fact that INDECOPI technically came under the Ministry of Industry, its designers gave it an unusually high degree of political autonomy.

Internally, INDECOPI was divided into an administrative area and a functional area. The institution’s maximum administrative authority would be its three member Board of Directors,<sup>43</sup> headed by a President appointed for a five-year period who could only be removed in cases of proven ‘negligence, incompetence or immorality’.<sup>44</sup> The Board of Directors would meet on a regular basis, depending on their workload, to approve general managerial policies. In parallel, INDECOPI would have an independent Council that would advise the Board on decisions related to the institution’s administration. Under the Board, a General Manager (CEO) would supervise several departmental managers in charge of particular administrative tasks. Finally, in order to secure greater accountability, an independent internal auditing office was created to supervise INDECOPI’s financial and economic activities as well as the conduct of its personnel.<sup>45</sup>

In parallel, the functional area was fashioned like a two-tier quasi-judicial organisation. The first tier was divided into ‘intellectual protection’ offices and ‘defence of competition’ commissions. The offices would act both as a registry of intellectual property rights and a single-judge administrative court that would resolve disputes related to such rights. The commissions would act as multi-member administrative tribunals that would enforce, and resolve disputes related to, the recently enacted pro-market and competition legislation. The decisions adopted by both the offices and the commissions could be appealed to a common Tribunal, the second and final administrative decision-making body. In turn, the Tribunal’s rulings could only be disputed before the Judiciary, thus eliminating the Ministry of Industry’s dubious participation in this process.

As a general rule, INDECOPI's offices, commissions and Tribunal had the power to fine individuals or corporations who were found to have infringed one of the several statutes under their supervision. They also had the power to grant temporary and definitive injunctions (therefore, their 'quasi-judicial' status), but could not award damages. Likewise, generally, proceedings could be initiated following a private suit presented by a party affected by another's wrongful conduct or ex-officio by decision of an office or commission, which represented the 'public interest'.

[Figure 1]

The quasi-judicial status of INDECOPI's functional area was not the only feature that carried over from Peru's 'multiple agencies' experiment. Most importantly, INDECOPI's commissions and Tribunal maintained the 'multisectorial' character of its predecessors within the Ministry of Industry. The offices, on another hand, as mentioned, were fashioned like a single-judge court and, therefore, were effectively headed by an Office Chief, much like a registry. In order to secure greater transparency in the decision-making process, INDECOPI's charter established that the task of appointing and removing the institution's commissioners and office chiefs would fall upon the Board, not the Ministry. Furthermore, these officials would be appointed on an indefinite basis and, like the President of the Board, could only be removed in cases of 'negligence, incompetence or immorality'. However, the Ministry questionably withheld the authority to appoint the members to INDECOPI's Tribunal.

A final aspect that deserves special attention is that INDECOPI's charter allowed the appointment of part-time commissioners who could combine their public duties with private sector activities by meeting periodically, much in the manner of a corporate board, to solve the cases under their jurisdiction.<sup>46</sup>

### **Initial Shortcomings and Strategies**

INDECOPI's initial steps in regulatory activity were not graceful. From the onset, the process of incorporating the agency, moving various bureaux to a single location and dissolving INTINTEC was so expeditious (it took a little over three months) and scarcely publicised outside the Government's official channels, that there was almost no public awareness of what the new entity stood for.<sup>47</sup> Its multiple functions, many of them completely novel, probably did not help to clarify the situation.

Despite the fact that the new agency was much leaner than the defunct INTINTEC (less than one hundred full-time staff in 1994 as opposed to 5,000),<sup>48</sup> many typical Peruvian bureaucratic ailments subsisted. In particular, inadequate funding, low wages and poor prospects had historically contributed to making the public sector uncompetitive in the field of human capital recruitment. To overcome this obstacle, INDECOPI's charters afforded a significant economic and budgetary autonomy, awarding the institution all revenues from intellectual property registration, international cooperation and fines, among others.<sup>49</sup> Additionally, INDECOPI's personnel were declared under the 'private sector labour regime',<sup>50</sup> thus avoiding several public sector austerity policies and wage ceiling controls. As a result, INDECOPI was able to offer competitive pay by public sector standards.

However, better salaries alone would not suffice to change the public sector's second-rate employer image. In this context, an interesting, yet short-lived, experience followed. INDECOPI's first Board was able to lure a highly regarded retired Contracts Professor from the Pontificia Universidad Católica del Perú (or Catholic University), one of the country's leading academic institutions, to preside over the Consumer Protection Commission (CPC). The new President of CPC quickly surrounded himself with co-commissioners who were young leading academics and professionals in their fields, many with graduate studies in Europe and the United States. Soon after, a competent support staff of recently graduated professionals followed. In a short span, this commission

emitted judgements that would promptly become leading cases in the field of consumer protection law. Unfortunately, after a few months, the CPC commissioners would abruptly resign (and with them most of their staff) in an episode that was rumoured to have resulted from the unwillingness of the administration to publish a ruling emitted by the commission penalising a major financial institution. Whatever the cause, the CPC experiment planted a seed that would take root over time.

Achieving institutional integration was also an urgent task. In practice, INDECOPI's offices and commissions resembled small feudal states, each with its own prerogatives, work-habits, methods and procedures. The mere formality of designating several administrative bureaux with a common acronym, having them use stationary with the same logo and share a building was not enough to overcome bureaucratic problems such as lack of coordination and rivalries. It was not uncommon for two different areas within the organisation to preside, in parallel, over the same case and even hand-down contradictory rulings. The general task of harmonizing criteria would fall upon INDECOPI's Tribunal, yet the initial lack of integration was nonetheless time and resource consuming.

Another perversity that resulted from INDECOPI's 'feudalistic' character was related to the 'police' functions of its offices and commissions. It could be often be the case that an office carried out an inspection (say, a copyright violation raid in a market) and a few days later another office or commission carried out a similar action in the same place or its vicinity. Likewise, the offices and commissions would habitually have personnel doing similar administrative tasks (say answering phone calls or making photocopies). Thus, in many respects, INDECOPI's design was not proving to be cost efficient.

Apart from these 'intra-agency' problems, INDECOPI also faced 'inter-agency' conflicts. Since INDECOPI's creation was not coupled by a comprehensive review of the functions spread throughout the public administration, many of its tasks overlapped with those

entrusted to other government agencies. This was particularly evident in the fields of consumer protection and commercial advertising supervision, in which the Ministry of Health's food and drug bureaux and the recently created Superintendence of Private Pension Funds carried out ex-ante advertisement controls, while INDECOPI professed ex-post supervision.

A final shortcoming was related to the novel character of much of INDECOPI's legislation. At the time, it was rare to find professionals specialised in fields that, for the most part, had previously been conspicuous by their absence (say, lawyers familiar with antitrust legislation). By and large, with occasional exceptions like the short-lived CPC experiment, many rulings were poorly reasoned and frequently clashed with the general goals pursued by the new legislation (for example, restricting competition instead of enhancing it).

Overall, in its first year and a half of institutional life, INDECOPI resembled the hideous and confusing administrative Leviathan that Boloña feared. If the agency was to endure, it would have to experience serious adjustments.

## **PART II**

### **INDECOPI: CAPACITY BUILDING STAGE (1995-1996)**

#### **IN SEARCH OF AN IDENTITY**

In late 1994, INDECOPI's first President resigned in order to run for Congress. The appointment of his successor was preceded by the publication of Decree Law No. 788,<sup>51</sup> which declared the INDECOPI 'under reorganisation', authorized it to decentralise its functions and partially reformed its charter in the section related to its functional areas.<sup>52</sup>

In January 1995, Beatriz Boza was appointed as INDECOPI's new President. Ms. Boza was a young Peruvian attorney, who after pursuing graduate studies at Yale had worked as an Associate for nearly six years at two premier Manhattan law firms, up until the time she was 'drafted' by the Government.<sup>53</sup>

The publication of Legislative Decree No. 788 days prior to the appointment of INDECOPI's new President was not a coincidence. Ms. Boza is said to have made the acceptance of her appointment conditional on the enactment of this legislation, thus setting in motion an important reformist thrust.

#### **Human Resources**

One of the first goals of the Boza administration was to assemble qualified senior and supporting staffs. Clearly, the institution's recruitment policies stressed two characteristics: youth and education.

Upon taking office, Ms. Boza proceeded to appoint fellow foreign-trained professionals, mostly in their early thirties, to several senior management positions. Moreover, as in Ms. Boza's case, most recruits came from the private sector, with little or no prior public sector experience, introducing an efficiency-minded style of work and organisation

uncommon in the bureaucracy. Among the recruits was Alfredo Bullard –appointed as the Board’s new principal advisor-, an attorney and Law Professor from the Catholic University with graduate studies at Yale, who had been one of the CPC commissioners that resigned during the previous administration. Also appointed was Armando Cáceres, as head of INDECOPI’s new Economic Policy Division, an economist and former USAID official with graduate studies at Columbia University. Likewise, the new Institutional Development Manager was an attorney from the Catholic University with an MBA from the ESDEN Business School in Spain; the new Technical Cooperation and International Relations Manager was an economist from the Catholic University with a Master’s degree from Reading University in England; and, the new Legal Manager was an attorney from the Catholic University with graduate studies at Harvard.

Similar educational backgrounds can be observed among the senior employees recruited during the following years. By late 1999, between 77% and 87% of all senior employees had graduate degrees from US or European universities.<sup>54</sup>

The process of renovating and building-up INDECOPI’s support staff did not prove to be a monumental task. Unlike the tax and the social security administration reforms, in which the pre-existing institutions left a legacy of 3,000 and 40,000 employees, respectively, and problematic labour unions,<sup>55</sup> in 1995 INDECOPI had a little over 100 non-unionised, full-time employees. The massive liquidation of INTINTEC had been carried out before the new agency began operating in 1993. Furthermore, prior to 1995 INDECOPI’s turnover rate reached nearly 100%, with average employees staying less than a year.<sup>56</sup> Thus, INDECOPI’s new administration did not have to implement a policy of dismissals and re-evaluation of its personnel. At the most, workers were subject to standard periodical evaluations, and those that did not meet expectations were encouraged to seek new employment.

On a formal level, standardised hiring procedures were set in place.<sup>57</sup> On a substantive level, attracting and retaining a qualified staff was still a major challenge. Above all, the novelty of INDECOPI's functions and regulatory powers made it difficult to find 'specialists' in the labour market skilled in 'imperfect market' regulation. Furthermore, in spite of being able to offer better compensation than other public institutions, wages were not high enough to effectively compete with the private sector. Thus, the administration opted to concentrate its recruitment activities on targeting recent college graduates, which it could train in the new legislation.

The academic and professional backgrounds of the recently appointed senior staff, as well as the 'private sector' style they imported, contributed to attract recent graduates. Moreover, strategies geared towards creating greater awareness about the institution, such as inviting Nobel laureate Douglass C. North to a symposium in early 1995,<sup>58</sup> most certainly caught the public's eye. Organising conferences in Lima with international academics became a recurrent practice, contributing to establish INDECOPI's 'technocratic' image.

In parallel, a new Technical Cooperation and International Relations Department was set up to facilitate international training for INDECOPI's staff. This strategy served two functions. On one hand, it strengthened the skills of the institution's personnel in the enforcement of the newly enacted legislation. On the other, it acted as a non-monetary unit of compensation that attracted the targeted younger professionals. Thus, internships at the US Department of Justice and Federal Trade Commission, as well as at Mexico's PROFECO were arranged; and attendance at seminars organised by the WTO and foreign universities, was provided for INDECOPI's personnel through competitive exams. Similarly, through an agreement with the British Council, scholarships to study in Great Britain were also allocated. Furthermore, seminars and lecture series with international scholars were organised in Lima on a wide-ranging set of topics. Finally, drawing on the Institution's academic personnel, internal training courses were organized.

