

# **AGREEMENT BETWEEN JAPAN AND THE REPUBLIC OF PERU FOR AN ECONOMIC PARTNERSHIP**

Japan and the Republic of Peru (hereinafter referred to as "Peru"), hereinafter collectively referred to as the "Parties" and individually referred to as the "Party":

Committed to strengthen the longstanding friendship and strong economic and political relations that have developed through many years of mutually beneficial cooperation and growing trade and investment between the Parties;

Realizing that enhancing economic ties between the Parties would contribute to increasing trade and investment flows across the Pacific;

Convinced that this Agreement would open a new era for the relationship between the Parties;

Recognizing that the economies of the Parties are endowed with conditions to complement each other and that this complementarity should contribute to further promoting sustainable economic development in the Parties, by making use of their respective economic strengths through bilateral trade and investment activities;

Believing that the implementation of this Agreement will improve the living standards of peoples and create new and better employment opportunities in the Parties;

Seeking to create a clearly established legal framework through mutually advantageous rules to govern trade, business and investment between the Parties, which would enhance the competitiveness of their economies, promote the economic relations between them, make their markets more efficient and dynamic and ensure a predictable commercial environment;

Committed to avoid all distortions to their bilateral trade;

Further committed to develop effective mechanisms for cooperation in various fields as agreed in this Agreement;

Recognizing the rights of the Parties to regulate in order to meet national policy objectives pursuant to international agreements to which either Party is a party and pursuant to this Agreement;

Committed to implement this Agreement in a manner consistent with environmental protection and conservation; and

Reaffirming the importance of strengthening and enhancing the multilateral trading system as reflected by the World Trade Organization (hereinafter referred to as "WTO");

HAVE AGREED as follows:

## **Chapter 1. General Provisions**

### **Article 1. Establishment of a Free Trade Area**

The Parties, consistent with Article XXIV of the GATT 1994 and Article V of the GATS, hereby establish a free trade area.

### **Article 2. Relation to other Agreements**

1. The Parties reaffirm their rights and obligations with respect to each other under the WTO Agreement or any other agreement to which both Parties are parties.
2. In the event of any inconsistency between this Agreement and the WTO Agreement or any other agreement to which both Parties are parties, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution, taking into consideration general principles of international law.

3. The provisions of the Agreement between Japan and the Republic of Peru for the Promotion, Protection and Liberalisation of Investment, signed at Lima on November 21, 2008 (hereinafter referred to as "BIT"), except its Articles 24 (Joint Committee) and 25 (Sub-committee on Improvement of Investment Environment), as may be amended, are incorporated into and made part of this Agreement, mutatis mutandis.

Note: In the event of any inconsistency between this Agreement and the BIT, unless otherwise provided for in this Agreement, the provisions of paragraph 2 shall be applied.

### **Article 3. Regional and Local Government**

In fulfilling its obligations and commitments under this Agreement, each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies in the exercise of powers delegated to them by central, regional and local governments or authorities within its Area. For greater certainty, neither Party shall be discharged from its obligations under this Agreement, in the event of a noncompliance with the provisions of this Agreement, by any of its governmental levels or non-governmental bodies in the exercise of such powers delegated to them.

### **Article 4. General Definitions**

For the purposes of this Agreement, unless otherwise specified:

(a) the term "Area" means:

(i) with respect to Japan:

(A) the territory of Japan; and

(B) the exclusive economic zone and the continental shelf with respect to which Japan exercises sovereign rights or jurisdiction in accordance with international law; and

(ii) with respect to Peru: the mainland territory, the islands, the maritime zones, and the air space above them, over which Peru exercises sovereignty or sovereign rights and jurisdiction, in accordance with relevant provisions of the Constitution of Peru and international law;

Note 1: Nothing in this definition shall affect the rights and obligations of the Parties under international law. Note 2: For greater certainty, the definition of and references to "Area" contained in this Agreement apply exclusively for the purposes of determining the geographical scope of application of this Agreement.

(b) the term "Commission" means the Commission established under Article 14;

(c) the term "customs authority" means the authority that, according to the legislation of each Party or non-Parties, is responsible for the administration and enforcement of customs laws and regulations. In the case of Japan, the Ministry of Finance, or its successor, and in the case of Peru, National Superintendence of Tax Administration (Superintendencia Nacional de Administración Tributaria (SUNAT)), or its successor;

(d) the term "days" means calendar days including weekends and holidays;

(e) the term "enterprise" means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;

(f) the term "GATT 1994" means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement. For the purposes of this Agreement, references to articles in the GATT 1994 include the interpretative notes;

(g) the term "GATS" means the General Agreement on Trade in Services in Annex 1B to the WTO Agreement; (h) the term "good" means any merchandise, product, article or material;

(i) the term "Harmonized System" or "HS" means the Harmonized Commodity Description and Coding System defined in paragraph (a) of Article 1 of the International Convention on the Harmonized Commodity Description and Coding System, and adopted and implemented by the Parties in their respective laws; (j) the term "measure" includes any law, regulation, rule, procedure, requirement, provision, practice, decision or administrative action issued or taken by a Party;

(k) the term "national" means a natural person who:

(i) for Japan, is a national of Japan under its laws; and

(ii) for Peru, is a national of Peru or has a permanent residency in Peru under its laws;

(l) the term "originating good" means a good that qualifies as originating under the provisions of Chapter 3; (m) the term "person" means a natural person or an enterprise; and

(n) the term "WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994.

### **Article 5. Transparency**

1. Each Party shall promptly publish, or otherwise make publicly available, its laws, regulations, administrative procedures, administrative rulings and judicial decisions of general application as well as international agreements to which the Party is a party, which pertain to or affect the operation of this Agreement.
2. Each Party shall, upon request by the other Party, within a reasonable period of time, respond to specific questions from, and provide information to, the other Party with respect to matters referred to in paragraph 1, in English.
3. Nothing in this Article shall prejudice as to whether a measure adopted by a Party is consistent or not with this Agreement.
4. When introducing or changing its laws, regulations, administrative procedures or administrative rulings that significantly affect the implementation and operation of this Agreement, each Party shall, to the extent possible, and in accordance with its laws and regulations, endeavor to provide, except in emergency situations, a reasonable interval between the time when such laws, regulations, administrative procedures or administrative rulings as introduced or changed are published or made publicly available and the time when they enter into force.

Note: For greater certainty, "administrative rulings of general application" means an administrative decision or interpretation that applies to all persons and fact situations that fall within the scope of application of such administrative decision or interpretation and that establishes a norm of conduct but does not include: (a) a determination or ruling made in an administrative proceeding that applies to a particular person, good, or service in a specific case; or (b) a ruling that adjudicates with respect to a particular act or practice.

## **Article 6. Public Comment Procedures**

Each Party shall, to the extent possible and in accordance with its laws and regulations, endeavor to provide an opportunity for comments from the public on any regulation of general application that affects any matter covered by this Agreement.

