

LEGISLATIVE COUNCIL BRIEF

FREE TRADE AGREEMENT BETWEEN HONG KONG AND PERU

INTRODUCTION

At the meeting of the Executive Council on 24 September 2024, the Council ADVISED and the Chief Executive ORDERED that the outcomes of the negotiations with Peru on a free trade agreement (FTA) should be endorsed and the FTA should be signed. Hong Kong and Peru signed the FTA on 15 November 2024 (Lima time), during the Chief Executive's visit to Lima, Peru to attend the APEC Economic Leaders' Meeting.

JUSTIFICATIONS

Key Outcomes of the Negotiations

2. The FTA with Peru is comprehensive in scope and the commitments therein are of high quality. Overall commitments go beyond those undertaken by Hong Kong and Peru respectively under the World Trade Organization (WTO), giving legal certainty to more favourable market access and treatment to one another. Key outcomes of the negotiations and expected benefits to Hong Kong are summarised in paragraphs 3 to 20 below. The full text of the FTA can be accessed at Trade and Industry Department (TID)'s website (www.tid.gov.hk).

(A) Trade in Services

Market access commitments

3. We have achieved high quality and balanced outcome on trade in services, building on the two sides' commitments under the WTO General Agreement on Trade in Services as well as their latest FTAs with

other trading partners⁽¹⁾. Hong Kong service providers will enjoy legal certainty in market access and national treatment for a comprehensive range of services in the Peruvian market under the four modes of supply⁽²⁾, namely cross border supply (Mode 1), consumption abroad (Mode 2), commercial presence (Mode 3), and movement of natural persons (Mode 4).

4. Peru made various improvements over its commitments under the WTO (WTO-plus) in all four modes of supply. In Modes 1 to 3, they encompass sectors where Hong Kong has traditional strengths or has potential for development, including professional services, computer and related services, research and development services, financial services, road transport services, air transport services and various business services.

5. Hong Kong's commitments under Modes 1 to 3 likewise cover a wide range of services, many of which are WTO-plus. Relevant sectors include professional services, construction and related engineering services, educational services, financial services, maritime transport services, road transport services, and recreational, cultural and sporting services.

6. In line with the practice of modern and high quality FTAs, the two sides have also agreed to provide each other forward looking Most-Favoured-Nation treatment which enables services and service suppliers of one side to enjoy the other side's additional service commitments, if any, in their future FTAs, except for sectors specifically reserved in their respective schedules.

7. In respect of Mode 4, in addition to WTO-plus commitments for the categories of business visitors and intra-corporate transferees (ICTs) in a wide range of sectors, the two sides also include commitments for spouses of ICTs as well as installers or servicers. Peru's Mode 4 commitments cover the additional categories of persons that Hong Kong has not committed, i.e. investors and technicians. Our commitments for Mode 4 by and large reflect Hong Kong's existing liberal regime on temporary entry and stay of business persons.

⁽¹⁾ The latest FTAs of Peru are its FTA with Australia (bilateral) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (plurilateral), of which Peru is a party; whereas for Hong Kong, the latest FTA was signed with Australia.

⁽²⁾ Detailed explanations of the four modes of supply of services are provided in the Annex.

Other sector-specific measures

8. Apart from market access commitments, the two sides have agreed on other obligations including sector-specific ones to facilitate trade in services. On **professional services**, Hong Kong and Peru have concluded a separate agreement in the form of a side letter, under which the two sides shall enter into discussions to explore ways to facilitate recognition of existing relevant professional experience.

9. On **financial services**, a set of modern and facilitating provisions is agreed. It is set out in a stand-alone and dedicated chapter, covering electronic payment card systems, transparency in regulation, and the supply of new financial services, while maintaining the rights of a Party to take measures for prudential reasons where necessary.