As a result, INDECOPI quickly developed a 'graduate school' reputation, allowing it to attract many young qualified candidates.<sup>59</sup> By 1999, close to 70% of INDECOPI's personnel were under the age of 35, 97% had higher education and 18% had post-graduate degrees.<sup>60</sup>

On the downside, the 'graduate school' strategy also encouraged a high level of mobility into the private sector, potentially limiting the institution's ability to 'reap the gains' from having well-trained personnel. To prevent this, the administration required that all employees that received training abroad sign a commitment to work at the institution for 6 months or twice the length of the specific course undertaken, whichever turned out to be longer. Yet even this proved insufficient. In 1996 and 1997, the turnover rate of top officials averaged 38.5%, and currently the average tenure of an employee is only two years.<sup>61</sup>

On the whole, despite the turnover issue, in a relatively short span the Boza administration succeeded in putting together an unusually qualified staff by Peruvian public sector standards. As a foreign observer states, one of Ms. Boza's "greatest contributions has been to instil a sense of pride and efficiency in public service (...) INDECOPI's new headquarters in Lima resembles a modern corporation rather than a government building".<sup>62</sup>

### **Internal Innovations**

A second feature of the Boza administration was its commitment to carry out administrative innovations to enhance INDECOPI's performance, under the umbrella afforded by the 'reorganisation' declared by Legislative Decree No. 788. On a formal level, the administrative area was redesigned, defining the tasks of its different departmental managers. More importantly, perhaps, were the unwritten 'rules of the game'. From the outset it was understood that the administrative area's role was to

support and provide common services to INDECOPI's quasi-judicial bureaux, and not interfere with the latter's decision-making functions.

[FIGURE 2]

Within this new approach, the Board's responsibilities were also redefined. It was understood that the Board was responsible for "establishing general policies, managing the institution's image, and heading dissemination and communication functions (...not having) direct responsibility for the jurisdictional decisions of the functional bodies (...and limiting itself in this regard) to monitoring the transparency and legality of institution members' behaviour".<sup>63</sup> As Ms. Boza often stated, the Board's main function was to isolate the decision-makers from external sources of pressure and represent the institution in the court of public opinion. As the authorised spokesperson of the institution, the President of Board was also in charge of disclosing INDECOPI's functional and administrative decisions. To facilitate this task, a 'Press and Communications Office' was established to implement a uniform communications policy throughout the institution.

Another innovation was the creation of an Economic Policy Division, independent of both the administration and the functional areas. The Economic Policy Division was conceived as an autonomous 'think-tank' that would carry out studies at the request of the quasi-judicial areas. The Division's formal independence of both of the original areas of the organisation was to help preserve the objectivity of its analysis. Furthermore, the conclusions or recommendations contained in the Division's reports did not bind the decision-making bureaux. The underlying intuition was that the consolidation of all economic studies and research in a single specialised division could potentially yield economies of scope, avoiding each bureau within the organisation having to engage in similar independent activities. Additionally, it would serve to provide a sound theoretical backbone, absent to a large extent in the rulings during previous years, and at the same

time to harmonize the economic criteria employed within the different decision-making bodies. Figure 3 illustrates how the new administration envisioned INDECOPI's organisational structure.<sup>64</sup>

[FIGURE 3]

The functional area and the Economic Policy Division were conceived as the pillars of the institution. Underneath, providing the necessary support was the administration. Above, 'shielding' the decision-makers and policy designers from external 'elements' was the Board of Directors and its communication policies.

Parallel to implementing these organisational innovations, INDECOPI's new administration had to deal with the 'intra-agency' problems deriving from the 'feudal' character of the institution's bureaux. Several strategies were deployed. First of all, weekly Monday morning meetings between senior management and senior employees from all bureaux were instated, creating the communication channel that had been missing within the institution. It allowed the bureaux to exchange information and share useful experiences, without interfering with each other's decision-making autonomy. New cases that might be of general interest or particular importance were announced and explained, as were 'sensitive' recent or forthcoming rulings. Over time, these exchanges helped develop the institutional awareness and sense of unity necessary to achieve greater integration.

A second innovation was the establishment of annual strategic planning, an imported feature from the private sector. A scheme of annual retreats and periodic goal evaluations allowed management and the quasi-judicial bodies to establish common general objectives, and define the institution's underlying philosophy reflected in its auto-proclaimed institutional mission ("To be the facilitator of loyal and honest competition in

Peru”) and vision (“Together achieving that loyal and honest competition contribute to create welfare for all”).

A final integration strategy was related to the Board’s communication policies. In particular, the new administration did not view INDECOPI’s multi-functionality and unprecedented enforcement authority as a flaw, rather as a distinct advantage. Within its ‘corporate’ approach to public management, the new administration recognized INDECOPI’s unique potential for ‘common brand positioning’.<sup>65</sup> In their view, INDECOPI was essentially a ‘holding company’ that offered different ‘services’ to the public (dispute resolution, intellectual property registration, corporate restructuring, information, etc.). As such, it was crucial to position the ‘INDECOPI’ brand or trademark in the consumer’s (the people’s) ‘decision set’. Establishing a solid reputation in the marketplace for the quality of the services provided would in time allow the institution to leverage this reputation into developing other ‘service lines’. Thus, for example, an effective positioning of the registration, consumer protection and corporate restructuring services offered could serve to generate an institutional ‘goodwill’. The ‘INDECOPI’ brand would in turn convey positive information to the public regarding other services that were perhaps more difficult to promote (antidumping and subsidies protection, elimination of bureaucratic barriers to entry, elimination of technical barriers to international trade, etc.). The solid reputation of the services branded under the acronym ‘INDECOPI’ could potentially help the institution withstand external special-interest criticisms. As Boza herself argues, common branding helped the institution “withstand political pressures triggered by its rulings against several government agencies, as well as its antitrust ruling in a political potent case ... (if) INDECOPI did not have a recognizable valuable brand –or it encompassed only the tribunal, for example, at a time when it hands down an unpopular ruling- (...) the political pressure might be overwhelming”.<sup>66</sup>

Thus, in the administration’s strategy, developing a uniform communication policy was fundamental, for it could serve as a ‘marketing’ tool to position the ‘INDECOPI’

trademark. Permanent communication channels, such as the weekly intra-agency meetings, provided management with timely information it could use both to highlight potentially popular rulings and prepare defensive manoeuvres in the case of potentially controversial decisions.

### **THE QUALIFYING EXAMS: THE FLOUR CARTEL CASE**

In early July 1995, a representative of the Bread-making Industry Association (BIA) suggested to the media that a possible increase in the price of bread was forthcoming. This statement sparked the suspicion of INDECOPI's Antitrust Commission, which then initiated an inquiry into the basis of such declarations. After a preliminary investigation, the BIA agreed to refrain from similar behaviour in the future. Notwithstanding, the predicted rise in the price of bread materialised, prompting the Commission to take a further look, this time into the flour industry.

The rise in the price of bread occurred days before President Fujimori's 1995 inaugural address, after the 1993 Constitution allowed for his landslide re-election. Bread being an important component of the 'basket' on which the consumer price index is based, the rise had significant inflationary consequences. Reactions soon followed, as women's organisations from the 'pueblos jóvenes' –the poor urban settlements from which Fujimori derived most of his support- picketed in front of the Ministry of Agriculture, banging empty pots, demanding that the government lower the price of bread. True to his populist propensities, during his inaugural address Fujimori stated that his government would not hesitate to employ the legislation it had enacted to look into the case. This statement, which could have been considered a mere rhetorical flourish if it had come from someone else, had powerful implications. According to Carlos Boloña, Fujimori had an "obsession about (...) flour, that (...it was) creating inflation".<sup>67</sup> Thus, Fujimori's words blew a strong wind in INDECOPI's sails, giving the institution the political backing to carry out a thorough investigation.

Fujimori's consent gave INDECOPI enough strength to confront, arguably, the most powerful of interest groups in Peru. The Peruvian flour industry was dominated by a small cartel of corporations forming part of the private sector 'grupos', linked to such heavyweight names as Romero, Raffo and Nicolini.<sup>68</sup> Sure enough, as the antitrust investigation progressed and unrest grew, these interest groups did not hesitate to throw their weight around. As Alfredo Bullard recalls: "Close friends of mine and Beatriz Boza called us mad and some even threatened to ask the President to fire us".<sup>69</sup> Instead, such bullish strategies strengthened the institution's image in the eyes of the President.

The international ties established by INDECOPI proved to be helpful in carrying out such demanding investigations. The U.S. Federal Trade Commission and Justice Department shared techniques and strategies with INDECOPI's young and still inexperienced officials. Since the Antitrust Commission's small staff was insufficient for the task, personnel was temporarily 'drafted' from all areas of the institution and briefed on the case. Simultaneous visits were made to all the companies under investigation with surprisingly successful results. Incriminating documents, which included transcripts of Board of Director meetings discussing different aspects of the cartel and reports sent by salesmen monitoring the implementation of the price-fixing agreement, were retrieved.

The evidence, coupled with microeconomic analysis, supported the Commission's findings that, after a price war, eleven major milling firms had entered into an agreement to fix the price of flour upwards. Thus, the cartel members were fined with the maximum penalty then allowed (roughly \$50,000 each). Perhaps of equal importance, the Commission's ruling helped strengthen INDECOPI's public credibility.

## **LEGISLATIVE REFORM AND EMPOWERMENT**

President Fujimori must have been satisfied with the way the flour cartel case was handled and its outcome. Speaking before an auditorium of private sector entrepreneurs at Peru's annual Conferencia Anual de Empresarios (CADE) meeting, in November 1995, he expressed his commitment to strengthen the institutions called to secure market competition.<sup>70</sup> With a comfortable majority in the new Congress, Fujimori then obtained a delegation of legislative powers and assigned the preparation of the draft legislation to INDECOPI.

### **The Flour Cartel's Legacy**

The flour cartel case, undoubtedly, was of a particular significance to INDECOPI. Internally it was perceived as a team effort, with personnel from all the bureaux contributing to the investigation. It instilled a sense of pride and helped unite the agency.

The case was also an unrivalled learning opportunity. The picketing at the doors of the Ministry exposed that the new 'rules of the game' were not properly internalised by the population, which still expected the Government to directly intervene in the economy setting price controls. It was also clear that the private sector had not fully grasped the implications of the new legislation. INDECOPI's officials could expect that the next time they initiated a probe into a major price-fixing agreement, 'easy' written evidence would not be readily available, nor would the investigated parties open their doors and grant access to their records voluntarily. Most certainly, it was unlikely that INDECOPI would be able to conclude a similar investigation in such a short span (it had taken little over four months for Commission to emit a ruling after the investigation was initiated).

Similarly, INDECOPI realised that other public institutions, fearful of weakening their own authority, were not always happy to collaborate. As Alfredo Bullard recalls: "The police refused to cooperate with us on company inspections, demanding court orders which local judges refused to give us ... on the basis that we were intruding into their jurisdiction".<sup>71</sup> These problems were aggravated by the fact that INDECOPI's statutes did

not contain specific provisions regarding the institution's powers of investigation, but rather sporadic and ambiguously general clauses dispersed throughout its legislation.

Another consensus that emerged related to INDECOPI's fining capabilities. Maximum administrative penalties of approximately \$50,000 in cases of antitrust violations, or \$4,000 in cases of misleading advertisements, would hardly prove an effective deterrent.