## **Article 7. Confidential Information**

1. Unless otherwise provided for in this Agreement, nothing in this Agreement shall be construed to require a Party to disclose or allow access to confidential information, the disclosure of which would impede the enforcement of its domestic laws and regulations or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.
2. Each Party shall, in accordance with its domestic laws and regulations, maintain the confidentiality of information provided as confidential by the other Party pursuant to this Agreement.

## **Article 8. Review and Appeal**

1. Each Party shall establish or maintain judicial tribunals or procedures for the purpose of the subsequent review and, where warranted, correction of administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the authorities entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.
2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:
  - (a) a reasonable opportunity to support or defend their respective positions; and
  - (b) a decision based on the evidence and submissions of record or, where required by its domestic laws and regulations, the record compiled by the administrative authorities.
3. Each Party shall ensure, subject to appeal or subsequent review as provided for in its laws and regulations, that a decision referred to in subparagraph 2(b) shall be implemented by, and shall be taken into consideration of the authorities with respect to the administrative action at issue.

## **Article 9. Measures Against Corruption**

Each Party shall ensure that measures and efforts are undertaken to prevent and combat corruption regarding matters covered by this Agreement in accordance with its laws and regulations.

## **Article 10. General Exceptions**

1. For the purposes of Chapters 2 through 6, Article XX of the GATT 1994 is incorporated into and made part of this Agreement, mutatis mutandis.
2. For the purposes of Chapters 7 through 9, Article XIV of the GATS is incorporated into and made part of this Agreement, mutatis mutandis. Note: For the purposes of this Article, it is understood that subparagraph (b) of Article XX of the GATT

1994 and subparagraph (b) of Article XIV of the GATS include environmental measures necessary to protect human, animal or plant life or health, and that subparagraph (g) of Article XX of the GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

## **Article 11. Security Exceptions**

1. For the purposes of Chapters 2 through 6, Article XXI of the GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.
2. For the purposes of Chapters 7 through 9, Article XIV bis of the GATS is incorporated into and made part of this Agreement, *mutatis mutandis*.

## **Article 12. Taxation**

1. Nothing in this Agreement shall apply to taxation measures except as expressly provided for in this Article. 2. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.
3. Paragraphs 1 and 2 of Article 5 and paragraph 1 of Article 7 shall apply to taxation measures, to the extent that the provisions of this Agreement are applicable to such taxation measures. Note 1: For greater certainty, taxation measures do not include:
  - (a) customs duty as defined in Article 18;
  - (b) anti-dumping or countervailing duty that is applied pursuant to Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement (hereinafter referred to as "Agreement on Anti-dumping") or the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement (hereinafter referred to as "Agreement on Subsidies and Countervailing Measures"); or
  - (c) fee or other charge in connection with importation commensurate with the cost of services rendered. Note 2: Nothing in this Article shall affect the rights and obligations of the Parties under the WTO Agreement.

## **Article 13. Temporary Safeguard Measures**

- In accordance with Article XII of the GATT 1994, the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement, and Article XII of the GATS, and consistent with the Articles of Agreement of the International Monetary Fund, a Party may adopt or maintain measures:
- (a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or
  - (b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.

## **Article 14. Commission**

1. The Parties hereby establish a Commission which shall be co-chaired by Ministers or senior officials of the Parties who are competent over this Agreement.
2. The Commission shall be composed of representatives of the Governments of the Parties.
3. The Commission shall:
  - (a) review and monitor the implementation and operation of this Agreement;
  - (b) when necessary, make appropriate recommendations to the Parties and provide them with its opinion regarding, among other issues, the interpretation or application of this Agreement;
  - (c) endeavor to resolve disputes between the Parties about any matter concerning the interpretation or application of this Agreement;
  - (d) supervise and coordinate the work of all Sub- Committees established under this Agreement; and
  - (e) take any other action as the Parties may agree.
4. The Commission may:
  - (a) establish Sub-Committees and any other working- groups necessary for the operation of this Agreement; (b) delegate its responsibilities to Sub-Committees and any other working groups established under this Agreement;
  - (c) consider, recommend to the Parties and promote any amendment to this Agreement, subject to the fulfillment of the internal legal procedures of each Party; and
  - (d) adopt the Operational Procedures referred to in Article 70.
5. All decisions of the Commission shall be taken by mutual agreement.
6. If the Commission makes a decision, subject to the fulfillment of internal legal requirements, such decision shall enter into force on the date when the Parties notify each other, that such internal legal requirements have been fulfilled, unless the

Parties agree otherwise.

7. The Commission shall meet at least once a year alternately in Japan and Peru, unless the Parties agree otherwise.

## **Article 15. Contact Points**

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter relating to this Agreement, and shall communicate such designation to the other Party within 90 days following the entry into force of this Agreement.

2. Any information, request or notification to the other Party shall be carried out through the contact point, unless otherwise provided for in this Agreement.

3. The contact point shall:

(a) work jointly to develop agendas and make other preparations for the Commission meetings and to follow up on the said meetings as appropriate;

(b) address any matter entrusted by the Commission; and

(c) provide administrative support to the arbitral tribunal established under Article 209.

## **Article 16. Implementing Agreement**

The Governments of the Parties shall conclude a separate agreement (hereinafter referred to as "the Implementing Agreement"), which sets forth the details and procedures for the implementation of certain provisions of this Agreement.

The Implementing Agreement shall enter into force on the same date as this Agreement and shall remain in force as long as this Agreement remains in force.

## **Chapter 2. Trade In Goods**

### **Article 17. Scope of Application**

Except as otherwise provided for in this Agreement, this Chapter shall apply to trade in goods between the Parties.

### **Article 18. Definitions**

For the purposes of this Chapter:

(a) the term "Agreement on Agriculture" means the Agreement on Agriculture in Annex 1A to the WTO Agreement;

(b) the term "Agreement on Safeguards" means the Agreement on Safeguards in Annex 1A to the WTO Agreement;

(c) the term "bilateral safeguard measure" means a bilateral safeguard measure provided for in Article 30;

(d) the term "competent investigating authorities" means:

(i) for Japan, the Ministry of Finance, the Ministry of Economy, Trade and Industry, and any Ministry which has jurisdiction over the industry subject to investigation in Japan or their successors; and

(ii) for Peru, the Ministry of Foreign Trade and Tourism, or its successor;

(e) the term "customs duty" means any customs or import duty or a charge of any kind imposed on or in connection with the importation of a good, but does not include any:

(i) charge equivalent to an internal tax imposed consistently with the provisions of subparagraph 2(a) of Article II of the GATT 1994;

(ii) anti-dumping or countervailing duty applied consistently with the provisions of Article VI of the GATT 1994, the Agreement on Anti-dumping, and the Agreement on Subsidies and Countervailing Measures; or

(iii) fee or other charge commensurate with the cost of services rendered;

(f) the term "domestic industry" means, with respect to an imported good, the producers as a whole of the like or directly competitive goods operating in a Party, or those whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;

(g) the term "export subsidies" means export subsidies defined in Article 1(e) of the Agreement on Agriculture;

(h) the term "import licensing" means an administrative procedure used for the operation of import license regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation to the importing Party;

(i) the term "provisional bilateral safeguard measure" means a provisional bilateral safeguard measure provided for in Article 33;

(j) the term "serious injury" means a significant overall impairment in the position of a domestic industry; and (k) the term "threat of serious injury" means serious injury that, on the basis of facts and not merely on allegation, conjecture, or remote possibility, is clearly imminent.

