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中国-秘鲁自由贸易协定

简述

《中国-秘鲁自由贸易协定》("自贸协定")于2009年12月6日经两国政府正式批准，并已于2010年3月1日生效。该双边自由贸易协定旨在扫清中国与秘鲁之间在贸易和投资领域的障碍。

自贸协定针对两国制定了一系列统一的规则，将有助于双方着眼于各自的核心利益，建立有序的双边贸易和投资关系。自贸协定是中国与发展中国家之间的首份综合性商业协议，载明了有关货物贸易、服务贸易及投资的条款。

中国的市场将为秘鲁带来巨大的商机。就人口而言，中国是世界上最大的市场，人口接近13亿，其中约有5亿人居住在城市地区，他们的购买力快速增长。从经济角度来看，中国是过去二十年中真正实现快速增长的唯一国家。此增长涉及大量原材料、中间货物及生产资料的进口。

秘鲁与中国的商业结构具有互补性。在以自然资源(矿产、渔业及工农业产品)为基础的原材料和制成品方面，秘鲁的出口和中国的进口互相匹配。反之，在秘鲁的进口及中国的出口方面，两国非依赖于自然资源的制造业具有显著的互补性；主要涉及秘鲁不生产的生产资料(机器设备)以及耐用消费品。从商业角度来看，中国是秘鲁的第二大商业伙伴，2008年与中国的贸易额达到78.02亿美元，比2007年的数额高62.8%。

两国之间已就下列领域达成协定：货物贸易、原产地规则、贸易救济、服务贸易、投资、商务人员临时入境、卫生和植物卫生措

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随着外国对拉美的投资日益增长以及本地区企业不断扩大其在全球经济中的参与，翰宇法律顾问全球网络已经占有了独特的优势，能满足客户对高端法律顾问的需求，不仅仅在整个拉美和加勒比地区，同时覆盖全世界。

翰宇以向客户提供素质高、具成本效益且切合其要求的法律服务为宗旨。翰宇提升全球律师价值的行动旨在不断提升本所法律服务的素质，从而提高向客户提供服务的价值。翰宇为贯彻企业律师协会促进效益提升的目标，鼓励

施、技术性贸易壁垒、争端解决、海关程序、知识产权、合作和机构问题。此外，两国还顺利地就《海关合作协议》及《劳动和社会保障合作谅解备忘录》进行了磋商，并将另行签署。

该协定也将为秘鲁出口商带来巨大商机。在将享有优先进入中国市场的权利并将从中获益的产品中，包括各种农渔产品：葡萄、芦笋、柑橘果、辣椒、西红柿、可可、干果、豆类、洋姜、大蒜、洋葱、鳄梨、草莓、鱼粉、鱼油、potato鱼、鲜章鱼、冻鱼、虾及其他。从自贸协定开始实施的首日起，已经有大量的秘鲁出口产品以优惠条件进入中国市场。自协定生效之日起，相当比例的秘鲁出口产品享受到了进入中国的优惠待遇，有61.2%的秘鲁对华出口关税被降低到了0%，占秘鲁对华出口总量的83.5%。此外，有94.5%的产品开始按照较低的关税进入中国市场，占秘鲁对华出口总量的99%。就秘鲁从中国的进口而言，有62.7%的中国产品将按零关税进入秘鲁市场，占秘鲁从中国进口总量的61.8%。

值得一提的是，该协定对两国的敏感产品作出了特别安排。秘鲁将其最敏感的产品排除出了免税清单。就此而言，秘鲁不会免除对纺织品、服装、鞋类以及在秘鲁创造大量就业机会的某些金属机械产品的税费（共计592种产品）。这些产品占从中国进口总额的10%。同样，中国也将木材和纸类产品以及某些农产品排除在免税清单之外。

同时，该协定还允许受害方采用世界贸易组织准许的贸易防御措施（反倾销和全球保障）。协定还包含一份双边附属保障文书，规定了调查部门为收集相关资料而相互协助的合作机制。

自贸协定中的合作这一章规定了在不同领域开展合作的框架和目标，这些领域包括科技、信息技术、中小企业、渔业、传统医学、旅游、采矿、工业等。

此外，该协定将推动秘鲁进一步开发服务贸易业，也有助于秘鲁服务及服务提供商以优惠条件进入中国市场。双边须遵循国民待遇原则，这表明不能将本国服务与他国服务区别对待，也不能将本国服务提供商与他国服务提供商区别对待。

协商投资这一章对两国于1994年签订的《投资促进与保护协定》进行了补充。值得注意的是，协定中还包含一个核心安全章节，涉及按照秘鲁宪法规定为了国家安全而实施征收的各种事宜。此外，“善意”一词也被纳入了“投资”的定义中，与知识产权相互独立。

最后，就《海关合作协定》而言，主管海关机构将能就产品原产地及申报价值交换信息。通过这种方式，将有可能采用某些工

制定和落实一些程序和方针，以求不断优化培训和资源、知识管理、提供最佳专业队伍和高成本效益的法律服务，并进行管理。

翰宇还出版若干其他主题的刊物。如需查询刊物清单以及订阅刊物，敬请访问我们的 [订阅页面](#)。

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具，来调查海关犯罪（比如涉嫌产品价值低估）存在的情况。

到目前为止，该自贸协定是中国与另一发展中国家磋商签订的同类型最完整协定。

如需了解更多自贸协定的信息，请联系你在美国翰宇国际律师事务所的联系律师或者以下所列律师。

The China-Peru Free Trade Agreement

A Brief Overview

The China-Peru Free Trade Agreement (FTA) was officially ratified by each country's government on December 6, 2009 and went into effect on March 1, 2010. The bilateral FTA is designed to eliminate trade and investment obstacles between China and Peru.