Finally, as previously mentioned, the flour cartel case was a public relations success and provided the new administration with a unique opportunity to continue down the path of reform initiated by Legislative Decree No. 788. In order to prepare the legislation commissioned by the Executive, the administration called upon a five-person taskforce of junior officials from different bureaux that had collaborated in the flour cartel investigation, to work under the supervision of Alfredo Bullard.

Bullard's team spent the first three months of 1996 working behind closed doors, receiving input from different areas of the organisation, researching international statutes, consulting with foreign agencies. Their drafts were then confidentially discussed with the senior members of the institution, who granted their approval. A committee of senior officials and the Board presented and defended the drafts at the Council of Ministers, which agreed to most of the proposed innovations. As a result, in April 1996 the Executive enacted Legislative Decrees No. 807 (Law of Powers, Norms and Organization of INDECOPI), 822 (Copyright Law) and 823 (Intellectual Property Law). The legislation was published along with an unusually comprehensive and well-supported *Exposición de Motivos* prepared by the INDECOPI team, detailing the extent, implications and motives behind the reforms. The successful approval of the legislative reform package was viewed at INDECOPI as a triumphant team effort, boosting morale and cohesion.

### **Investigative and Punitive Powers**

Legislative Decree No. 807 granted INDECOPI unprecedented investigative and punitive powers. Comparatively, only SUNAT –the tax administration– could match INDECOPI’s new authority, reflecting the high degree of political backing enjoyed by the institution. INDECOPI’s bureaux were granted full access to all types of private and public documents upon request (corporate and accounting books, shareholder information, commercial correspondence, etc.).<sup>72</sup> Likewise, they were granted authority to summon and interrogate all levels of employees, search facilities without prior notice and access information held by other public entities.<sup>73</sup>

If the investigated parties refused to collaborate, INDECOPI’s bureaux could request judicial search warrants, which had to be granted within 24 hours,<sup>74</sup> and force their entry deploying the Police. Furthermore, the new legislation stated that the Police had to immediately comply with a request from INDECOPI, or it would be held liable.<sup>75</sup> Additionally, in cases of unjustified refusal to cooperate with an investigation, INDECOPI’s bureaux could impose fines of up to approximately \$50,000 and duplicate these fines indefinitely if such behaviour persisted.<sup>76</sup> Similar fines could be imposed on all those who altered, destroyed or handed over false documents or gave false testimonies during an investigation, and in cases in which offenders refused to comply with a sanction or remedy commanded by an INDECOPI bureaux.<sup>77</sup>

INDECOPI’s fining capacities were also significantly modified. In cases of proven infractions of the intellectual property statutes, INDECOPI’s offices could impose fines of up to approximately \$150,000. In cases of proven infraction of the competition statutes, with the exception of the antitrust statute, INDECOPI’s commissions could impose fines of up to approximately \$100,000. In cases of antitrust violations, the respective commission could impose fines of up to approximately \$1,000,000 and, in severe cases, of up to 10% of the offender’s gross sales in the previous fiscal year. Additionally, all of INDECOPI’s bureaux could impose a wide arrange of injunctive remedies. Damage remedies, however, still had to be sought out before the Judiciary, but INDECOPI was

authorized to initiate class actions, representing the consumers' interests, geared towards this end.

### **Procedures**

As previously mentioned, INDECOPI's designers put together a series of dispersed bureaux without revising or unifying the administrative procedures applicable to each, making the agency a rather complex institution for the lay observer. Thus, INDECOPI's new legislation contained the new 'simplified' procedural guidelines applicable to the 'dispute resolution services' administered by seven bureaux within the organisation. The new procedures were based on a judicial-like confrontational model, designed to guarantee the litigating parties' due-process rights while at the same time reducing the average length of the proceedings, as illustrated in Table 1.

[TABLE 1]

Among the important innovations enacted, the 'costly formality' of requiring an attorney in order to file a suit at INDECOPI was eliminated in order to facilitate the public's access to the institution's services,<sup>78</sup> much to the dislike of the Peruvian Bars. Additionally, the use of alternative dispute resolution mechanisms -such as mediation, conciliation and arbitration hearings- were introduced.

### **Organisational Changes**

Concluding the process initiated by Legislative Decree No. 788, INDECOPI's new legislation introduced modifications that established the agency's current functional organisation (see Figure 4). Among the major changes, the Tribunal was divided into two specialised chambers, one dedicated to hear the appeals of the intellectual property offices' decisions and the other the appeals of the competition commissions' decisions. This innovation contributed to reducing the average length of the appellate proceedings, while at the same time securing a greater level of specialisation in the decision-making

process. Furthermore, the introduction of joint sessions between the two chambers to decide upon matters that had both intellectual property and competition policy implications mitigated the intra-agency problems previously discussed.<sup>79</sup> Thus, conventions to avoid internal overlapping jurisdiction conflicts were adopted, spurring greater intra-agency coordination and unlocking significant policy synergies. As Boza explains, for example, INDECOPI began addressing pirated merchandise as both “an intellectual property and consumer rights issue”,<sup>80</sup> trying to find an adequate balance between the goals pursued by both sets of policies.

[FIGURE 4]

While the division of labour in the Tribunal was designed to encourage specialisation, other reforms were enacted in order to secure greater decision-making predictability and, consequently, further market transparency and knowledge of the ‘rules of the game’. In particular, all rulings passed by INDECOPI’s bureaux that expressly, and with a general character, interpreted the legislation under their enforcement would constitute a binding precedent and, therefore, would have to be publicized.<sup>81</sup> Similarly, all rulings that did not properly amount to a binding precedent but contained important decisions relating to consumers’ rights would also have to be made public. Finally, INDECOPI’s bureaux were authorised to approve general guidelines that, “without having a binding character, orientate economic agents regarding the scope and interpretative criteria of the legislation commended to each office or commission”.<sup>82</sup>

INDECOPI’s new legislation also contained provisions directed to reduce ‘inter-agency’ conflicts. Particularly, all forms of ex-ante commercial advertisement controls were abolished and ex-post supervision tasks centralised at INDECOPI.<sup>83</sup> The enforcement capacities of other government agencies were reduced to informing INDECOPI’s bureaux of the possible infractions detected within their sectors.<sup>84</sup>

Finally, and most fittingly, Legislative Decree No. 807 established that disputes related to decisions stemming from INDECOPI's Tribunal would be challenged before the Supreme Court.<sup>85</sup> Thus, the reform was recognising INDECOPI's exceptional hierarchy within the public sector, which virtually amounted to declaring the institution a parallel Judiciary specialised in the new intellectual property, market competition and trade legislation.

### **Accountability**

The authors of INDECOPI's legislative reform were aware that the institution's empowerment could arouse public mistrust. Likewise, they understood that in order to effectively position the brand 'INDECOPI' in the marketplace as a symbol of honest and efficient public service, the institution had to make sure that its officials not only avoided potential and actual conflicts but also apparent conflicts of interest. Thus the 1996 reforms introduced a series of new controls at all levels to secure greater accountability.

First of all, one of the most questionable features about INDECOPI's organisation was its part-time commissioner regime. Up to that time, this system had proved to be a valuable source of private sector expertise at a low cost, and had contributed to establishing strong partnerships with influential community members who professed INDECOPI's pro-market gospel. Until the reform, INDECOPI had mainly relied on 'reputation' incentives to ensure an adequate conduct on the part of these officials. That is to say, since the INDECOPI commissioners belonged to a "small, elite circle of professionals in Lima, where reputations are a premium" the potential damage resulting from a conflict of interest served to offset motivations for misbehaviour.<sup>86</sup>

INDECOPI's new by-laws not only preserved the institution's ability to have part-time commissioners, but also extended this feature to the members of the Tribunal. In parallel, the reforms increased the number of commissioners in each competition bureau from four to six members, and the number of Tribunal members from five to ten. This amendment, could potentially slow down the decision-making processes, but these losses

would be offset by the gains derived from greater peer supervision and, on the whole, would make collusion more difficult.

Secondly, several types of conduct were expressly prohibited, such as representing non-personal causes at any of the agency's bureaux (up to six months after resignation), receiving gifts and maintaining conversations with parties involved in litigation without the presence of the other party or its representative.<sup>87</sup>

Thirdly, procedures were established in order for litigants to request that officials be removed from participating in the outcome of their disputes, in cases in which potential conflicts of interest could arise.<sup>88</sup>

Additionally, it was established that the offices of Board member, Tribunal member and office chief were incompatible with other public appointments in which political authority was exercised (for example, President or Vice President, Minister or Vice Minister of State, Congressmen, Mayor, etc.). Similarly, this prohibition was extended up to six months after having left office.

Furthermore, given the level of access to sensitive information granted by the new legislation, Legislative Decree No. 807 established the obligation on behalf of all INDECOPI's officials to protect industrial or commercial secrets. The breach of this obligation would convey criminal and civil liability, as well as the inability to hold any form of public office for up to ten years.<sup>89</sup>

A final aspect worth mentioning is related to the process of appointments to the Tribunal. The 1996 reform maintained the authority of the Ministry of Industry to appoint Tribunal members, but introduced a clause by way of which this appointment had to be based on the nominations made by INDECOPI's Board with the opinion of its Advisory Council.<sup>90</sup> While this solution was still not the 'best of all possible worlds', it is still very significant

to see how the Fujimori Administration was willing to share power with an autonomous institution. Over time, however, INDECOPI would perhaps prove to be too autonomous for the President's liking.

### **PART III**

#### **INDECOPI: INSTITUTIONALISATION (1997-2000)**

##### **CHANGING THE RULES OF THE GAME**

We now turn our attention to latter three years of Ms. Boza's presidency, and attempt to explain the strategies deployed to 'institutionalise' the agency, despite losing on the way considerable support from the Executive.

##### **Organisational Adjustments**

In order to take full advantage of INDECOPI's multi-functional character, the Boza administration continued to introduce organisational innovations geared to bring about further economies of scale and economies of scope. On a day-to-day level, routine administrative tasks, such as document duplication, messenger services and publishing activities were centralised, thus avoiding each bureau within the organisation having to assign personnel to perform similar chores.

Other time and resource saving innovations were introduced on a larger scale. Of particular importance are the Enforcement Unit or UFI (Unidad de Fiscalización del INDECOPI) and the Client Services Office or SAC (Servicio de Atención al Cliente). Until 1997, each individual bureau within INDECOPI -drawing from their own personnel pool- regularly performed enforcement activities, such as inspections and investigations. UFI was modelled on the SUNAT's successful 'revamping' of its enforcement unit. Staff selected for the purpose accompanied SUNAT officials in several 'undercover'

enforcement inspections and raids, while at the same time a top official from SUNAT was lent to INDECOPI to organize and train personnel in UFI.

In early 1998, a similar step was taken with regard to INDECOPI's multiple telephone-based information services. Most commissions and offices had phone lines and staff dedicated to answer the public's enquiries. The consolidation of such services under a centralised administrative office –SAC- further contributed to "significantly reduced costs and increased efficiency".<sup>91</sup>

Finally, additional reforms were introduced at the administrative level. In particular, a 'customer services' department, of private sector inspiration, was set up to handle INDECOPI's relationships with the public.

[FIGURE 5]

### **Information and Education Services**

Perhaps the most important lesson of previous years was that the 'new rules of the game' were not clearly grasped by the population. INDECOPI's administration was well aware that steps had to be taken to foster a culture of market competition if the agency was to succeed in the long run. Hence, by 1997 INDECOPI initiated a nation-wide information and education campaign targeted mainly, but not exclusively, at business managers, consumers and schoolteachers.