## **Article 19. Classification of Goods**

The classification of goods in trade between the Parties shall be in conformity with the Harmonized System.

## **Article 20. National Treatment**

Except as otherwise provided for in Annex 2, each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994, and to this end Article III of the GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.

## **Article 21. Elimination or Reduction of Customs Duties**

1. Except as otherwise provided for in this Agreement, neither Party shall increase or introduce any customs duty on originating goods of the other Party beyond the rate to be applied in accordance with its Schedule in Annex 1.
2. Except as otherwise provided for in this Agreement, each Party shall eliminate or reduce its customs duties on originating goods of the other Party, in accordance with its Schedule in Annex 1.
3. If the rate of customs duty on an originating good of a Party applied in accordance with Annex 1 is higher than the most-favored-nation applied rate of customs duty on the same good, the latter rate shall be applied to that originating good.
4. (a) Upon request of either Party, the Parties shall negotiate on issues such as improving market access conditions on originating goods designated for negotiation in the Schedules in Annex 1 in accordance with the terms and conditions set out in such Schedules.  
(b) Upon request of either Party, the Parties shall consult to consider accelerating the reduction or broadening the scope of the elimination of customs duties set out in their Schedules in Annex 1 since the fifth calendar year following the calendar year in which this Agreement enters into force.
5. For greater certainty, a Party may:
  - (a) raise a rate of customs duty to be applied on the originating good of the other Party up to the rate established in its Schedule in Annex 1 following a unilateral reduction of the rate; or
  - (b) suspend the further reduction of or increase any customs duty on the originating good of the other Party, as authorized by the Dispute Settlement Body of the WTO pursuant to the Understanding on Rules and Procedures Governing the Settlement of Disputes in Annex 2 to the WTO Agreement.

## **Article 22. Non-tariff Measures**

1. Except as otherwise provided for in Annex 2 and other relevant provisions of this Agreement, neither Party shall introduce or maintain any prohibition or restriction other than customs duties on the importation of any good of the other Party or on the exportation or sale for export of any good destined to the other Party, which is inconsistent with its obligations under Article XI of the GATT 1994 and the relevant provisions of the WTO Agreement, and to this end Article XI of the GATT 1994, is incorporated into and made part of this Agreement, *mutatis mutandis*.
2. Neither Party shall require the other Party or exporter to adopt or maintain:
  - (a) voluntary undertakings inconsistent with Article 8 of the Agreement on Anti-dumping and Article 18 of the Agreement on Subsidies and Countervailing Measures; or
  - (b) voluntary export restraints inconsistent with Article 11 of the Agreement on Safeguards.
3. Neither Party shall require its importer to have a contractual or other relationship with a distributor in the importing Party as a condition for engaging in importation or for the import of a good, which is inconsistent with paragraph 1 of Article XI of the GATT 1994.

## **Article 23. Import Licensing**

1. Neither Party shall adopt or maintain a measure that is inconsistent with the Agreement on Import Licensing Procedures in Annex 1A to the WTO Agreement (hereinafter referred to as "Agreement on Import Licensing Procedures") and to this end the Agreement on Import Licensing Procedures is incorporated into and made part of this Agreement, *mutatis mutandis*.
2. Neither Party shall apply an import licensing procedure to a good of the other Party unless it has provided notification in accordance with Article 5 of the Agreement on Import Licensing Procedures.

## **Article 24. Administrative Fees and Formalities**

1. Each Party shall ensure that all fees and charges imposed on or in connection with importation or exportation of goods are consistent with subparagraph 1(a) of Article VIII of the GATT 1994. To this end, Article VIII of the GATT 1994 is

incorporated into and made part of this Agreement, mutatis mutandis.

2. Neither Party shall require consular transactions, including related fees and charges, in connection with the importation of any originating good of the other Party.

Note: For the purposes of this paragraph, "consular transactions" means requirements by the consul of the importing Party located in the exporting Party for the purpose of obtaining consular invoices or consular visas for commercial invoices, certificates of origin, manifests, shippers' export declarations, or any other customs documentation required on or in connection with importation.

3. Each Party shall make available on its websites details of fees and charges that it imposes on or in connection with importation or exportation of goods as soon as possible.

## **Article 25. Export Duties, Fees or other Charges**

Neither Party shall introduce or maintain any duties, fees or other charges of any kind imposed on a good exported from the Party into the other Party, unless such duties, fees or other charges are not in excess of those imposed on the like good destined for domestic consumption.

## **Article 26. Customs Valuation**

For the purposes of determining the customs value of goods traded between the Parties, the provisions of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement (hereinafter referred to as "Agreement on Customs Valuation"), which is hereby incorporated into and made part of this Agreement, mutatis mutandis, shall apply.

## **Article 27. Agricultural Export Subsidies**

1. Neither Party shall introduce, maintain or reintroduce any export subsidies on any agricultural good which is listed in Annex 1 to the Agreement on Agriculture and exported to the other Party.

2. If either Party considers that the other Party has failed to carry out its obligations under this Agreement by introducing, maintaining or reintroducing an export subsidy, such Party may request consultations with the other Party according to Chapter 15 with a view to arriving at a mutually satisfactory solution, in particular, agreeing on specific measures that the importing Party may adopt to counter the effect of such subsidized imports.

## **Article 28. Price Band System**

Peru may maintain its Price Band System referred to in Note 2 of Section 1 of the Schedule of Peru in Annex 1 with respect to the agricultural goods specified with one asterisk ("\*") in column 5 of its Schedule. Safeguard Measures

## **Article 29. General Provisions**

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994, the Agreement on Safeguards and Article 5 of the Agreement on Agriculture.

2. A Party applying a safeguard measure to the importation of an originating good of the other Party in accordance with Article XIX of the GATT 1994 and the Agreement on Safeguards, or Article 5 of the Agreement on Agriculture, shall not apply at the same time a bilateral safeguard measure under this Section to that importation.

