

Uruguay: Homework for 2018 - A Free-Trade Agreement and a New Cellulose Plant

Uruguay has two important pending agreements that require approval and further legal/practical changes in 2018:

1. A Free-Trade Agreement (FTA) with Chile, signed by the government in October 2016.
2. A pre-contract with Finnish company, UPM, setting out the conditions to enable the construction of a cellulose plant in the Rio Negro region of Uruguay.

Free-Trade Agreement with Chile:

Under the Uruguayan Constitution, the FTA already signed with Chile is subject to ratification by parliament and to date this has not happened.

Strangely (if you are not from Uruguay), it is being held up by the sitting government's own parliamentarians and not by the opposition.

Uruguay at present has only one FTA, signed (and ratified) with Mexico in 2004.

Twice, Uruguay has passed up the possibility of even negotiating a FTA with USA. This is mainly because of political differences within the government itself – a left wing coalition called the Frente Amplio ("FA"). Many of its members view FTA's as a liberal/capitalist means to undermine small countries' sovereignty, with particularly issues in areas such as employment and intellectual property law.

The agreement with Chile seemed relatively non-controversial. The government did not anticipate any problems when they signed up to it in 2016. However, it has been held up in commissions for over a year, amid concerns that signing this would be the start of a slippery slope leading to pressure to sign other FTA's, with more "contentious" requirements.

It appears the government itself has almost given up hope of the FTA with Chile being approved as there is no public push behind it. Interestingly though the government continues to make noises about a FTA with China (!) and the EU, in which case the Chile agreement would certainly have to be ratified first.

Pre-contract for the development of a new cellulose plant in Uruguay's interior:

The construction of a cellulose plant in Uruguay's Rio Negro region depends on compliance with the terms of a pre-contract with the Finnish company, UPM.

The pre-contract establishes a long list of legal and practical guarantees that the company requires from the Uruguayan government, before it will commit to build the new plant.

UPM already has one plant in Uruguay which is working well. However, in part because of some of the issues that arose during construction of that plant, UPM has sought specific guarantees before it will agree to build the second plant.

UPM's first cellulose plant in Uruguay, located in Fray Bentos, is successful and profitable.

The company has been flirting with the idea of building a second plant for several years on a site in the interior of Uruguay on the Rio Negro river. However, UPM has been reluctant to commit unless and until the Uruguayan government deals with a number of issues which they see as essential before they will agree to build the plant.

This means that even if the government does comply with all the requirements, there is still a possibility that the company decide not to proceed.

The proposed agreement sets out the problem areas and time limits for dealing with them as follows:

1. Infrastructure – Uruguay's roads, railways and port all need serious up-grading if a plant in the interior is to be able to function. The railway is a particular concern. At present Uruguay's railway system is basically non-existent.

The contract says that work on the railway must have been started by November 2018 and finished by February 2022. The company will have specific priority rights to use the track.

2. Labour issues – construction of the first plant was beset by labour issues, with frequent strikes and occupations. The agreement signed requires that the main unions agree to a Protocol governing the construction period, to ensure that it is built on time. There is also an obligation for the unions, government and UPM to agree on rules affecting the right to strike, occupy the site, etc.

It states that at least 75% of the labour force must be Uruguayan and sets out plans to train Uruguayans in the specialized tasks needed.

3. Tax-free zone – the Agreement requires that a new Tax-Free Zone be established where the company finally decides to build the plant. This requirement was inevitable given that the first UPM plant in Uruguay has this status, as well as another plant built and operated by a separate Swedish/Chilean consortium.
4. Administrative delays – there is particular concern that the government deals promptly with all necessary permits for the plant to be able to operate.

While Uruguayan bureaucracy is not known as corrupt, it can be infuriatingly slow. Foreseeing this, the agreement establishes that the government will appoint a specific liaison person in the Environment Ministry to deal with their applications and sets out time periods by which the various applications must be dealt with.

5. Environmental issues – UPM agrees to monitor the quality of the water in the Rio Negro and actually to improve water quality over its present level. Other emissions

will also be controlled. The forestry which will need to produce lumber for the plant will likewise be subject to agreed controls.

Direct effects if the cellulose plant agreement is implemented:

The plant is projected to produce between 1.9-2.4 million tons of cellulose per annum. It would be the largest private investment in country's history and add 2% to Uruguay's GDP.

Exports would be 100 million US dollars p.a. and tax revenues would be 120 million US dollars p.a. (even after all the requested tax breaks are taken into account).

During construction, the plant will employ between 3000-5000 people. Once complete, it should create 4000 permanent jobs.

Indirect effects if the cellulose plant agreement is implemented:

If implemented the plant would provide a massive economic boost to Uruguay's interior. By improving/creating infrastructure and skills, it would also act as a strong attraction for other investments in similar or related fields.

Also, it will be difficult for the government to change labour rules just for UPM. So, if rules are changed, then the changes should benefit everybody.

Conclusion

Uruguay has in many ways been stuck in a semi-socialist 1960/70's past. However, the FA government, which has now been in power for over 13 years, has always managed to avoid the excesses/outright stupidities of some other governments in Latin America.

Hopefully, the inexorable passing of time will lead to more enlightened leadership going forward, together with a bit of help from general worldwide economic forces – as illustrated by these two agreements.

If Uruguay can address some or all of the issues raised by the UPM agreement and the Chile FTA, then it could have an exciting economic future.

DR. MARK TEUTEN

mail@teutenaboagdos.com

© 2017 TEUTEN ABOGADOS

Note: This article is for information purposes only and should not be relied upon as legal advice. Please consult with a lawyer as to your particular circumstances.