During the following years, INDECOPI organised a series of courses, seminars and workshops both in Lima and in the Peruvian provinces. Some were academically orientated, often featuring international lecturers. Others were more pragmatic, directed at explaining the new legal framework to members of guilds and local chambers of commerce. By 1999 INDECOPI was organising 21 educational events per month, reaching an annual total of 428,059 people.<sup>92</sup>

Close to 17% of all educational events organised in 1999 were training sessions for the 'INDECOPI Educa' program, run by the agency's Institutional Development Department. INDECOPI Educa was a 30-hour training program targeted at primary and secondary schoolteachers, so they could in turn teach their students the concepts inherent in a market economy. In 1999 alone, more than 5,400 schoolteachers took part in the program, hence reaching approximately 162,000 students, and 65% of the sessions were held in the provinces.<sup>93</sup>

In parallel, INDECOPI marketed its information services. Through the SAC and its 24-hour telephone hotlines, INDECOPI offered services to over 65,000 consumers in 1999, of which 88% requested information and the remaining filed complaints.<sup>94</sup> In addition, recognizing the particular importance of tourists as a unique consumer 'sub-group', INDECOPI established the Tourist Protection Service, offering similar services as SAC to national and foreign tourists.

Several information services were also offered to the business community. Throughout its Information and Documentation service, in 1999 INDECOPI handled 34,424 information requests,<sup>95</sup> mainly referred to technical regulations and standards. Likewise, businesses consulted INDECOPI's trademark database close to 2,000 times per month.

Finally, INDECOPI expanded its information services to reach the government. In 1999, its Economic Policy Division supervised the preparation of close to 150 economic-legal opinions at the request of different government bureaux, 64% of which were requested by the Congress and were related to pending legislation.<sup>96</sup>

### **Dispute Resolution Services**

As mentioned, among its functions, INDECOPI was granted quasi-judicial dispute resolution powers, related to the many statutes it was charged with enforcing. In 1993, INDECOPI handled 22,079 controversies and the number steadily increased over the

following years, reaching 47,277 new complaints in 1999, an increase of 128%. In its first seven years of operation, INDECOPI handled a workload of over a quarter of a million cases.

[TABLE 2]

To cope with their increasing workload, several of INDECOPI's bureaux began to implement, as early as 1995, alternative dispute resolution (ADR) mechanisms, such as conciliation and mediation hearings, in order to meet the demands for their services. These isolated experiences were so successful that in the 1996 legislative reform, ADRs were incorporated as a mandatory stage in all proceedings held by seven different bureaux. Likewise, ADRs were 'exported' to the SAC and the Tourist Protection Service, in which personnel were trained in order to mediate, free of charge, in 'informal' telephone complaints filed by consumers. Such innovations allowed INDECOPI to expand its dispute resolution capacity and significantly reduce the average length of procedures. More importantly, the reputation gained by INDECOPI, as an expeditious and low-cost alternative to the Judiciary, allowed the institution effectively to lobby for and obtain in 2000 a Congressional law allowing it to grant damages awards in consumer protection cases.<sup>97</sup>

### **Decentralisation by Privatisation**

Legislative Decree No. 788 had authorised INDECOPI to pursue its decentralisation on a nation-wide level, by entering into private agreements to delegate some of its functions to "organisations, institutions, public entities, chambers of commerce, professional associations or guilds of renowned prestige".<sup>98</sup> In practice, this authorization allowed INDECOPI to expand its activities based on corporate franchising theory. Thus, INDECOPI entered into agreements with various public and private institutions located in several important provincial cities, establishing over a dozen ODIs (Oficina Descentralizada del INDECOPI). Among these 'partners' were eight local chambers of commerce, five universities, three regional governments and one professional guild, selected for their 'prestige' among their communities. By way of these agreements, INDECOPI delegated

selected functions providing the necessary know-how to its franchisees and attempting to monitor that the latter preserve the institution's standards and goodwill. As a result, INDECOPI has been able to make a presence for itself throughout vast part of the country, a feat which otherwise would have been impossible considering the institution's limited budget.

Most of the delegated authority has been limited to information and ADR services. Thus, the ODIs have performed similar tasks as those of the SAC in the Lima headquarters. However, a noteworthy exception has been the delegation of authority to preside over patrimonial restructuring and bankruptcy procedures, one of the services most in demand. This was carried out by means of 'cloning' the Patrimonial Restructuring Commission in Lima. Thus, parallel six-member commissions have been created at the ODIs. The new commissioners have been appointed by INDECOPI's Board, taking into account the nominations made by the franchised partners. As a common practice, five of the six commissioners are generally from the province where the ODI is located, encouraging the resolution of local disputes by local community members, and the sixth is appointed from INDECOPI's Lima staff. In order to minimize principal-agent conflicts and secure that all delegated commissions apply uniform decision-making criteria, their rulings, like those adopted by the commissions in Lima, are appealed to the common INDECOPI Tribunal.

Taking the ODI project a step further, in early 1998 the Boza administration allowed the 'clones' to 'compete' with headquarters. In Ms. Boza's words, this initiative demonstrated the institution's "commitment to free market competition" by allowing the ODIs "to outbid and out-manage INDECOPI's central office, thereby introducing efficiency-maximizing market forces into public administration".<sup>99</sup> Accordingly, if, for example, "superior management techniques permit an ODI to reduce by 10% the time necessary to complete a business reorganization, INDECOPI headquarters will have to improve its

own management techniques or risk losing its business reorganization clients –and the accompanying revenue”.<sup>100</sup>

While it is still premature to assess the long-term viability of the ODI project, the initial success of this ‘privatisation’ experiment has been such that this year INDECOPI has announced that it will begin ‘delegating’ authority to preside over consumer protection procedures.

## **LEADING CASES**

### **Nightclubs, Racial Discrimination and Judicial Confrontation**

In late 1997 and early 1998, the newly created SAC received several complaints from consumers alleging that nightclubs in Lima were practicing racial discrimination in granting access to their establishments. Though racism has been endemic to Peruvian society, no government agency had ever taken steps to confront these practices.

INDECOPI’s initial reaction was to publish advertisements in local newspapers warning that consumer discrimination based on race was illegal and that establishments that engaged in such actions were liable to sanctions. Several information requests followed by businessmen who wanted to comply with the legal framework.<sup>101</sup> Likewise, the press began conducting investigations into the matter and giving the issue ample coverage.<sup>102</sup>

As several nightclubs failed to comply, INDECOPI’s Consumer Protection Commission began to carry out undercover investigations, with a mix of racially diverse staff members posing as consumers, giving rise to several ex-officio procedures. In parallel, a private consumer association filed three suits against different nightclubs alleging they had also been involved in unlawful behaviour. Most defendants settled their cases with the Commission, adopting open admissions policies. The remaining offenders were fined and ordered to close down for a brief period.

While the cases were on appeal at INDECOPI's Tribunal, two defendants filed lawsuits before the Judiciary, seeking permanent relief from what they considered as intrusion into their constitutional right to business initiative. In October of that year, the Court granted injunctions ordering INDECOPI to cease its procedures, on the grounds that consumer protection legislation was not explicit in banning racial discrimination and that the defendants' constitutional right to free contract had been affected.

With a weakly motivated Court order that legally prevented INDECOPI from carrying out further investigations, and amid rumours of bribery, the institution's officials then decided to do what was once unthinkable. They went publicly on the record and criticised the judicial decision. What followed was a series of advertisements, press releases and press conferences openly lamenting what INDECOPI considered an erroneous ruling that it would, nonetheless, respect. The public outrage that followed was unprecedented, as the media coverage soared. Several NGOs, universities, student unions, professional guilds and private sector organisations publicly repudiated the Court's decision, and went so far as to picket the defendants' nightclubs, which saw their business radically decline to the point that one actually went bankrupt.

Seizing the opportunity generated by the public's support, INDECOPI's Economic Policy Division published a legal-economic study of the effect of racial discrimination in the market place, proposing an amendment to the Consumer Protection statute so that in future other businesses could not attempt to seek similar relief from the Judiciary. INDECOPI stressed the fact that consumer discrimination based on racial motives was constitutionally banned, since Peru had signed international human rights treaties banning all forms of racial discrimination, expressly including those of this sort.<sup>103</sup>

The Peruvian Congress quickly initiated public hearings on the issue and investigated the Judge that had decided the case. Finally, in December 1998, the Peruvian Congress

passed the legislative amendment proposed by INDECOPI in what was the only unanimous vote of Fujimori's ten-year regime.<sup>104</sup>

In the end, INDECOPI had flexed its muscles and successfully confronted one of the powers of the State. More importantly, the widespread favourable media coverage did wonders for its image and positioned the institution for the battles ahead.

### **The Poultry Cartel and Gasoline Cases**

In July 1996, only twelve months after a rise in the price of bread had sparked Peru's first significant antitrust investigation, another price-hike with inflationary consequences, this time in the chicken market, put INDECOPI's Antitrust Commission on alert. With the Flour Cartel experience and the significantly upgraded investigative and punitive powers recently awarded, INDECOPI's officials once again collected incriminating evidence to support its finding that a complex price-fixing agreement had been the cause of the rise in chicken prices, scoring another big media win. The rigorous hundred-plus page rulings emitted by both the Antitrust Commission and INDECOPI's Tribunal quickly silenced allegations that the investigation was politically motivated.<sup>105</sup>

The real test of INDECOPI's antitrust decision-making independence would come in 1998, when an international reduction of oil production by OPEC countries gave way to an increase in the price of domestic gasoline, generating inflationary pressures once more. By that time it was fairly obvious that the Fujimori administration was planning its infamous 're-re-election' bid, and several top ranking government officials, including the President himself, publicly called upon INDECOPI to investigate what they considered to be the product of an illegal collusion. Notwithstanding, after conducting its investigations, INDECOPI's Antitrust Commission emitted a ruling stating that it could not find preliminary evidence of wrongdoing, thus implicitly recognizing that the rise could be the result of natural market forces.<sup>106</sup> The Executive criticised the decision and implemented a short-lived scheme to subsidize the gasoline sold by its State-owned distributor, trying

to drive the private sector prices down, in an action that INDECOPI opposed. However, the Government would soon back-pedal when shortages generated by the subsidies drove prices further up. INDECOPI survived this public confrontation with the Executive relatively unharmed, in large part due to the goodwill and technocratic reputation it had generated in the previous years. Nonetheless, INDECOPI's relations with the Fujimori Administration were clearly deteriorating.

### **Passport Fees and Governmental Confrontation**

The year 1999 continued to host a series of confrontations between the Executive and INDECOPI. One of the most noteworthy came after the Market Access Commission charged the Government with violating its administrative simplification statutes, which limits the amount that a public entity can charge citizens to the cost of the service it performed. In a public statement, the Commission supported its findings that the passport offices were charging \$60 to issue that document, while the cost of the service, according to the data analysed, did not exceed \$12. Around that time, it was heavily rumoured that President Fujimori was financing his electoral campaign with public funds.

The Executive accepted INDECOPI's findings, but publicly stated that the excess from the sale of passports was being directed to a social fund to help orphans and single mothers of poverty-stricken districts. This 'tear-jerking' pretext was followed by the almost overnight passage of legislation by the Fujimorian majority in the Congress, establishing a \$40 'derelict child' tax on all new and renewed passports.<sup>107</sup>

Another confrontational issue arose after the privatised national airline –AeroPerú– filed for bankruptcy, leaving the domestic market in the hands of a monopolistic carrier. While the Government insisted that INDECOPI should control possible fare increases, INDECOPI replied that the problem lay in the Ministry of Transportation's excessive regulations that delayed the entry of new competitors into the market.