The FTA creates a framework of coherent rules that will open up organized bilateral trading and investment relationships. The FTA is the first broad commercial agreement between China and another developing country that includes provisions for goods trading, services trading and investments.

China's markets represent a great opportunity for Peru. In demographic terms, China is the world's largest market, with a population of almost 1.3 billion people, of which approximately 500 million are located in urban areas, representing a rapidly growing purchasing power. From an economic point of view, China is one of the few countries that have grown at a high rate in the last two decades. That growth has involved the importation of greater volumes of raw materials, intermediate goods and capital goods.

Peru's and China's commercial structures are complementary. Peru's exports and China's imports are well matched in the case of the raw materials and manufactured goods based on natural resources (mining, fishing and agro-industrial products). Conversely, Peru's imports and China's exports complement one another in manufacturing not based on natural resources — mainly capital goods (machinery and equipment) and durable consumer goods not produced in the country. From a commercial point of view, China is already Peru's second-largest commercial partner; in 2008 commercial trading with China reached US\$7.8 billion, 62.8 percent higher than 2007.

Agreements between the two countries have been reached in the following areas: trading of goods, origin

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rules, trade remedies, services, investment, temporary entry for business persons, sanitary and phytosanitary measures, technical barriers to trade, dispute settlement, customs procedures, intellectual property rights, cooperation and institutional matters. Moreover, a Customs Cooperation Agreement and a Memorandum of Understanding for Labor and Social Security Cooperation have been successfully negotiated as separate instruments to the FTA.

The FTA also represents a great opportunity for Peru-based exporters. Among the products that will benefit from preferential access to China's market is a wide range of agricultural and fishing products, such as grapes, asparagus, citrus fruits, peppers, tomatoes, cacao, dried fruits, beans, artichokes, garlic, onions, avocados, strawberries, fish meal, fish oil, pota fish, fresh octopuses, frozen fish and shrimp. A significant percentage of Peru's exports has enjoyed preferential access to China since the FTA went into effect; tariffs on 61.2 percent of the products that make up 83.5 percent of Peru's exports to China were reduced to 0 percent from day one. Furthermore, 94.5 percent of the products that make up 99 percent of Peru's exports to China now have access to this market at a lower tariff rate. Finally, 62.7 percent of the products that make up 61.8 percent of imports coming from China will enter Peru's market tariff-free.

It is important to mention that the FTA takes into account the sensitivities of both countries. Peru has managed to exclude from the fee deduction process its most important products. Peru will not eliminate the fees for a significant number (592) of textile products, clothing, footwear and some metal-mechanical products, which generate a lot of employment in Peru. These products make up 10 percent of the total value imported from China. In the same way, China has excluded wood and paper products from the fee deduction process, as well as some agricultural products.

The FTA also allows affected parties to employ the trade defense measures (antidumping and global safeguards) allowed by the World Trade Organization. It also comprises an additional bilateral safeguard instrument and establishes cooperation mechanisms so that investigating authorities can assist each other in order to collect relevant information.

The cooperation chapter included in the FTA establishes the framework and objectives to carry out cooperation activities in diverse areas including science and technology, information technologies, small and midsize businesses, fishing, traditional medicine, tourism, mining and industry, among others.

In addition, the FTA helps improve Peru's openness in service trading and establishes preferential access for Peru's services and providers into China's market. Both parties must apply the national treatment principle, meaning that they cannot discriminate between their own services and the other country's services, or between domestic service providers and the other country's service providers.

The negotiated investment chapter coexists with and complements the scope of the Investment Promotion and Protection Agreement the countries entered into in 1994. It is interesting to note that an Essential Security article covering aspects of expropriation for national security reasons, in accordance with the provisions established by Peru's Constitution, was included in the agreement. Moreover, the term "goodwill" was included in the definition of "investment," independent of intellectual property rights.

Finally, in relation to the Customs Cooperation Agreement, the competent customs authorities will be able to exchange information about the origin of a product and its declared value. In this way, it will be possible to rely on tools to investigate situations in which a customs felony such as product subvaluation is suspected.

This FTA, so far, is the most complete agreement of its type that China has negotiated with another developing country.

For more information on the FTA, contact your principle Squire Sanders lawyer or one of the lawyers listed in this Alert.

The information in this bulletin was compiled by the China offices of Squire, Sanders & Dempsey L.L.P.

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