Peru Attempts to Regulate Its Way to a Freer Market

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LIMA—For nearly 30 years—from 1963 to 1990—Peru had statist governments. They all believed that their own wisdom in deciding what, how, and for whom to produce far exceeded the wisdom of the market. President Alberto Fujimori's government significantly altered this course. The macroeconomic stabilization and austerity measures applied between 1988 and 1992 were accompanied by structural reforms that included privatization of state companies and economic deregulation.

However, the Fujimori government now realizes that to reverse the statist policies of the past it is not enough to privatize and deregulate the economy. To ensure an open, competitive environment in which resources are allocated efficiently, the government must provide a legal framework for the protection of ownership rights. But to what extent do such protections interfere in market transactions and disrupt the re-emergence of a market economy? This is the question now facing Peruvian lawmakers.

At the heart of the controversy is a governmental agency set up by the Fujimori government called the National Institute for the Defense of Competition and Intellectual Ownership (Indecopi). This agency was created at the end of 1992 to oversee what academics now call “the new economic regulation.” Indecopi’s work covers three separate areas: defense of intellectual ownership, promotion of free competition and reorganization of insolvent companies.

In the past, intellectual ownership rights, which include industrial property (brands and patents) as well as copyright, lacked adequate protection in Peru. According to a recent U.S. government survey, Peru was among the group of Latin American countries with the highest number of pirated films, cable transmissions, tape recordings, computer software and published material.

As a consequence of these findings, U.S. Trade Representative Mickey Kantor announced a year ago that Peru was on the “Watch List”—one of 16 countries whose intellectual ownership practices will be closely monitored to ensure their observance of the Special 301 provisions of the 1974 Trade Act. The Clinton administration has made the protection of intellectual ownership one of the central tenets of its trade policies with Peru.

Indecopi reacted quickly. The head of the intellectual ownership office, Ruben Villacorta Ugarteche, began a campaign against pirating as though he were leading a crusade. It was not enough for him that thousands of pirated videotapes and computer programs were confiscated; he even went so far as to appear on television driving an enormous steamroller over the offending material.

Such high-profile activities managed to provoke the animosity of wide sectors of the population that had become accustomed to reaping the benefits of pirated products. Still, the campaign was a successful dissuader. One year ago, it was common to find the Sunday editions of El Comercio, Peru’s principal daily newspaper, publishing advertisements for pirated software on its classified pages. As a result of Indecopi’s action, this stopped.

Although Indecopi has had considerable success in the protection of intellectual property rights, academics and analysts have questioned to what point the state can regulate competitive behavior without the costs exceeding the gains. This is not an easy question to answer, as Indecopi’s commissions for the “defense of free trade,” “repression of disloyal competition,” “anti-dumping and subsidy control,” “advertising standards” and “consumer rights” have discovered.

Seeing the protectionist potential embodied in these commissions, former Economic Minister Carlos Bolona said in a recent TV appearance that he regretted having created such a “Frankenstein’s monster.” Mr. Bolona is not the only wary one. Similar concerns are shared among Indecopi’s own leaders, who insist that the commissions must not become the tools of protectionist interventionism. “We simply want the market to function,” says Jorge Fernandez-Baca, president of the Free Trade Tribunal, the division of Indecopi that has the power to review the decisions of all other offices within the agency.

Indecopi’s third function—the restructuring of insolvent companies—has also raised some heat. Peru’s recession, brought on by economic austerity measures, has been very deep. Between 1990 and 1992 gross domestic product slumped a net 5.5%, causing a number of companies to go bankrupt. Many of these companies, or their creditors, left it to Indecopi to put their bankruptcy proceedings in order.

Indecopi actually has the power to declare companies insolvent, as well as to restructure companies and arrange for basic agreements with those companies’ creditors. Of course, not everyone is content with Indecopi’s judicial-like powers or its decisions. Many businessmen have taken the agency’s officials to court. In the case of the financially troubled American Airlines, for example, Indecopi played the role of intermediary and ruled that a company stock had to be issued to a creditor. However, the original stockholders were furious with the decision and took Indecopi to court. Usually such proceedings have fizzled. But even when the complaints are declared groundless, this sort of situation leaves Indecopi officials feeling uneasy.

More than a year after its 1992 inauguration, Indecopi is in the eye of the storm of Peruvian economic life. Critics charge it has taken on too much and has assumed certain powers that would have been better left to the judiciary. The problem is that the judiciary’s ability to deal with such issues is also fairly suspect.

In 1990, a brazen Peruvian manufacturer tried to register the Reebok sneakers brand as his own, even including its classic British flag logo. Indecopi’s forerunner in industrial property defense turned the manufacturer down. However, the matter was then taken to the courts and, to Peru’s chagrin, the courts ruled in favor of the brand’s registration.

What would be the consequences for Peru if this sort of practice were to become par for the course? In the context of a global market, Peru’s ability to secure solid investment would be severely compromised. With this in mind, Indecopi—which already is looking to revisit the Reebok affair—will not only be necessary, but indispensable. While Peru is banking on the free market model as its best bet, the market can be free only if the rules of fair play are enforced.

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