Tensions significantly built-up when the Executive enacted Supreme Decree No. 10-99-PCM, establishing that all public officials that shared private sector duties were banned from representing private or public causes at all Government entities for a period of up to one year after they resigned from their public post. This regulation was potentially devastating for INDECOPI, which relied heavily on its part-time commissioner regime, as well as for other public entities that employed part-time private sector consultants and officials. After a week of intense negotiations and lobbying, the Executive amended this Decree limiting the ban to the public entity in which the official was employed, a formula already in place at INDECOPI since its 1996 legislative reform.

A final case worth mentioning came in mid 1999, when the presidential race was already under way. A tabloid newspaper, today widely regarded as an instrument of mass propaganda employed by the Fujimorian Intelligence Service, dubbed "La Repúdica" (loosely translated 'The Repudiate') began to circulate in Lima's shanty-towns, imitating the trade-dress and trademarks of an independent anti-Government newspaper called "La República" (loosely translated 'The Republic'), which at the time was directed by a Congressmen from the opposition. The headlines of the new daily constantly slurred politicians and Presidential hopefuls of opposing parties. A suit was brought to INDECOPI against the daily on the grounds that it was violating registered trademarks. INDECOPI's Trademark Office quickly granted an injunction suspending the daily's circulation as long as it kept on imitating its rival's brands. The established press widely celebrated the ruling as an act of autonomous decision-making and heralded INDECOPI as an institution that had managed to steer a uniquely independent course from the Government.

## **INDECOPI IN NUMBERS**

### **Measuring Institutionalisation Strategies**

The existing data, though scarce, may cast light upon the effectiveness of some of the strategies employed by INDECOPI's administration to consolidate the institution.

First of all, from its conception, INDECOPI achieved a high degree of budgetary independence. In 1999, 80% of INDECOPI's annual budget of about 8 million US Dollars, came from autonomous sources of revenue, mainly trademark registration fees (44%) and corporate restructuring fees (30%).<sup>108</sup> Arguably, the agency's lack of dependency upon public funds gave it greater manoeuvrability at times when the Executive was attempting to hold sway over public institutions for political purposes. Resourceful management, of course, played a central role recruiting a numerically 'lean' and qualified staff (only 291 full-time employees, and 48 part-time commissioners and directors in 1999),<sup>109</sup> and injecting private sector efficiency in its spending policies. When the Government passed a series of public sector austerity measures in late 1999, like restrictions on cell phone usage or travel expenses, INDECOPI did not need to adjust its administrative policies since similar measures had long been voluntarily put in place.

The key element of INDECOPI's public image as an efficient and autonomous institution is what we have called its 'common branding' strategy. For a newcomer agency with budgetary restrictions, gaining brand-name recognition through commercial advertisement was unrealistic. Instead, the administration relied heavily on the institution's news-making capability to gain a permanent presence in the press. Between 1997 and 1999, the total number of news stories reported in the Peruvian mainstream press related to INDECOPI rose by 60%, to a total of 2,574 articles recorded in a little over a dozen publications permanently monitored by the agency's Press Office, an average of seven reports a day.

[TABLE 3]

Further examination of data shows the importance of INDECOPI's multiple regulatory endowments in achieving a permanent space in the daily news. In a nutshell, different bureaux make newsworthy stories at different times, thus assuring that there is always

something to report about INDECOPI. For example, in Table 4 we can compare the amount of news stories generated by INDECOPI's ten bureaux in August 1998 and in August 1999, and see how when one office had a 'slump' another was there to pick up the slack.

[TABLE 4]

Comparative monthly data also illustrates how INDECOPI's press coverage soared in the latter half of 1998, at the time of the consumer anti-discrimination campaigns, and continued to reach high levels in the first six months of 1999, when clashes with the Executive become more frequent.

[TABLE 5]

INDECOPI's news coverage was complemented by its nationwide educational campaigns, which not only generated public awareness regarding the principles of the market economy, but also of the agency's role in the newly adopted model. The agency's Institutional Development Department reports that 17,811 educational events were organized between 1996 and 2000, originally centred in Lima and rapidly shifting to the provinces as illustrated in Table 5. While there are no exact estimates of the amount of people reached through INDECOPI's educational campaign, the multiplying effect of the agency's INDECOPI Educa program, targeted at schoolteachers, could conservatively put the number at well over 1,500,000.

[TABLE 6]

Finally, generating awareness regarding INDECOPI's existence and multiple functions would hardly be an effective consolidation strategy if the agency's words were not backed up by positive results that the public could associate with the institution. In this regard, the agency's dispute resolution services are of extreme importance, since they are the

services most commonly demanded by the population. As previously mentioned, in its short existence, INDECOPI had handled well over a quarter of a million cases. This number does not include the ADR services offered free of charge to consumers, which in 2000 reached 7,507 complaints (roughly 32% through SAC, 32% through the Tourist Protection Service and 35% through the ODIs), solved in an average of less than 30 days.

Throughout the years, INDECOPI has been able to expand its dispute resolution capacities, handling a larger number of cases each year, reducing the length of its procedures and achieving a higher degree of predictability. By the summer of 2000, consumer protection cases, the most common link to the general population, averaged little over three months.<sup>110</sup>

Tables 6, 7 and 8 illustrate the effectiveness of INDECOPI's dispute resolution services. Of the 235,927 cases solved by INDECOPI's bureaux between 1993 and 1999, only 4% were appealed to the Tribunal; and of the 9,189 cases that reached the INDECOPI Tribunal, only 7% were appealed to the Judiciary. In other words, roughly 99.7% of the disputes taken to INDECOPI reached a definitive solution at the agency. In the remaining 0.3% of the cases that reached the Judiciary, INDECOPI's decisions have been upheld 93% of the time.

[TABLES 7, 8, 9]

### **Measuring Regulatory Success**

Is the Peruvian market less imperfect today thanks to INDECOPI? After little more than eight years of operations, it is still difficult to measure INDECOPI's achievements as both the promoter and arbitrator of a free market economy in Peru, mainly because goals such as fostering greater efficiency, transparency and competition are much longer-term and less susceptible to quantitative measurement. Nonetheless, preliminary evidence

would suggest that INDECOPI has been successful in promoting market competition and consumer rights and, to a lesser degree, in protecting intellectual property.

On the international level, there is growing awareness of Peru's progress throughout the previous decade. The WTO's 2000 Secretariat Report on Peruvian Trade Policy identifies significant improvements throughout the latter half of the 90s in indicators such as growth in GDP, employment, trade, foreign investment and social welfare. It also considers that INDECOPI's multiple regulatory endowments properly recognizes the "interlinkages and the need for consistency between competition policy and protection of intellectual property rights and the use of contingency measures", within a framework developed with a view to ensuring that consumers benefit from the liberalization process.<sup>111</sup>

Domestically, the existing data would suggest that Peruvian consumers today have a greater understanding of the concepts inherent in a free market, and that they perceive their rights to be better protected. An independent survey conducted in July 1999 by Apoyo Opinión y Mercadeo showed that 82% of the consumers polled were aware of their statutory rights, and 84% of the retailers obligations, in cases in which they were not satisfied with a product or service acquired. Likewise, 65% felt that their rights were equally or better protected than in 1994.<sup>112</sup> In all cases, the results were homogeneous among all socio-economic sectors of the population.

In regard to intellectual property protection, the tally is not as positive. Despite sharp reductions in software piracy (from 83 percent in 1995 to 60 percent in 1998) and video piracy (95 percent in 1995 to 50 percent in 1998),<sup>113</sup> and significant increases in general intellectual property registration,<sup>114</sup> Peru is still on the U.S. Trade Representative's Priority Watch List, due to its lack of deterrent-level decisions. While observers recognize INDECOPI's enforcement efforts, insufficient customs, police, and judicial support continue to cause significant problems for legitimate owners of intellectual property.<sup>115</sup>

Overall, although there are reasons for optimism regarding INDECOPI's regulatory achievements, in a country in which institutions have had a dismal record of outliving the regime that incorporated them, the true measure of the agency's success may well be the test of time.

## **CONCLUSIONS**

One cannot understand the institutions that strengthened and withered in Peru during the previous decade without taking into account President Fujimori's populist propensities. The regime's dislike of independent public and private organizations that could counter-balance the Executive's stronghold on power is clearly manifested in a series of manoeuvres that systematically weakened fundamental democratic institutions. Yet the Administration was also very aware that without some sort of institutional development (of the technocratic kind), after the shambles it inherited, the economic reforms on which the regime would build its domestic and international support were bound for failure. Not surprisingly, Fujimori often stated that he did not mind Washington's opinion about his regime so long as Wall Street had a favourable one. Hence, just as the SUNAT reform was indispensable for securing fiscal balance so too were the regulatory agency reforms that INDECOPI would symbolize, for securing investor confidence in the new economic rules of the game.

Evidence suggests that the Fujimori Government not only succeeded in building-up technocratic institutions, such as SUNAT, INDECOPI and the Superintendence of Banking and Insurance (SBS), but also successfully diminished all rival democratic institutions. Some of the technocratic institutions he built-up claimed a considerable degree of credibility, especially within the business class. As mentioned in the introduction, a 1999 nationwide opinion poll among Board members and CEOs of Peru's 5,389 leading businesses representing all sectors of productive activity, revealed that INDECOPI was

the nation's most trusted institution with 56,97% of the preferences, followed by the Catholic Church (54,10%), the SBS (50,41%), the universities (41,8%), SUNAT (33,2%); and most disturbingly, the press (15,16%), the Armed Forces (9,47%), the District Attorney's Office (2,87%), the Congress (1,64%), the municipal governments (1,64%), the Judiciary (0,82%) and political parties (0%).<sup>116</sup> In a similar survey conducted after the 2000 Presidential elections, INDECOPI ranked as the trustworthiest regulatory agency, in a statistical tie with the Central Bank.<sup>117</sup>

INDECOPI's successful institutionalisation is due to several factors. First, the relatively high degree of formal autonomy granted to the agency is commendable. Notwithstanding, INDECOPI's success is largely a result of resourceful leadership and management, a lot of learning-by-doing and crucial political backing at an opportune time. The agency's regulatory design -more a product of strong intuitive vision and pragmatism than thorough planning- also deserves special mention.

### **Leadership, Management and Politics**

On the leadership and managerial level, quite a few comparisons can be made with the SUNAT reform. At the time of INDECOPI's defining relegation of command in 1995, the SUNAT reform was already widely heralded as successful,<sup>118</sup> and several strategies implemented by the new administration seem to mirror this experience. Upon taking office, Beatriz Boza set out to build a team based on trust and confidence, much as Manuel Estela, her counterpart in SUNAT, did.<sup>119</sup> She likewise relied on people with whom strong relations already existed, drawing her teammates from her university background.

Unlike the SUNAT reform,<sup>120</sup> however, Boza's team had little prior experience in civil service. Though Alfredo Bullard's previous experience as a Commissioner in the short-lived CPC experiment must have been crucial in providing inside knowledge regarding the institution, the team was basically made up of young, foreign-trained, private sector professionals. This, to large extent, accounts for the private style efficiency-minded

managerial decisions later undertaken. Surprisingly, a sharp difference from other reforms that relied on a private sector task force is that most of the INDECOPI team, to this date, still remains in the public sector.