10. In relation to **digital trade**, the two sides agreed on a dedicated chapter on **electronic commerce**. Apart from the commitment not to impose customs duties on electronic transmissions, the chapter features an Article on Non-Discriminatory Treatment of Digital Products (the first for Hong Kong in its FTAs) under which each Party shall endeavour to accord to digital products of the other Party treatment no less favourable than it accords to similar digital products of its own or a non-Party. Other prominent provisions of the chapter include electronic contracts (another Article new to Hong Kong's FTAs), paperless trading, protection of personal information, movement of information and freedom in the location of computing facilities.

(B) Trade in Goods

Preferential tariff treatment

11. For goods originating from Hong Kong, Peru will eliminate customs duties on 91.3% of its tariff lines upon the entry into force of the FTA, and will phase out the duties for an additional 7% of its tariff lines over 17 years. A further 0.6%, comprising agricultural products such as dairy products, rice and sugar etc., will be subject to partial tariff elimination upon the FTA entering into force. The remaining 1.1%, comprising mainly textile and clothing products, will continue to be subject to customs duties due to domestic sensitivity in Peru. Such products will however be subject to negotiation for liberalisation in the fifth year from the date of entry into force of the FTA. On Hong Kong's part, we have committed to binding our existing zero import tariff regime for all goods originating from Peru when the FTA takes effect.

12. For the purpose of Peru affording preferential tariff treatment to goods of Hong Kong origin, the two sides have formulated a set of preferential rules of origin. These rules of origin include “value-based” rules⁽³⁾ as well as more flexible rules for certain products of Hong Kong’s trade interest. To enable Hong Kong exporters to mark their products bound for the Peruvian market as of Hong Kong origin upon fulfillment of the rules of origin agreed in the FTA, the Secretary for Commerce and Economic Development will add the FTA to Schedule 1 to the Trade Descriptions Ordinance (Cap. 362) by notice published in gazette⁽⁴⁾.

Non-tariff measures

13. Hong Kong and Peru will also simplify and harmonise customs procedures, as well as promote cooperation between their customs administrations. On the application of trade remedy measures⁽⁵⁾, the FTA includes WTO-plus disciplines by strengthening the notification and consultation requirements. While Hong Kong is not a user of trade remedy measures, the additional disciplines will better safeguard Hong Kong’s interest as any investigations initiated by Peru will be brought to our attention at an early stage for intervention as appropriate. The two sides will also strengthen cooperation and enhance transparency in the areas of sanitary and phytosanitary measures⁽⁶⁾ as well as technical barriers to trade⁽⁷⁾, with the objective of reducing trade restrictive measures and facilitating bilateral trade.

⁽³⁾ Under the “value-based” rules of the FTA with Peru, goods may claim Hong Kong origin on the basis of the proportion (which may be different for different goods) of the value added to the goods in Hong Kong, to the total value of the goods.

⁽⁴⁾ Broadly speaking, under the Trade Descriptions Ordinance, a good can be marked as of Hong Kong origin if it meets the general rule (i.e. it is last substantially transformed, wholly grown or wholly mined in Hong Kong); or if it has fulfilled the relevant rules of origin under a trade arrangement set out in Schedule 1 to the Ordinance. The addition of the FTA to Schedule 1 is to cater for situations where the rules of origin under the FTA are different from the general rule, so as to enable our exporters to mark their goods accordingly.

⁽⁵⁾ Trade remedy measures refer to anti-dumping, countervailing and safeguard measures. Imposition of these measures by the importing economy could result in additional duties (being one of the usual forms) on top of tariffs and other charges or other import restrictions on certain imports.

⁽⁶⁾ Sanitary and phytosanitary measures are any measures applied (a) to protect human or animal life or health from risks arising from additives, contaminants, toxins or disease-causing organisms in their food; (b) to protect human life or health from plant- or animal-carried diseases or pests; (c) to protect animal or plant life or health from pests, diseases, disease-carrying organisms or disease-causing organisms; or (d) to prevent or limit other damage from the entry, establishment or spread of pests.