3. In the case a Party has applied a bilateral safeguard measure under this Section to an importation of an originating good of the other Party prior to the application of a safeguard measure in accordance with Article XIX of the GATT 1994 and the Agreement on Safeguards, or Article 5 of the Agreement on Agriculture, the duration of the bilateral safeguard measure referred to in paragraph 1 of Article 31 to that importation shall not be interrupted by the Party's non-application of the bilateral safeguard measure in accordance with paragraph 2. The Party may resume the application of the bilateral safeguard measure to that importation upon the termination of the latter safeguard measure up to the remaining period of the bilateral safeguard measure.

## **Article 30. Bilateral Safeguard Measures**

1. Subject to the provisions of this Section, a Party may apply a bilateral safeguard measure if an originating good of the other Party, as a result of the elimination or reduction of a customs duty in accordance with Article 21, is being imported into the former Party in such increased quantities, in absolute terms, and under such conditions that the imports of that originating good constitute a substantial cause of serious injury, or threat thereof, to the domestic industry of the former

Party.

2. If the conditions in paragraph 1 are met, a Party may, to the minimum extent necessary to prevent or remedy serious injury, and facilitate adjustment:

- (a) suspend the further reduction of any rate of customs duty on the originating good provided for in Section 1; or
- (b) increase the rate of customs duty on the originating good to a level not to exceed the least among: (i) the most-favored-nation applied rate of customs duty in effect on the day when the bilateral safeguard measure is applied;
- (ii) the Base Rate as specified in Column 3 of its Schedule in Annex 1; and

Note 1: In the case of the elimination of customs duties on the date of entry into force of this Agreement, the most-favored-nation applied rate on April 1, 2009 shall be the Base Rate.

Note 2: In the case of originating goods specified with "G" in Column 5 of the Schedule of Japan in Annex 1, the Base Rate shall be replaced by the most-favored-nation applied rate on April 1, 2009.

(iii) the most-favored-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement.

Note: Upon the entry into force of this Agreement, the Parties shall exchange the most-favored-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement.

## **Article 31. Conditions and Limitations**

1. No bilateral safeguard measure shall be maintained except to the extent and for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment, provided that such period of time shall not exceed a period of two years. However, in highly exceptional circumstances, if the competent investigating authorities determine in conformity with the procedures set out in Article 32, that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the domestic industry is adjusting, a bilateral safeguard measure may be extended, provided that the total duration of the bilateral safeguard measure, including such extensions, shall not exceed three years.

2. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over one year, the Party applying the bilateral safeguard measure shall progressively liberalize it at regular intervals during the period of application.

3. Upon the termination of a bilateral safeguard measure, the rate of customs duty for the originating good subject to the measure shall be the rate which would have been in effect but for the bilateral safeguard measure.

4. No bilateral safeguard measure shall be applied again to the import of a particular originating good which has been subject to such a bilateral safeguard measure, for a period of time equal to the duration of the previous bilateral safeguard measure or one year, whichever is longer.

## **Article 32. Investigating Procedures**

1. A Party may apply a bilateral safeguard measure only after an investigation has been carried out by the competent investigating authorities of that Party in accordance with Article 3 and subparagraph 2(c) of Article 4 of the Agreement on Safeguards and to this end, Article 3 and subparagraph 2(c) of Article 4 of the Agreement on Safeguards are incorporated into and made part of this Agreement, mutatis mutandis.

2. The investigation referred to in paragraph 1 shall in all cases be completed within one year following its date of initiation.

3. In the investigation referred to in paragraph 1 to determine whether increased imports of an originating good have caused serious injury or threat of serious injury to a domestic industry under the terms of this Section, the competent investigating authorities of the Party which carry out the investigation shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that domestic industry, in particular, the rate and amount of the increase in imports of the originating good in absolute terms, the share of the domestic market taken by the increased imports of the originating good, and the changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.

4. The determination that increased imports of an originating good have caused serious injury or threat of serious injury to a domestic industry shall not be made unless the investigation referred to in paragraph 1 demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the originating good and serious injury or threat thereof. When factors other than the increased imports of the originating good are causing injury to the domestic industry at the same time, such injury shall not be attributed to the increased imports of the originating good.

## **Article 33. Provisional Bilateral Safeguard Measures**



1. In critical circumstances, where delay would cause damage which it would be difficult to repair, a Party may apply a provisional bilateral safeguard measure, which shall take the form of the measure set out in paragraph 2 of Article 30, pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good of the other Party have caused or are threatening to cause serious injury to a domestic industry of the former Party.
2. The duration of a provisional bilateral safeguard measure shall not exceed 200 days. During that period, the pertinent requirements of Articles 34 and 35 shall be met. The duration of the provisional bilateral safeguard measure shall be counted as a part of the period referred to in paragraph 1 of Article 31.
3. Paragraph 3 of Article 31 shall apply, *mutatis mutandis*, to a provisional bilateral safeguard measure. The customs duty imposed as a result of the provisional bilateral safeguard measure or its guarantees shall be refunded or liberated, in accordance with domestic laws and regulations, if the subsequent investigation referred to in paragraph 1 of Article 32 does not determine that increased imports of an originating good of the other Party have caused serious injury or threat of serious injury to a domestic industry.

## **Article 34. Notification**

1. A Party shall immediately make a written notice to the other Party:
  - (a) upon initiating an investigation referred to in paragraph 1 of Article 32 relating to serious injury, or threat thereof, and the reasons for it;
  - (b) upon taking a decision to apply or extend a bilateral safeguard measure; and
  - (c) upon adopting a provisional bilateral safeguard measure.
2. The Party making the written notice referred to in paragraph 1 shall, in accordance with its laws and regulations, provide the other Party with all pertinent information, which shall include:
  - (a) in the written notice referred to in subparagraph 1(a), a summary of the reason for the initiation of the investigation, a precise description of the originating good subject to the investigation and its subheading under the Harmonized System, the period subject to the investigation and the date of initiation of the investigation; and
  - (b) in the written notice referred to in subparagraph 1(b), a summary of the evidence of serious injury or threat of serious injury caused by the increased imports of the originating good, a precise description of the originating good subject to the proposed bilateral safeguard measure and its subheading under the Harmonized System, a precise description of the proposed bilateral safeguard measure, and the proposed date of the introduction and expected duration of the bilateral safeguard measure.
3. A written notice referred to in paragraph 1 and any other communication between the Parties pursuant to this Section shall be made in the English language.
4. A Party shall provide the other Party with a copy of the public version of the report of its competent investigating authorities resulting from the investigation required under paragraph 1 of Article 32. This requirement is deemed to have been complied with if such report is made available on a publicly accessible website.

