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Peru – South Korea Free Trade Agreement Update

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On August 30, 2010, the Governments of the Republics of Peru ("Peru") and Korea ("South Korea") announced the conclusion of negotiations for a Free Trade Agreement ("FTA") between the two countries, which is expected to enter into full force in mid-2011 after the conclusion of each country's internal ratification procedures.

Currently, both countries' legal teams are fine-tuning the final text of the FTA. Peruvian officials are targeting next November's meeting of the Asia-Pacific Economic Cooperation, to be held in Japan, for the signing of the FTA.

Formal negotiations began in March 2009 and concluded on August 30, 2010, after several rounds of negotiations. However, due to the increase of trade and similar agreements between Latin American and Asian-Pacific countries during the past five years, both countries showed interest in pursuing a free trade agreement as early as 2006. Peru has been South Korea's second target of major investments in Latin America, in principally the energy, mining, manufacturing and wholesale and retailer sectors. Also, this marks Peru as the second South American country to have sealed a free trade agreement with South Korea. According to Peru's Ministry of Foreign Affairs and Tourism, in 2009 alone, bilateral trade between the two nations reached approximately US$1.4 billion, of which Peru's exports accounted for US$750 million and its imports for US$648 million. Peruvian President Alan Garcia has set a target of US$7 billion, to be reached by 2016.

Generally, the FTA's purpose is to strengthen commercial relations by creating a framework and conditions that are favorable for commerce and investment between both countries, as well as setting forth controls and safeguards for investors in the private and public sectors. The FTA will mainly regulate the following: (a) National Treatment and Market Access;
(b) Rules and Procedures of Origin; (c) Commercial Defense; (d) Technical Barriers to Trade; (e) Sanitary and Phytosanitary Measures; (f) Custom Procedures and Trade Facilitation;
(g) Cross-Border Trade in Services; (h) Telecommunications; (i)

Temporary Entry for Business Persons; (j) Investments; (k) Electronic Commerce; (l) Intellectual Property;
(m) Competition Policies; (n) Government Procurement; (o) Cooperation and Strengthening of Trade Capacities; (p) Labor; (q) Environment; (r) Dispute Settlement; and (s) Institutional Matters.

According to news releases, the FTA will eliminate most tariffs between the two countries within 10 years from its entry into force, with the exception of 107 agricultural and marine products, such as rice, beef, onion and garlic, which are considered to be sensitive to South Korea's interests. Pursuant to such news releases, from the South Korean perspective, domestic manufacturers of automobiles, electronic goods and home appliances stand to benefit the most from the FTA. Peru's 9% tariffs on imported vehicles will phase out, in different intervals, over the next decade, as will those on white goods, while the 9% tariffs on color televisions will be eliminated immediately when the FTA enters into effect. Korean officials have expressed that the treaty puts them in "first-mover advantage" over Japan, which is currently in talks with Peru for a free trade agreement. According to South Korean officials, they are interested in tapping into Peru's abundant natural resources, such as gold, zinc, tin and copper.

For Peru, the FTA will benefit fisheries, agriculture and forestry exports, as well as exports of natural gas and oil (the country is becoming a major producer of these two natural resources in South America). According to the U.S. Energy Information Administration, Peru ranks seventh in total oil production as well as in dry natural gas production in South and Central America. The Peruvian Agency of Competitiveness of the Ministry of Agriculture pointed out that 25% (377 tariff schedule classification items) of the agricultural products that are exported worldwide will enter into South Korea free of any duty upon entry of the FTA, such as coffee, sugar, cacao, tomato paste, and olives, among other products. Another 54% (810 tariff schedule sub-classifications) of agricultural products will have tariff phaseout within the next 10 years, while 202 sub-classified agricultural products will have tariff phaseout beyond 10 years, such as mandarin, egg yolk, ethanol, quinoa, kiwicha, and pork meat, among others.

According to Peru's Ministry of Foreign Commerce and Tourism, Peru has experienced major growth and development in various industries, such as mining and hydrocarbons, agribusiness, fishery and textile manufacturing. The FTA will fuel additional growth in these industries by facilitating improvements to Peruvian production capacity and by allowing for the transfer of technology through the acquisition of intermediate goods, capital and know-how.

As a matter of background, the FTA will be South Korea's second agreement with a Latin American country, its first such agreement having been entered into with Chile in 2004. In general, this is South

Korea’s eighth free trade agreement, including agreements with ASEAN countries, India, Singapore, the United States and the European Union.

This FTA will be Peru’s fourth free trade agreement with an Asian nation, the others being Singapore, Thailand and China. Peru also has free trade agreements with the United States, Canada and the European Free Trade Association, made up of Switzerland, Iceland, Liechtenstein and Norway. Peruvian President Alan Garcia and his team, at the Ministry of Foreign Commerce and Tourism, have been extremely aggressive in seeking and negotiating free trade agreements, with the goal of strategically positioning Peru in the global community.

The Vice-Minister of Foreign Commerce of Peru, Mr. Carlos Posada, announced that Peruvian officials are eager to place the FTA in full force, and that the FTA will not need Peruvian congressional ratification, since the FTA does not constitute any change in national legislation related to human rights or national sovereignty. The President of Peru is authorized and empowered by Peru’s 1993 Constitution to negotiate, execute and ratify treaties without prior approval from the Peruvian Congress, provided that such treaties do not deal with matters of human rights, sovereignty, national defense, state financial obligations, and the creation, amendment and repeal of taxes. Such a treaty is enacted by the President through the issuance of a Supreme Decree, as regulated by Law No. 26647 (Rules pertaining to National Perfection of Treaties entered into by the State).

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