⁽⁷⁾ Technical barriers to trade include technical regulations, standards and conformity assessment procedures that may directly or indirectly affect trade in goods.

(C) Investment

14. The FTA contains a chapter on Establishment⁽⁸⁾ and Related Provisions, which includes provisions that will facilitate two-way investment flows between Hong Kong and Peru by providing investors with legal certainty on national treatment and other safeguards in respect of their investments in non-services sectors⁽⁹⁾. The commitments are WTO-plus.

15. With a view to further enhancing investment flows between Hong Kong and Peru, the two sides have agreed to negotiate a separate **Investment Promotion and Protection Agreement** to complement the FTA. The negotiations will cover additional elements⁽¹⁰⁾ on investment promotion and protection that are typically found in a modern investment agreement.

(D) Other Areas

16. The FTA contains provisions to facilitate economic and trade cooperation with the aim of enhancing the benefits of the FTA and promoting a favourable environment for the development of small and medium enterprises. It also contains a provision to pave the way for future possible negotiations on government procurement to facilitate suppliers' access to each other's market; and includes commitments to ensure effective protection of intellectual property rights and promote competition.

17. The FTA also provides for an effective, efficient and transparent process for consultations and settlement of disputes arising under the FTA. Apart from arbitration, mediation is also provided for as a means of dispute resolution under the FTA. Besides, as in all our existing FTAs with foreign trading partners, the FTA contains security exception provisions to safeguard our essential security interests.

⁽⁸⁾ Establishment refers to investments in the forms of (a) the constitution, acquisition or maintenance of an enterprise; or (b) the creation or maintenance of a branch or representative office, in **non-services sectors**, for the purpose of performing an economic activity.

⁽⁹⁾ National treatment and other safeguards in respect of investments in services sectors are covered by the chapter on Trade in Services.

⁽¹⁰⁾ Some key elements include non-discriminatory treatment, minimum standard of treatment for investments, and protection from unlawful expropriation and protection of transfers.

Economic and Strategic Value of the FTA

18. Peru is an important trading partner of Hong Kong in Latin America. It ranked fifth among Hong Kong's merchandise trading partners in the region. The FTA will provide a transparent, consistent and predictable regime for trade between Hong Kong and Peru, bringing mutual benefits to our two economies.

19. On trade in goods, since the bilateral trade between Hong Kong and Peru is relatively small at present and the import tariffs currently imposed by Peru are already at a low level, the resultant tariff savings from this FTA is not significant. We envisage that the amount of tariff savings and other benefits will grow with the closer trade relations the FTA will bring about. On trade in services, the FTA will provide our service providers with secured market access and enhanced legal certainty of non-discrimination treatment in Peru. The FTA will provide a favourable platform for Hong Kong's traders and investors to expand their businesses in Peru and through Peru to the Latin American markets.

20. Apart from direct economic benefits, the FTA also carries important strategic value to Hong Kong. First, FTAs are conducted pursuant to the National 14th Five-Year Plan which supports Hong Kong in enhancing its status as an international trade centre. Second, the FTA could help contribute to the Belt and Road Initiative of which Peru is a supporter. Third, the FTA with Peru will also create synergy with the FTA signed between Hong Kong and Chile in 2012, expanding our FTA network in the Latin America region and reinforcing the message to our other potential Latin American trading partners that Hong Kong is ready to forge closer economic partnership in the region through FTAs.

BASIC LAW IMPLICATIONS

21. Signing the FTA with Peru is in conformity with the Basic Law, including the provisions concerning human rights.

FINANCIAL AND CIVIL SERVICE IMPLICATIONS

22. Additional requirements for manpower and financial resources, if any, arising from the implementation of the FTA, including those related to the necessary enforcement activities, will be absorbed by the relevant bureaux and departments within their existing resources.