## **Article 35. Consultations and Compensation**

1. Consultations between the Parties on the application of the provisional bilateral safeguard measure shall be initiated immediately after the provisional bilateral safeguard measure is applied.
2. A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party with a view to reviewing the information arising from the investigation referred to in paragraph 1 of Article 32, exchanging views on the bilateral safeguard measure and reaching an agreement on compensation set out in paragraph 3.
3. A Party proposing to apply or extend a bilateral safeguard measure shall provide to the other Party mutually agreed adequate means of trade compensation in the form of concessions of customs duties whose value is substantially equivalent to that of the additional customs duties expected to result from the bilateral safeguard measure.
4. If the Parties are unable to agree on the compensation within 30 days after the commencement of the consultations pursuant to paragraph 2, the Party to whose originating good the bilateral safeguard measure is applied shall be free to suspend the application of concessions of customs duties under this Agreement, which are substantially equivalent to the bilateral safeguard measure. The Party exercising the right of suspension may suspend the application of concessions of customs duties only for the minimum period necessary to achieve the substantially equivalent effects and only while the bilateral safeguard measure is maintained.
5. The Party exercising the right of suspension provided for in paragraph 4 shall notify the other Party in writing at least 30 days before suspending the application of concessions.

## **Article 36. Review**

Except as otherwise agreed by the Parties, the Parties shall review the provisions of this Section, if necessary, after 10 years

of the date of entry into force of this Agreement, in particular, with a view to determining whether there is a need to maintain the bilateral safeguard mechanism. Other Provisions

## **Article 37. Sub-committee on Trade In Goods**

1. The Parties hereby establish a Sub-Committee on Trade in Goods (hereinafter referred to in this Article as "the Sub-Committee"). 2. The functions of the Sub-Committee shall be:

- (a) reviewing and monitoring the implementation and operation of this Chapter;
- (b) considering any other matter related to this Chapter as the Parties may agree;
- (c) discussing any amendments to Annex 1, in accordance with the amendment of the Harmonized System to ensure that each Party's obligations under this Agreement shall not be altered;
- (d) consulting on and endeavoring to resolve any difference related to the scope of application of this Chapter that may arise between the Parties;
- (e) establishing, if necessary, ad hoc working groups to accomplish any specific tasks;
- (f) reporting the findings of the Sub-Committee to the Commission; and
- (g) other functions assigned by the Commission.

3. The Sub-Committee shall be composed of government officials of the Parties. 4. The Sub-Committee shall hold meetings, in principle, every two years, and at such times and venues or by means, as may be agreed by the Parties.

## **Chapter 3. Rules of Origin**

### **Article 38. Definitions**

For the purposes of this Chapter:

- (a) The term "certification body" means an entity or a body designated or authorized to issue a Certificate of Origin by the competent authority of a Party, in accordance with its laws and regulations;
- (b) The term "competent authority" means the authority that, in accordance with the laws and regulations of each Party, is responsible for the issuance of a Certificate of Origin or for the designation of certification bodies, for the authorization of approved exporters referred to in Article 58 and for the verification of information related to Proofs of Origin referred to in Article 66:
  - (i) in the case of Japan, the Ministry of Economy, Trade and Industry, or its successor; and
  - (ii) in the case of Peru, the Ministry of Foreign Trade and Tourism, or its successor;
- (c) The term "exporter" means a person located in the exporting Party from where a good is exported by such person;
- (d) The term "factory ships of the Party" or "vessels of the Party" respectively, means factory ships or vessels which:
  - (i) are registered in the Party;
  - (ii) sail under the flag of the Party; and
  - (iii) meet one of the following conditions:
    - (A) they are at least 50 percent owned by nationals of the Parties; or
    - (B) they are owned by a juridical person which has its head office and its principal place of business in either Party and which does not own any vessel or ship registered in a non-Party;
- (e) The term "fungible goods" or "fungible materials" respectively, means goods or materials that are interchangeable for commercial purposes, whose properties are essentially identical;
- (f) The term "Generally Accepted Accounting Principles" means the recognized consensus or substantial authoritative support within a Party, at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures;
- (g) The term "identical goods" means goods that are the same in all respects, including physical characteristics and quality, irrespective of minor differences in appearance that are not relevant to the determination of origin;
- (h) The term "importer" means a person located in the importing Party from where a good is imported by such person;
- (i) The term "material" means a good that is used in the production of another good, including any components, ingredients, raw materials or parts;
- (j) The term "non-originating material" means a material which does not qualify as an originating good under this Chapter;
- (k) The term "originating material" means a material that qualifies as originating under this Chapter;
- (l) The term "packing materials and containers for shipment" means goods that are used to protect a good during transportation and shipment, other than packaging materials and containers for retail sale referred to in Article 49;
- (m) The term "preferential tariff treatment" means the rate of customs duties applicable to an originating good of the exporting Party in accordance with paragraph 2 of Article 21;

- (n) The term "producer" means a person who engages in the production of goods or materials;
- (o) The term "production" means a method of obtaining goods including growing, raising, extracting, picking, gathering, breeding, mining, harvesting, fishing, trapping, capturing, collecting, hunting, manufacturing, processing and assembling; and
- (p) The term "relevant authority" means:
  - (i) in the case of Japan, the Ministry of Finance, or its successor; and
  - (ii) in the case of Peru, the Ministry of Foreign Trade and Tourism, or its successor.

## Article 39. Originating Goods

For the purposes of this Agreement, a good shall qualify as an originating good of a Party where:

- (a) the good is wholly obtained or produced entirely in the Party, as defined in Article 40;
- (b) the good is produced entirely in the Party exclusively from originating materials of the Party; or
- (c) the good satisfies the product specific rules (change in tariff classification, qualifying value content or specific manufacturing or processing operation) set out in Annex 3, when the good is produced entirely in the Party using non-originating materials, and meets all other applicable requirements of this Chapter.

## Article 40. Wholly Obtained Goods

For the purposes of subparagraph (a) of Article 39, the following goods shall be considered as wholly obtained or produced entirely in a Party:

- (a) live animals, born and raised in the Party;
- (b) goods obtained from live animals in the Party;
- (c) goods obtained by hunting, trapping, fishing conducted within the baselines, or capturing in the Party;
- (d) plants and plant products harvested, picked or gathered in the Party;
- (e) minerals and other naturally occurring substances not included in subparagraphs (a) through (d) extracted or taken in the Party;
- (f) goods of sea-fishing and other goods taken from the sea by vessels of the Party;

Note 1: For the purposes of this Chapter, goods of sea-fishing and other goods taken from the sea by vessels of a Party within 200 nautical miles from the baselines of the other Party shall be regarded as originating goods of the latter Party.

Note 2: Nothing in this Chapter shall be deemed to prejudice the positions of the respective Parties with respect to matters relating to the law of the sea.

- (g) goods produced on board factory ships of the Party from the goods referred to in subparagraph (f);
- (h) goods taken or extracted from the seabed or beneath the seabed outside the Party, provided that the Party has rights to exploit such seabed or subsoil in accordance with international law;
- (i) waste and scrap derived from:
  - (i) manufacturing or processing operations conducted in the Party; or
  - (ii) used goods collected in the Party, provided that such waste and scrap are fit only for the recovery of raw materials; and
- (j) goods obtained or produced in the Party exclusively from the goods referred to in subparagraphs (a) through (i).