Finally, Boza's team was small, even smaller than SUNAT's,<sup>121</sup> which would support the thesis that, in these types of processes, "momentum and learning are facilitated by the cohesiveness" of a small group of reformers.<sup>122</sup>

Several initial managerial decisions adopted by the Boza administration also resemble the SUNAT experience. Most evident are the 'graduate school' strategy behind the administration's human resource policies, and the aggressive communication policy adopted from the start.<sup>123</sup> In INDECOPI's case, however, these policies were perhaps easier to put into practice since it did not have to undergo a significant personnel renovation process, nor did it have to work against a lacklustre public image inherited from decades of poor performance. In implementing other more complex decisions, like organizing its Enforcement Unit, INDECOPI openly sought, and relied upon, SUNAT's previous experience.

Many cost-efficient innovations introduced at INDECOPI resulted from a natural learning process. Other more ambitious and unique strategies are attributable to the agency's management. Most noticeable is the ODI franchising system with which the institution began to decentralise its functions, despite its budgetary limitations. While it is still premature to assess the ODI strategy's long-term viability, the institution's main challenge in this field will be related to the agency costs involved in monitoring, coordinating strategies and aligning the interests of the delegated partners.<sup>124</sup> If successful, the ODI system could potentially create partners in the civil society with a 'stakeholder' interest in preserving INDECOPI and its autonomy.

On the political front, INDECOPI's success was in part due to timely and crucial political backing. The agency's initial successes in regulatory activity facilitated internal cohesiveness and self-confidence, and gave the institution enough momentum to consolidate and position itself in the public view. These aspects also resemble the SUNAT experience.<sup>125</sup> However, unlike SUNAT's story, INDECOPI was also largely successful in resisting external pressures when the Executive's priorities switched due to re-electoral considerations. This, in turn, was in part due to the institution's budgetary autonomy, as well as to the administration's branding policy and the public support generated by its rather effective media and education strategies. Similarly, it may have been in part because INDECOPI was not as politically 'useful' as SUNAT, since it is difficult to imagine that the Executive could not have 'captured' the agency if it really needed to, as it did with so many other public and private institutions. Nonetheless, there is no reason to believe that the 'defence' strategies deployed by INDECOPI could not be effective in other, less authoritarian, scenarios.

### **Regulatory Design**

Does INDECOPI represent a model that other Latin American regulatory agencies might follow? Two arguments can be made against the institution's regulatory design: (i) its empowerment has come by way of weakening the Judiciary, and (ii) it concentrates too much power (too many functions) under a single roof.

To a large degree, INDECOPI was partially the result of an Administration in need of building private sector confidence without the will to strengthen the Judiciary. Thus, INDECOPI is unique for it has been granted judicial-like powers that all other western regulatory agencies lack. While this definitely shatters traditional paradigms inherent to a rights based system, it is not necessarily a fault that undermines the agency's legitimacy, so long as judicial review of the decisions adopted by INDECOPI's bureaux is still plausible. That is to say, so long as the Judiciary can have the last word regarding INDECOPI's decisions, the former will be fulfilling its role as the institution called upon to

defend the public interest, therefore securing an adequate balance between the powers of the State. INDECOPI's powers may seem awkward, but that does not per se make the agency illegitimate.

Furthermore, INDECOPI's unique empowerment may actually benefit the Judiciary. On one hand, INDECOPI is having great success in handling a significant workload that otherwise would have had to fall upon the judicial system, and along the way achieving the degree of specialization and know-how required to handle the novel legislation entrusted to the agency. At this stage, transferring INDECOPI's judicial-like powers to the Judiciary would only complicate any attempt at judicial reform, a still very urgent task. On another hand, since 80% of INDECOPI's budget is currently self-generated, it frees up public resources available to be channelled to the judicial branch. From this perspective, INDECOPI may actually be a useful proxy -not a rival- of the Judiciary, upon which the judicial reform may be constructed. In other words, it could be counterproductive 'to rob Peter to pay Paul'.

In relation to INDECOPI's excessive concentration of regulatory functions, it is true that the agency could, in the wrong hands, become a vehicle for State-interventionism and abuse. Nonetheless, this possibility does not derive from the concentration of functions itself, but rather from insufficient political autonomy and a lack of adequate check-and-balance controls. To mitigate such risks, it is not necessary to weaken or break up one of the country's scarce well-functioning institutions. Instead, policy-makers should concentrate on establishing proper safeguards against such dangers like, for example, implementing an effective judicial reform. Similarly, the agency could be granted constitutional budgetary and political autonomy, and reforms geared to secure greater transparency in the process of appointing key officials could be introduced.

Although INDECOPI is largely a result of the peculiarities of the Peruvian political economy, the institution's design may still serve as a rough blueprint for regulatory

reforms in other Latin American countries. Certainly, international reformers should note the agency's potential for producing economies of scale and economies of scope, as well as policy synergies and inter-linkages in the implementation of its different functions (for example, antidumping and competition policies, or intellectual property and consumer protection). However, 'cloning' an INDECOPI-like agency in a more institutionally stable context may be politically unfeasible.

### **The Road Ahead**

INDECOPI's outlook presents a series of challenges. Although the creation and strengthening of technocratic agencies has served to compensate in the short run for the systematic failings of the State bureaucracy, without a complementary reform of the Peruvian State, and most noticeably a judicial reform, the institutions that surround it will limit INDECOPI's achievements.

INDECOPI's accomplishments initially relied heavily on the managing team brought in by the Boza administration. After the turmoil that followed President Fujimori's fall from power, many of the agency's officials have left the institution. Furthermore, since the Toledo administration took office in July 2001, INDECOPI's personnel turn-over rate has dramatically increased, and several questionable "politically-charged" decisions handed down during 2004 have led many opinion leaders to raise concerns regarding the institution's loss of technocratic independence and its "political capture". Whether succeeding administrations can follow its predecessor's path, or if INDECOPI's success was too dependent on the people that initially guided the agency, is still an open question.

In addition, continuous budgetary restrictions and limitations for hiring personnel adopted by the Peruvian Government may seriously endanger the quality of the institution's performance. Ultimately, the agency's continuance will be dependent on the Government's renewed support.

In sum, INDECOPI's experience offers several lessons for policy-makers and policy-analysts concerned with institutional reform and policy implementation in Latin America. Similarly, the question of its continuance poses major challenges for future reformers in developing countries who will have to find ways to integrate the positive aspects and pioneering innovations of this and many similar autonomous agency experiments, into a broader reform of the State. If this paper can contribute to this outcome, it will have fulfilled its purpose in excess.

Figure 1. Functional organisational diagram (1993).

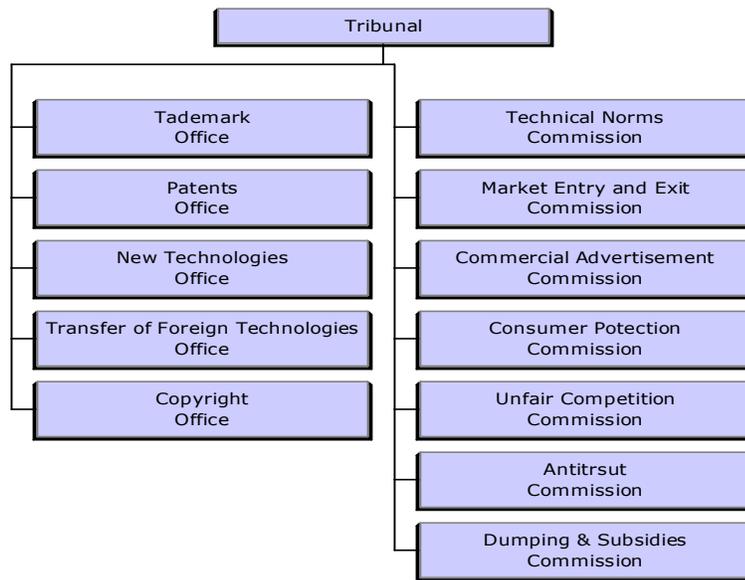


Figure 2. Administrative organisational diagram (1995-1996).



Figure 3. Organisational structure.

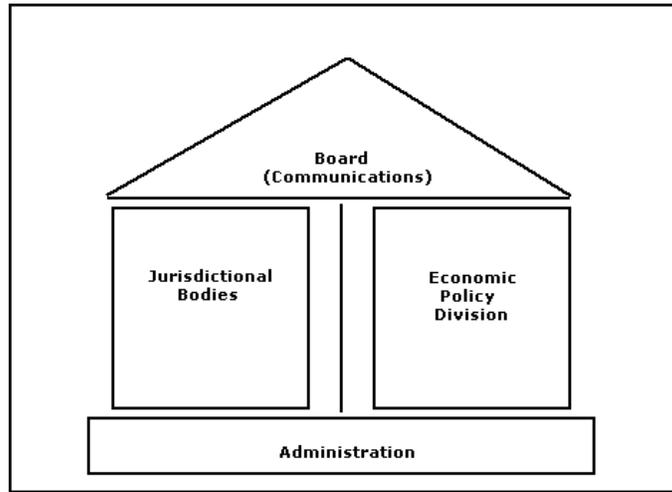
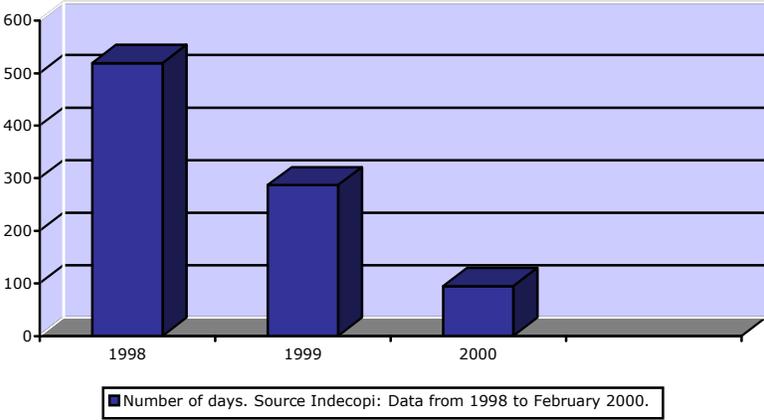


Table 1. Average length of consumer protection proceedings.



Source: INDECOPI

Figure 4. Functional organisational diagram (1996).

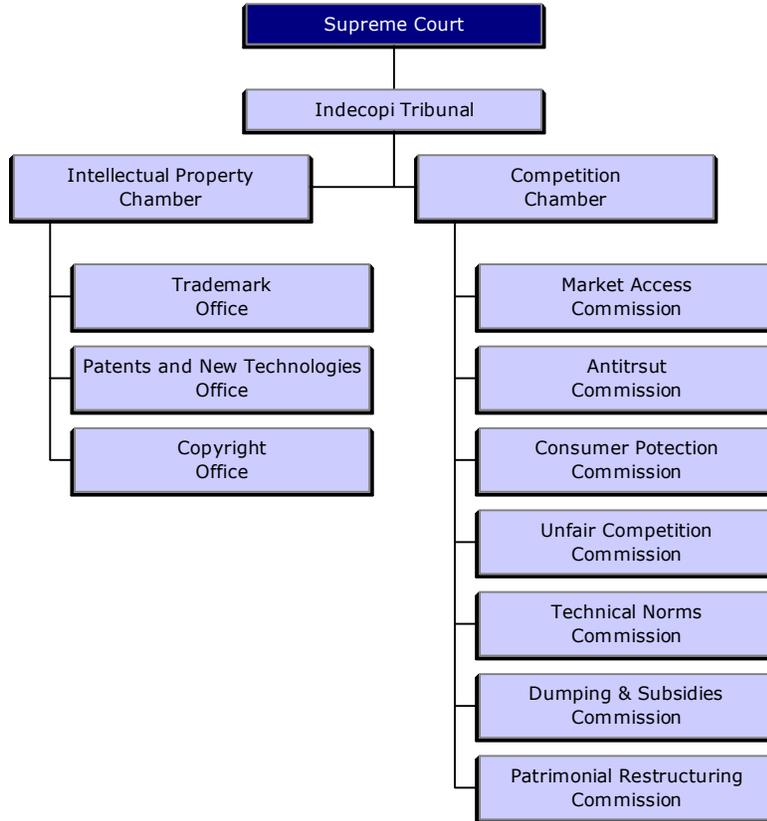


Figure 5. Administrative organisational diagram (1999).