ECONOMIC IMPLICATIONS

23. Signing the FTA with Peru has positive economic implications for Hong Kong as it will help foster closer economic ties and facilitate investment flows between the two economies. The FTA will provide Hong Kong with better access to the Peruvian market and hence create more business and investment opportunities in Peru and Latin America region. The FTA will also help strengthen Hong Kong's role as an international trade, commerce and financial centre, thereby benefiting Hong Kong's long-term economic development.

SUSTAINABILITY IMPLICATIONS

24. The FTA with Peru will bring more and better access to the Peruvian market, create more business opportunities for Hong Kong businessmen and help increase trade and investment flows between Hong Kong and Peru. Enhancing our economic links with Peru will help reinforce Hong Kong's position as an international trade, business and financial hub.

LEGISLATIVE IMPLICATIONS

25. Implementation of the FTA would require legislative amendments as set out in paragraph 12 above.

PUBLIC CONSULTATION

26. We conducted a one-month public consultation exercise on the proposed FTA between Hong Kong and Peru from November to December 2022 to help develop our negotiation positions and better gauge the local business community's areas of interest. We sought views from major trade and industrial associations, professional bodies and the general public, and their feedback was positive.

PUBLICITY

27. Details of the FTA, including the full texts, have been uploaded onto the TID's website (www.tid.gov.hk) upon signing of the FTA. Publicity including a press release will also be arranged and a spokesman will be available to answer media enquiries.

BACKGROUND

28. Peru ranked fifth among our merchandise trading partners in Latin America in 2023, with bilateral merchandise trade amounted to HK\$5.2 billion. The bilateral merchandise and services trade between Hong Kong and Peru grew at an average annual rate of 4% (from 2019 to 2023) and 16.3% (from 2018 to 2022) respectively. The FTA negotiations between Hong Kong and Peru commenced in January 2023 and were concluded in July 2024. After signing, the FTA will enter into force after the completion of the respective necessary internal procedures by Hong Kong and Peru.

ENQUIRIES

29. For enquiries, please contact Mr. Kar-keung Chan, Assistant Director-General of Trade and Industry Department (Europe) (Acting), at 2398 5394.

Trade and Industry Department
16 November 2024

EXPLANATIONS OF THE FOUR MODES OF SUPPLY FOR TRADE IN SERVICES

Cross Border Supply (Mode 1)

The cross border mode of supply refers to the supply of a service from the area of an FTA party into the area of the other FTA party. If Party A of an FTA makes commitment in respect of Mode 1, a service supplier of the other Party of the FTA (i.e. Party B) can supply the service within the area of Party B to service consumers in the area of Party A, without being physically present in the area of Party A. An example is the supply of consultancy service through telecommunications, fax or mail etc.

Consumption Abroad (Mode 2)

The consumption abroad mode of supply refers to the supply of a service in the area of an FTA party to the service consumer of the other FTA party. If Party A of an FTA makes commitment in respect of Mode 2, a service supplier of Party B can, within the area of Party B, provide the service to consumers of Party A who are present in the area of Party B. An example is the supply of hotel services.

Commercial Presence (Mode 3)

The commercial presence mode of supply refers to the supply of a service by a service supplier of an FTA party, through commercial presence in the area of the other FTA party. If Party A of an FTA makes commitment in respect of Mode 3, a service supplier of Party B can provide the service within the area of Party A through commercial presence in the area of Party A. This covers the presence of juridical persons (e.g. corporations, joint ventures, partnership, sole proprietorship, trust, association) as well as representative offices, branches etc.

Movement of Natural Person (Mode 4)

The movement of natural person mode of supply refers to the supply of a service by a service supplier of an FTA party, through the presence of their natural persons in the area of the other FTA party. If Party A of an FTA makes commitment in respect of Mode 4, a service supplier of Party B can provide the service within the area of Party A through the presence of natural persons of Party B. This covers natural persons who are themselves service suppliers, as well as natural persons who are employees of service suppliers (e.g. accountants of accounting firms).