## Article 41. Qualifying Value Content

1. For the purposes of calculating the qualifying value content (QVC) of a good, the following formula shall be applied:

$$\text{QVC} = \frac{\text{FOB} - \text{VNM}}{\text{FOB}} \times 100$$

where:

QVC: is the qualifying value content of a good, expressed as a percentage; FOB: is, except as provided for in paragraph 2, the free- on-board value of a good payable by the buyer of the good to the seller of the good, regardless of the mode of shipment, not including any internal excise taxes reduced, exempted, or repaid when the good is exported; and VNM: is the value of the non-originating materials used in the production of a good.

2. FOB referred to in paragraph 1 shall be:

- (a) substituted with the first ascertainable price paid for a good from the buyer to the producer of the good, if there is free-on-board value of the good, but it is unknown and cannot be ascertained; or
- (b) the value determined in accordance with Articles 1 through 8 of the Agreement on Customs Valuation, if there is no free-on-board value of a good.

3. For the purposes of paragraph 1, the value of the non- originating materials used in the production of a good in a Party

shall be:

(a) in the case of a material imported directly by the producer of a good: the CIF value; or

(b) in the case of a material acquired by the producer in the Party:

(i) the CIF value; or

(ii) the transaction value, but may exclude all the costs incurred in the Party in transporting the material from the warehouse of the supplier of the material to the place where the producer is located such as freight, insurance and packing as well as any other known and ascertainable cost incurred in the Party in such transportation.

Note 1: For the purposes of this paragraph, the term "CIF value" means the customs value of the imported good in accordance with the Agreement on Customs Valuation and includes freight and insurance where appropriate, packing and all other costs incurred in transporting the material to the importation port in the Party where the producer of the good is located.

Note 2: For the purposes of this paragraph, the "transaction value" means the price actually paid or payable for a material with respect to a transaction of the producer of the material.

4. The Agreement on Customs Valuation shall apply, mutatis mutandis, for the purposes of calculating the value of a good or non-originating material referred to in subparagraphs 2(b) and 3(b).

5. For the purposes of this Article, the value of a non- originating material used in the production of a good in a Party shall not include the value of non-originating materials used in the production of originating materials of the Party which are used in the production of the good.

## **Article 42. Non-qualifying Operations**

1. A good shall not be considered to be an originating good of a Party merely by reason of:

(a) operations to ensure the preservation of goods in good condition during transport and storage (such as drying, freezing, keeping in brine) and other similar operations;

(b) changes of packaging and breaking-up and assembly of packages;

(c) placing in bottles, cases, boxes and other packaging operations, including packing, unpacking or repacking operations for retail sale purposes;

(d) disassembly;

(e) collection of parts and components classified as a good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System;

(f) mere making-up of sets of articles; or

(g) any combination of operations referred to in subparagraphs (a) through (f).

2. Paragraph 1 shall prevail over the product specific rules set out in Annex 3.

## **Article 43. Accumulation**

For the purposes of determining whether a good is an originating good of a Party:

(a) an originating good of the other Party which is used as a material in the production of the good in the former Party may be considered as an originating material of the former Party;

(b) the production in the other Party may be considered as that in the former Party; and

(c) the production carried out at different stages by one or more producers within the Party or in the other Party may be taken into account, when the good is produced using non-originating materials, provided that such good has undergone its last production process in the exporting Party and such production process goes beyond the operations provided for in Article 42.

## **Article 44. De Minimis**

1. A good that does not satisfy a change in tariff classification requirement set out in Annex 3 shall be considered as an originating good of a Party if:

(a) in the case of a good classified under Chapter 1, 4 through 15, or 17 through 24 of the Harmonized System, the total value of non-originating materials used in the production of the good that have not undergone the required change in tariff classification does not exceed 10 percent of the FOB value of the good, determined pursuant to Article 41, and the non-originating material used in the production of the good is provided for in a subheading which is different from that of the good for which the origin is being determined under this Article;

(b) in the case of a good classified under Chapter 25 through 49, or 64 through 97 of the Harmonized System, the total value of non-originating materials used in the production of the good that have not undergone the required change in tariff classification does not exceed 10 percent of the FOB value of the good, determined pursuant to Article 41; or

(c) in the case of a good classified under Chapter 50 through 63, of the Harmonized System, the total weight of non-originating materials used in the production of the good that have not undergone the required change in tariff classification does not exceed 10 percent of the total weight of the good, provided that it meets all other applicable requirements set out in this Chapter for qualifying as an originating good.

2. The value of non-originating materials referred to in paragraph 1 shall, however, be included in the value of non-originating materials for any applicable qualifying value content requirement for the good.

## **Article 45. Unassembled or Disassembled Goods**

1. Where a good satisfies the requirements of the relevant provisions of Articles 39 through 42 and is imported into a Party from the other Party in an unassembled or disassembled form but is classified as an assembled good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System, such a good shall be considered as an originating good of the other Party.

2. A good assembled in a Party from unassembled or disassembled materials, which were imported into the Party and classified as an assembled good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System, shall be considered as an originating good of the Party, provided that the good would have satisfied the applicable requirements of the relevant provisions of Articles 39 through 42 if each of the non- originating materials among the unassembled or disassembled materials had been imported into the Party separately and not as an unassembled or disassembled form.

## **Article 46. Fungible Goods or Materials**

1. For the purposes of determining whether a good qualifies as an originating good of a Party, where fungible originating materials of the Party and fungible non- originating materials that are commingled in an inventory are used in the production of the good, the origin of the materials may be determined pursuant to an inventory management method under the Generally Accepted Accounting Principles in the Party.

2. Where fungible originating goods of a Party and fungible non-originating goods are commingled in an inventory and, prior to exportation do not undergo any production process or any operation in the Party where they were commingled other than unloading, reloading and any other operation to preserve them in good condition, the origin of the good may be determined pursuant to an inventory management method under the Generally Accepted Accounting Principles in the Party.

3. Once an inventory management method set out in paragraphs 1 and 2 has been chosen, it shall be used throughout the fiscal year or fiscal period of the person that selected the inventory management method.

## **Article 47. Sets**

1. Sets classified pursuant to Rule 3 of the General Rules for the Interpretation of the Harmonized System and goods specifically described as sets in the nomenclature of the Harmonized System shall qualify as originating goods of a Party, where every good contained in the set qualifies as originating under this Chapter.

2. Notwithstanding paragraph 1, a set shall be considered as an originating good, if the value of all non-originating goods used in the set does not exceed 10 percent of the FOB value of the set determined pursuant to Article 41, and such set satisfies all other applicable requirements of this Chapter.