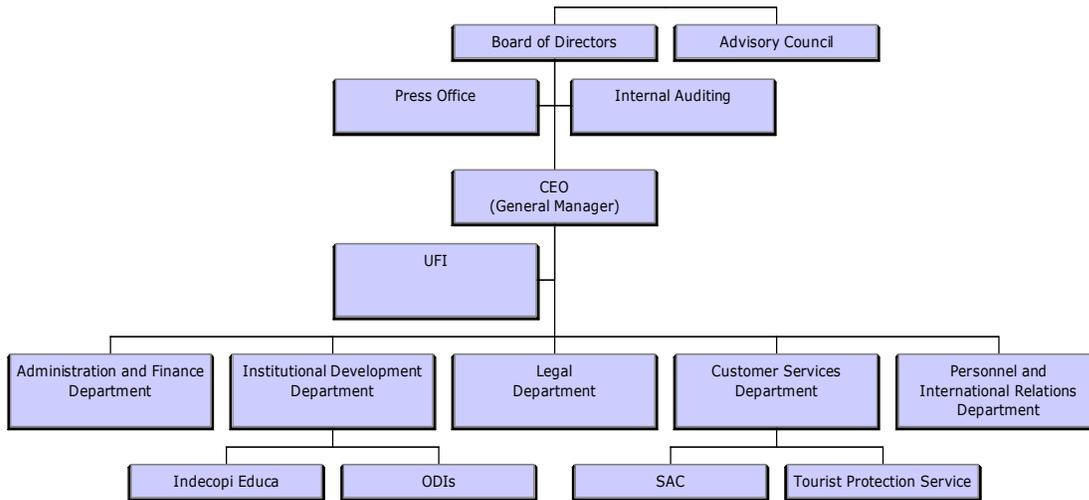
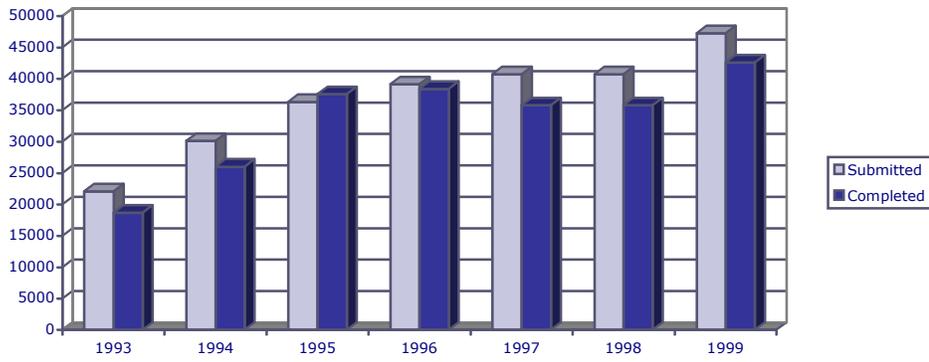


Table 2. Cases handled (1993-1999).



Source: INDECOPI

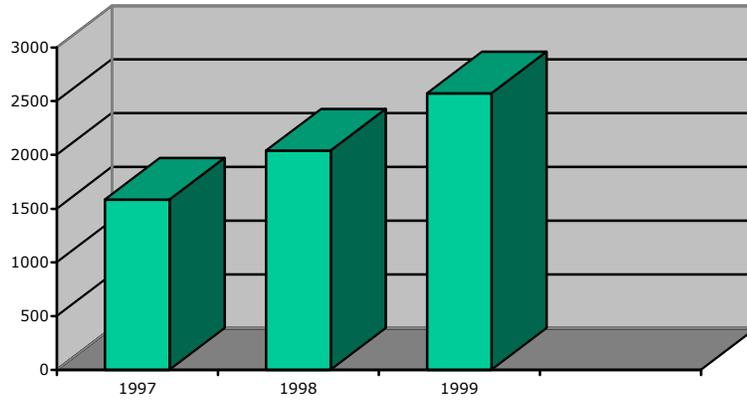


Table 3. Total number of written press (1997-1999).

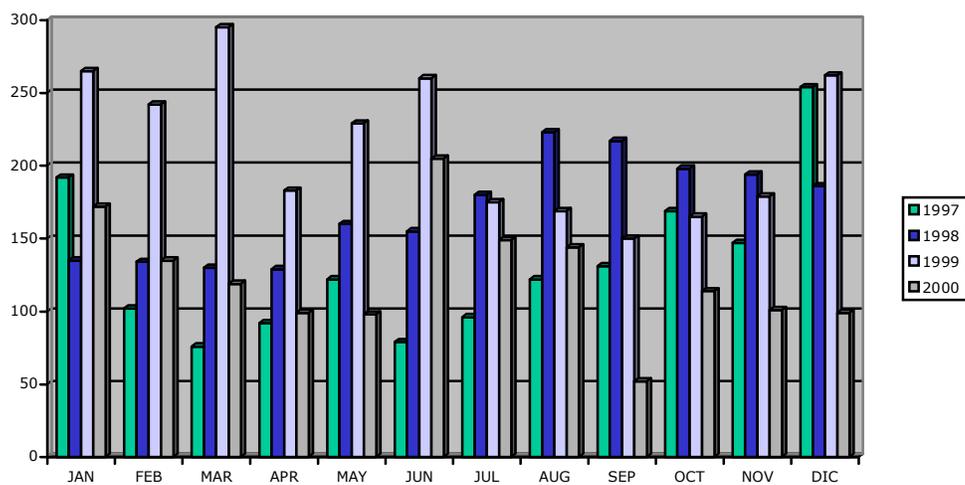
Source: INDECOPI

Table 4. News in written press by functional area (August 1998 v. August 1999).

<b>Bureau</b>	<b>August 1998</b>	<b>August 1999</b>
Market Entry Commission	16	5
Unfair Competition Commission	5	1
Dumping and Subsidies Commission	0	9
Antitrust Commission	34	5
Consumer Protection Commission	3	28
Technical Norms Commission	40	8
Patrimonial Restructuring Commission	9	64
Copyright Office	6	12
Patents and New Technologies Office	2	6
Trademark Office	13	5

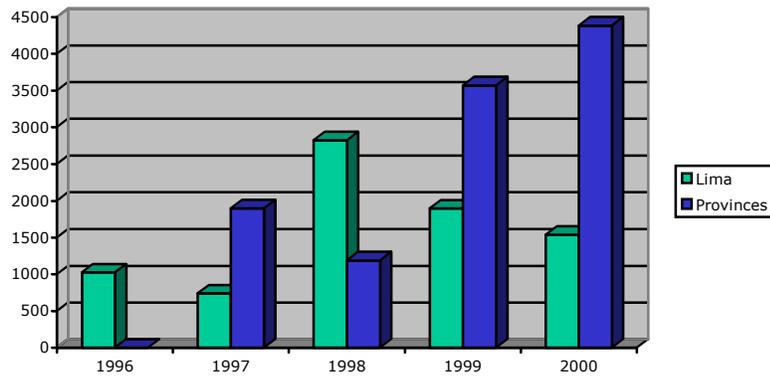
Source: INDECOPI

Table 5. News in written press (1997-2000).



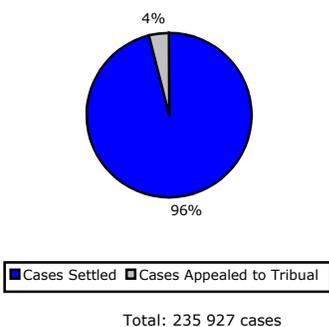
Source: INDECOPI

Table 6. Educational events (1996-2000).



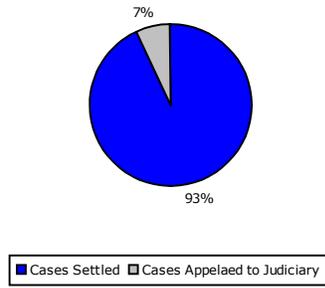
Source: INDECOPI

TABLE 7. Outcome of cases. Commissions and Offices (1993-1999).



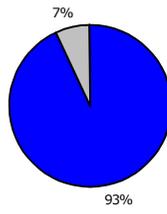
Source: INDECOPI

TABLE 8. Outcome of cases. INDECOPI Tribunal (1993-1999).



Total: 9 189 cases

Source: INDECOPI



■ Cases Upheld ■ Cases Overruled

TABLE 9. Outcome of cases. Judiciary (1993-1999).

Total: 153 cases decided

Source: INDECOPI

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## FOOTNOTES

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<sup>1</sup> See generally John Williamson (ed.), *Latin American Adjustment: How Much Has Happened?* (Washington, 1990), chapter 2.

<sup>2</sup> See Antonia Silva (ed.), *Implementing Policy Innovations in Latin America. Politics, Economics and Techniques* (Washington: 1996).

<sup>3</sup> See Universidad de Lima, *Perúmetro 1. Situación Económica y Empresarial del Perú 1999: Opinión de los Líderes Empresariales* (Lima, 1999).

<sup>4</sup> See generally Rosemary Thorp and Geoffrey Bertram, *Peru 1890 – 1977. Growth and Policy in an Open Economy* (Basingstoke and London, 1978).

<sup>5</sup> See generally Rosemary Thorp, *Progress, Poverty and Exclusion. An Economic History of Latin America in the 20th Century* (Baltimore, 1998).

<sup>6</sup> Thorp and Bertram, *Peru*, pp. 265, 273-274; Rosemary Thorp, *Economic Management and Economic Development in Peru and Colombia* (Basingstoke and London, 1991), pp. 40-42.

<sup>7</sup> See generally Abraham Lowenthal (ed.), *The Peruvian Experiment. Continuity and Change Under Military Rule* (Princeton, 1975); Thorp, *Economic Management*; Thorp, *Progress, Poverty and Exclusion*.

<sup>8</sup> See generally Francisco Durand, *Business and Politics in Peru. The State and the National Bourgeoisie* (Boulder and Oxford, 1994).

<sup>9</sup> See generally Thorp, *Economic Management*; Richard Webb, *Una Economía Muy Peruana* (Lima, 1999).

<sup>10</sup> Durand, *Business and Politics*, pp. 104-107; Webb, *Una Economía*, pp. 108-111.

<sup>11</sup> See generally Thorp, *Economic Management*; John Crabtree, *Peru Under García. An Opportunity Lost* (Basingstoke and London, 1992); Durand, *Business and Politics*.

<sup>12</sup> Crabtree, *Peru Under García*, pp. 58-68.

<sup>13</sup> Grupo de la Agenda Social, *Desafíos Para Alcanzar la Paz. Hacia un Desarrollo Social Sostenible en el Perú* (NA, 1995), p. 25.

<sup>14</sup> Crabtree, *Peru Under García*, p. 179; Mario Vargas Llosa, *A Fish in the Water* (London, 1994), pp. 345-374.

<sup>15</sup> John Crabtree, 'Neo-Populism and the Fujimori Phenomenon', in John Crabtree and Jim Thomas (eds.), *Fujimori's Peru: The Political Economy* (London, 1998), pp. 17-19.

<sup>16</sup> Crabtree, *Peru Under García*, p. 183.