3. Provisions of this Article shall prevail over the product specific rules set out in Annex 3.

## **Article 48. Accessories, Spare Parts and Tools**

Accessories, spare parts or tools delivered with a good at the time of importation that form part of the good's standard accessories, spare parts or tools:

(a) shall be disregarded in determining whether all the non-originating materials used in the production of a good have undergone the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 3; and

(b) shall be considered as originating or non- originating materials, as the case may be, used in the production of the good in calculating the qualifying value content of the good, provided that the accessories, spare parts or tools are not invoiced separately from the good, whether or not they are separately described in the invoice; and that the quantities and value of the accessories, spare parts or tools are customary for the good.

## **Article 49. Packaging Materials and Containers for Retail Sale**

1. Packaging materials and containers for retail sale, which are classified with the good, pursuant to Rule 5 of the General Rules for the Interpretation of the Harmonized System, shall be disregarded in determining the origin of the good, provided that:

- (a) the good is wholly obtained or entirely produced as defined in subparagraph (a) of Article 39;
- (b) the good is produced exclusively from originating materials, as defined in subparagraph (b) of Article 39; or
- (c) the good has undergone the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 3.

2. If a good is subject to a qualifying value content requirement, packaging materials and containers used for retail sale shall be considered as originating or non- originating materials of the good, as the case may be.

## **Article 50. Packing Materials and Containers for Shipment**

Packing materials and containers for transportation and shipment of a good shall not be taken into account in determining the origin of the good.

## **Article 51. Indirect Materials**

In order to determine whether a good qualifies as an originating good of a Party, it shall not be necessary to determine the origin of the following elements used in its production:

- (a) fuel and energy;
- (b) tools, dies and molds;
- (c) spare parts and goods used in the maintenance of equipment and buildings;
- (d) lubricants, greases, compounding materials and other goods used in production or used to operate equipment and buildings;
- (e) gloves, glasses, footwear, clothing, safety equipment and supplies;
- (f) equipment, devices and supplies used for testing or inspecting the good;
- (g) catalysts and solvents; and
- (h) any other goods that are not incorporated into another good but whose use in the production of the good can reasonably be demonstrated to be a part of that production.

## **Article 52. Consignment Criteria**

1. An originating good of a Party shall be deemed to meet the consignment criteria when it is transported:

- (a) directly from the exporting Party to the importing Party without passing through a non- Party; or
- (b) from the exporting Party to the importing Party through one or more non-Parties for the purpose of transit, transshipment or temporary storage in warehouses in such non-Parties, provided that:
  - (i) it does not undergo operations other than unloading, reloading and any other operation to preserve it in good condition; and
  - (ii) the good remains under control of the customs authorities in such non-Parties.

2. If an originating good of a Party does not meet the consignment criteria referred to in paragraph 1, that good shall no longer be considered as an originating good of the Party.

## **Article 53. Proofs of Origin**

For the purposes of this Chapter, the following documents shall be considered as Proofs of Origin:

- (a) a Certificate of Origin referred to in Article 54; and
- (b) an origin declaration referred to in Article 57.

## **Article 54. Certificate of Origin**

1. A Certificate of Origin shall be issued by the competent authority of the exporting Party on application having been made by the exporter or, under the exporter's responsibility, by his authorized representative. 2. For the purposes of this Article, the competent authority of the exporting Party may designate, under the authorization given in accordance with the applicable laws and regulations of that Party, certification bodies for the issuance of a Certificate of Origin.

3. Each Party shall establish its form for the Certificate of Origin, which shall conform to the specimen provided for in Annex

4. The Certificate of Origin shall be completed in English by the exporter or, under the exporter's responsibility, by his authorized representative in accordance with the instructions provided for in the Overleaf Note for the Certificate of Origin in Annex 4.

4. A Certificate of Origin shall be issued by the time of shipment, except as provided for in Article 55.
5. The exporter applying for the issuance of a Certificate of Origin for a good shall be prepared to submit at any time, at the request of the competent authority of the exporting Party or its certification bodies which issue the Certificate of Origin, all appropriate documents proving that the good qualifies as an originating good of the exporting Party.
6. Where the exporter of a good is not the producer of the good in the exporting Party, the exporter may request a Certificate of Origin on the basis of:
  - (a) a declaration given by the exporter to the competent authority of the exporting Party or its certification bodies based on the information or a declaration provided by the producer of the good; or
  - (b) a declaration voluntarily given by the producer of the good directly to the competent authority of the exporting Party or its certification bodies at the request of the exporter.
7. A Certificate of Origin for a good shall be issued by the competent authority of the exporting Party or its certification bodies if the good can be considered as an originating good of the exporting Party.
8. The competent authority of the exporting Party or its certification bodies shall take any steps necessary to verify the qualification of the goods as originating goods of the exporting Party. For this purpose, they shall have the right to call for any evidence and to carry out any inspection of the documents or information relating to the originating status of the goods held by the exporter or producer referred to in this Article or any other check considered appropriate. They shall also ensure that the form referred to in paragraph 3 is duly completed.
9. The competent authority of each Party or its certification bodies shall number correlatively the Certificates of Origin issued.
10. An exporter to whom a Certificate of Origin for a good has been issued, or a producer referred to in subparagraph 6(b), shall promptly send a notification in writing of any change that could affect the accuracy or validity of the Certificate of Origin to the competent authority of the exporting Party, when such exporter or producer has reasons to believe that the Certificate of Origin contains incorrect information. The competent authority of the exporting Party shall, if it receives such notification, promptly notify the relevant authority of the importing Party, except where the Certificate of Origin has been returned by the exporter to the competent authority of the exporting Party or its certification bodies without being used for the purposes of claiming preferential tariff treatment.

## **Article 55. Certificate of Origin Issued Retrospectively**

1. A Certificate of Origin may exceptionally be issued after shipment of the goods to which it relates if:
  - (a) it was not issued at the time of shipment because of errors or involuntary omissions or exceptional cases; or
  - (b) it is demonstrated to the satisfaction of the competent authority of the exporting Party that a Certificate of Origin was issued but was not accepted at importation for technical reasons.
2. Such Certificate of Origin shall bear the phrase "ISSUED RETROSPECTIVELY" in the Field 9.

## **Article 56. Issuance of a Duplicate Certificate of Origin**

In the event of theft, loss or destruction of a Certificate of Origin before the expiration of its validity, the exporter may apply to the competent authority of the exporting Party or the certification body which issued it for a duplicate of the original Certificate of Origin on the basis of the export documents in their possession. The Certificate of Origin issued in this way shall bear in the Field 9 the phrase "DUPLICATE OF THE ORIGINAL CERTIFICATE OF ORIGIN NUMBER\_DATED\_". The duplicate Certificate of Origin shall be valid during the term of the validity of the original Certificate of Origin.