<sup>17</sup> John Crabtree and Jim Thomas, 'Neoliberalism, Democracy and Exclusion', in John Crabtree and Jim Thomas (eds.), *Fujimori's Peru: The Political Economy* (London, 1998), p. 266.

<sup>18</sup> Crabtree, *Neo-Populism*, p. 16.

<sup>19</sup> Maxwell A. Cameron, *Democracy and Authoritarianism in Peru: Political Coalitions and Social Change* (Basingstoke, 1994), p. 190.

<sup>20</sup> Adolfo Figueroa, 'Income Distribution and Poverty in Peru', in John Crabtree and Jim Thomas (eds.), *Fujimori's Peru: The Political Economy* (London, 1998), pp. 146-147.

<sup>21</sup> Crabtree, *Neo-Populism*, p. 22.

<sup>22</sup> Crabtree, *Neo-Populism*, p. 18.

<sup>23</sup> Luis Abugattas, 'Stabilisation, Structural Reform and Industrial Performance', in John Crabtree and Jim Thomas (eds.), *Fujimori's Peru: The Political Economy* (London, 1998), p. 61.

<sup>24</sup> Law No. 25327.

<sup>25</sup> Javier de Belaúnde, 'Justice, Legality and Judicial Reform', in John Crabtree and Jim Thomas (eds.), *Fujimori's Peru: The Political Economy* (London, 1998), p. 173.

<sup>26</sup> Ibid.

<sup>27</sup> Belaúnde, *Justice*, pp. 173-175.

<sup>28</sup> Belaúnde, *Justice*, p. 176.

<sup>29</sup> Belaúnde, *Justice*, pp. 179-184.

<sup>30</sup> Belaúnde, *Justice*, pp. 188-190.

<sup>31</sup> Legislative Decree No. 701.

<sup>32</sup> Legislative Decree No. 691.

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- <sup>33</sup> Legislative Decree No. 716.
- <sup>34</sup> Belaúnde, *Justice*, p. 173.
- <sup>35</sup> Kwang Wook Kim, 'Indecopi: A Case Study of Peruvian Autonomous Institutions', in Beatriz Boza (ed.), *The Role of the State in Competition and Intellectual Property Policy in Latin America: Towards and Academic Audit of Indecopi* (Lima, 2000), p. 47.
- <sup>36</sup> Video of Carlos Boloña's presentation on August 1998 at INDECOPI.
- <sup>37</sup> INDECOPI was created by Decree Law No. 25868 dated November 6 1992.
- <sup>38</sup> Article 2e of Decree Law No. 25868.
- <sup>39</sup> Decree Law No. 26116 and Decree Law No. 26122.
- <sup>40</sup> See Alfredo Bullard and Carlos A. Patrón, 'El Otro Poder Electoral. Apuntes Sobre la Experiencia Peruana en Materia de Protección Contra la Competencia Desleal', in *Thémis - Revista de Derecho*, No. 39 (1999), pp. 433-452.
- <sup>41</sup> Kim, *Indecopi*, p. 47.
- <sup>42</sup> Article 1 of Decree Law No. 25868.
- <sup>43</sup> Both the Ministry of Economy and the Ministry of Industry could nominate one member to the Board (article 4 of Decree Law No. 25868). Additionally, the President of the Board would be nominated by the Ministry of Industry (article 5 of Decree Law No. 25868). In all cases, the final appointments were made by the Ministry of Industry (article 4 of Decree Law No. 25868).
- <sup>44</sup> Articles 5 and 15 of Decree Law No. 25868.
- <sup>45</sup> Article 10 of Decree Law No. 25868.
- <sup>46</sup> Article 20 of Decree Law No. 25868.
- <sup>47</sup> Kim, *Indecopi*, p. 47.
- <sup>48</sup> Ibid.
- <sup>49</sup> Article 48 of Decree Law No. 25868.
- <sup>50</sup> Article 50 of Decree law No. 25868.
- <sup>51</sup> Dated December 29<sup>th</sup>, 1994.
- <sup>52</sup> The New Technologies Office was merged with the Patent Office and the Repression of Unfair Competition Commission was merged with the Commercial Advertisement Commission.
- <sup>53</sup> Kim, *Indecopi*, p. 47.
- <sup>54</sup> Beatriz Boza, 'The Role of Indecopi in Peru: The First Seven Years', in Beatriz Boza (ed.), *The Role of the State in Competition and Intellectual Property Policy in Latin America: Towards and Academic Audit of Indecopi* (Lima, 2000), p. 18; Kim, *Indecopi*, p. 53.
- <sup>55</sup> Rosemary Thorp, 'The Reform of the Tax Administration in Peru', in Antonia Silva (ed.), *Implementing Policy Innovations in Latin America. Politics, Economics and Techniques* (Washington: 1996), pp. 39-43.
- <sup>56</sup> Kim, *Indecopi*, p. 54.
- <sup>57</sup> Kim, *Indecopi*, p. 53.
- <sup>58</sup> Douglass C. North (ed.), *Importancia de las Instituciones en el Desarrollo de una Economía de Mercado* (Lima, 1995).
- <sup>59</sup> Kim, *Indecopi*, p. 54.
- <sup>60</sup> Boza, *The Role of Indecopi*, p. 18; Armando Cáceres, 'Indecopi's First Seven Years: The Challenge of Changing the Paradigm of Succeeding in the Market', in Beatriz Boza (ed.), *The Role of the State in Competition and Intellectual Property Policy in Latin America: Towards and Academic Audit of Indecopi* (Lima, 2000), p. 113.
- <sup>61</sup> Kim, *Indecopi*, p. 54.
- <sup>62</sup> Kim, *Indecopi*, p. 47.
- <sup>63</sup> Cáceres, *Indecopi's First Seven Years*, p. 109.
- <sup>64</sup> Boza, *The Role of Indecopi*, p. 9.
- <sup>65</sup> See Frank Pasquale, 'Indecopi as a Brand and Holding Company: The Business Model of Governance', in Beatriz Boza (ed.), *The Role of the State in Competition and Intellectual Property Policy in Latin America: Towards and Academic Audit of Indecopi* (Lima, 2000), pp. 83-106.
- <sup>66</sup> Boza, *The Role of Indecopi*, p. 12.
- <sup>67</sup> Kim, *Indecopi*, p. 48.
- <sup>68</sup> See Durand, *Business and Politics*, pp. 59-62.
- <sup>69</sup> Kim, *Indecopi*, p. 48.
- <sup>70</sup> Alberto Fujimori, 'Discurso en la Conferencia Anual de Empresarios (CADE)', in *Diario Oficial El Peruano, Separata Especial*, November 7 1995.
- <sup>71</sup> Kim, *Indecopi*, p. 48.
- <sup>72</sup> Article 2a of Legislative Decree No. 807.
- <sup>73</sup> Articles 2a and 2c of Legislative Decree No. 807.
- <sup>74</sup> Article 2c of Legislative Decree No. 807.
- <sup>75</sup> Article 8 of Legislative Decree No. 807.

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- <sup>76</sup> Article 5 of Legislative Decree No. 807.
- <sup>77</sup> Article 5 of Legislative Decree No. 807.
- <sup>78</sup> Article 42 of Legislative Decree No. 807.
- <sup>79</sup> Article 47 of Legislative Decree No. 807.
- <sup>80</sup> Boza, *The Role of Indecopi*, p. 13.
- <sup>81</sup> Article 43 of Legislative Decree No. 807.
- <sup>82</sup> Article 9 of Legislative Decree No. 807.
- <sup>83</sup> Article 14 of Legislative Decree No. 807.
- <sup>84</sup> Article 14 of Legislative Decree No. 807.
- <sup>85</sup> Article 64 of Legislative Decree No. 807.
- <sup>86</sup> Kwang Wook Kim, 'Conflict of Interest: The Tension Between Public-Private Cooperation and Multiple Principals in Peru', in Beatriz Boza (ed.), *The Role of the State in Competition and Intellectual Property Policy in Latin America: Towards and Academic Audit of Indecopi* (Lima, 2000), p. 305.
- <sup>87</sup> Article 45 of Legislative Decree No. 807.
- <sup>88</sup> Article 46 of Legislative Decree No. 807.
- <sup>89</sup> Article 6 of Legislative Decree No. 807.
- <sup>90</sup> Article 47 of Legislative Decree No. 807.
- <sup>91</sup> Boza, *The Role of Indecopi*, p. 13.
- <sup>92</sup> Boza, *The Role of Indecopi*, p. 8.
- <sup>93</sup> Ibid.
- <sup>94</sup> Ibid.
- <sup>95</sup> Ibid.
- <sup>96</sup> Boza, *The Role of Indecopi*, p. 9.
- <sup>97</sup> Law No. 27311.
- <sup>98</sup> Article 2 of Legislative Decree No. 788.
- <sup>99</sup> Boza, *The Role of Indecopi*, p. 17.
- <sup>100</sup> Boza, *The Role of Indecopi*, p. 17-18.
- <sup>101</sup> Beatriz Boza and Welby Leaman, 'The Promotional Role of the Government in Market Discrimination Cases: Lima Nightclubs, Self-Esteem and Civil Society Empowerment', in Beatriz Boza (ed.), *The Role of the State in Competition and Intellectual Property Policy in Latin America: Towards and Academic Audit of Indecopi* (Lima, 2000), p. 179.
- <sup>102</sup> Ibid.
- <sup>103</sup> Under the 1993 Constitution, international human right's treaties subscribed by the Peruvian State have constitutional hierarchy.
- <sup>104</sup> Law No. 27049.
- <sup>105</sup> Case No. 029-96-CLC.
- <sup>106</sup> Case No. 008-98-CLC.
- <sup>107</sup> Law No. 27103.
- <sup>108</sup> Cáceres, *Indecopi's First Seven Years*, p. 113.
- <sup>109</sup> Ibid.
- <sup>110</sup> See Table 1 in Chapter 2.
- <sup>111</sup> WTO, *Trade Policy Review: Peru. Summary Observations* (2000).
- <sup>112</sup> INDECOPI, 'Fortalecimiento del Sistema de Protección al Consumidor: Diagnóstico y Propuesta', in *Diario Oficial El Peruano, Separata Especial*, March 15 2000.
- <sup>113</sup> US Department of State, *Bureau of Economic and Business Affairs 1999 Country Report on Economic Policy and Trade Practices - Peru* (2000).
- <sup>114</sup> Boza, *The Role of Indecopi*, p. 4.
- <sup>115</sup> US Department of State, *Bureau of Economic and Business Affairs 1999 Country Report*.
- <sup>116</sup> Universidad de Lima, *Perúmetro 1*.
- <sup>117</sup> Universidad de Lima, *Perúmetro 3. Situación Económica y Empresarial 2000: Opinión de los Líderes Empresariales* (Lima, 2000).
- <sup>118</sup> See Thorp, *The Reform of the Tax Administration*; Francisco Durand and Rosemary Thorp, 'Tax Reform: The SUNAT Experience', in John Crabtree and Jim Thomas (eds.), *Fujimori's Peru: The Political Economy* (London, 1998), pp. 209-225.
- <sup>119</sup> Thorp, *The Reform of the Tax Administration*, pp. 36-37.
- <sup>120</sup> Thorp, *The Reform of the Tax Administration*, p. 37.
- <sup>121</sup> Thorp, *The Reform of the Tax Administration*, 45.
- <sup>122</sup> Ibid.
- <sup>123</sup> Thorp, *The Reform of the Tax Administration*, pp. 39-40, 42.
- <sup>124</sup> See generally Kim, *Conflict of Interest*.
- <sup>125</sup> Thorp, *The Reform of the Tax Administration*, p. 40.