## **Article 57. Origin Declaration**

1. An origin declaration referred to in subparagraph (b) of Article 53 may be made out, in accordance with this Article, only by an approved exporter provided for in Article 58.
2. An origin declaration may be made out only if the good concerned can be considered as an originating good of the exporting Party.
3. Where the approved exporter is not the producer of the good located in the exporting Party, an origin declaration for the good may be made out by the approved exporter on the basis of:
  - (a) information provided by the producer of the good to the approved exporter; or
  - (b) a declaration, given by the producer of the good to the approved exporter, that the good qualifies as an originating good of the exporting Party.
4. An approved exporter shall be prepared to submit at any time, at the request of the competent authority of the exporting Party, all appropriate documents proving that the good for which the origin declaration was made out qualifies as an originating good of the exporting Party.
5. The text of an origin declaration shall be as provided for in Annex 4. An origin declaration shall be made out in English by an approved exporter by typing, stamping or printing on the invoice, the delivery note or any other commercial document

which describes the good concerned in sufficient detail to enable it to be identified. The origin declaration shall be considered to be made out on the date of the issuance of such commercial document.

6. An origin declaration for a good may be made out by the approved exporter by the time of or after the shipment of the good.

7. An approved exporter who has made out an origin declaration for a good shall promptly notify in writing to the competent authority of the exporting Party, when such approved exporter realizes that the good does not qualify as an originating good of the exporting Party. The competent authority of the exporting Party shall, if it receives such notification, promptly notify the relevant authority of the importing Party.

## **Article 58. Approved Exporter**

1. The competent authority of the exporting Party may authorize an exporter located in the Party to make out an origin declaration as an approved exporter on condition that:

- (a) the exporter makes frequent shipments of originating goods of the exporting Party;
- (b) the exporter has sufficient knowledge and capability to make out an origin declaration appropriately and fulfils the conditions set out in the laws and regulations of the exporting Party; and
- (c) the exporter gives the competent authority of the exporting Party a written undertaking that he accepts full responsibility for any origin declaration which identifies him as if it had been signed in manuscript by him.

2. The competent authority of the exporting Party shall allocate to the approved exporter an authorization number which shall appear on the origin declaration. The origin declaration does not have to be signed by the approved exporter.

3. The competent authority of the exporting Party shall ensure the proper use of the authorization by the approved exporter.

4. The competent authority of the exporting Party may withdraw the authorization at any time. It shall do so in accordance with the laws and regulations of the exporting Party where the approved exporter no longer fulfils the conditions referred to in paragraph 1 or otherwise makes an incorrect use of the authorization.

## **Article 59. Notifications**

1. Upon entry into force of this Agreement, each Party shall provide the other Party with:

- (a) the form of its Certificate of Origin; and
- (b) a register of the names of the certification bodies and officials accredited to issue Certificates of Origin, as well as of the specimen signatures and impressions of stamps used in the offices of the competent authority or its certification bodies for the issuance of Certificates of Origin.

2. Any change to the register shall be notified in writing to the other Party. The change shall enter into force five days after the date of notification or in another later date indicated in such notification.

3. The competent authority of the exporting Party shall provide the importing Party with information on the composition of the authorization number and the names, addresses and authorization numbers of approved exporters and the dates from which the authorization comes into effect. Each Party shall notify the other Party any changes, including the date from which such changes come into effect.

## **Article 60. Claim for Preferential Tariff Treatment**

1. The importing Party shall grant preferential tariff treatment in accordance with this Agreement to an originating good of the exporting Party on the basis of a Proof of Origin submitted, when it is required, by the importer who claims preferential tariff treatment at the time of importation, in accordance with the procedures applicable in the importing Party.

2. Notwithstanding paragraph 1, the importing Party shall not require a Proof of Origin from importers for: (a) an importation of originating goods of the exporting Party whose aggregate customs value does not exceed US\$ 1,500 or its equivalent amount in the Party's currency, or such higher amount as may be established by the importing Party, provided that the importation does not form part of importations that may reasonably be considered to have been made separately for the purpose of avoiding the requirement for a Proof of Origin; or

(b) an importation of an originating good of the exporting Party, for which the importing Party has waived the requirement for a Proof of Origin.

3. Where an originating good of the exporting Party is imported through one or more non-Parties, the importing Party may require importers who claim preferential tariff treatment for that good to submit:

(a) in the case of Japan:

(i) a copy of the through bill of lading; or

(ii) a certificate or any other information given by the customs authority of such non-Parties or other relevant entities, which evidences that the good has not undergone operations other than unloading, reloading and any other operation to preserve it in good condition in those non-Parties; and



(b) in the case of Peru:

(i) in the case of transit or transshipment: the transportation documents, such as the air waybill, the bill of lading, or the multimodal or combined transportation document, that certify the transport from the exporting Party to the importing Party, as the case may be; and

(ii) in the case of storage: the transportation documents, such as the air waybill, the bill of lading, or the multimodal or combined transportation document, that certify the transport from the exporting Party to the importing Party, as the case may be, as well as, the documents issued by the customs authority or other competent authority of the non-Party that authorized this operation, according to its domestic legislation.

## **Article 61. Obligations Related to Importations**

1. Except as otherwise provided for in this Chapter, each Party shall require an importer that claims preferential tariff treatment for a good imported from the other Party to:

(a) make a written statement in the customs declaration, based on a valid Proof of Origin, that the good qualifies as an originating good of the exporting Party;

(b) have the Proof of Origin in its possession at the time the statement referred to in subparagraph (a) is made;

(c) have in its possession the documents referred to in paragraph 3 of Article 60, where applicable;

(d) submit the Proof of Origin, as well as the documents indicated in subparagraph (c) on the request of the customs authority; and

(e) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that a Proof of Origin on which a declaration was based contains information that is not correct.

2. Where an importer of an originating good at the time of importation does not have in his possession a Proof of Origin, the importer may, in accordance with the laws and regulations of the importing Party, apply for a refund of any excess customs duties paid or deposit imposed as a result of the goods not having been granted preferential tariff treatment, on presentation to the customs authority of the importing Party of the Proof of Origin issued or made out in accordance with Article 54 or Article 57 and, if required, such other documentation relating to the importation of the good, within a period not exceeding one year after the time of importation.

Note: Notwithstanding this paragraph, in the case of importation into Japan, refund of any excess duties paid shall not be applicable.

3. Paragraph 2 shall not be applicable in the case where the importer failed to declare to the customs authority of the importing Party, at the time of importation, that the good was an originating good under this Agreement, even though a valid Proof of Origin was provided to the customs authority subsequently.

4. Where an importer claims preferential tariff treatment for a good, the importing Party may deny preferential tariff treatment to the good where the good does not qualify as an originating good of the exporting Party or where the importer fails to comply with any of the relevant requirements of this Chapter.

## **Article 62. Validity of Proof of Origin**

1. A Proof of Origin shall be valid for 12 months from the date on which it is issued or made out, and shall be submitted for a single importation covered under one or more customs declarations within such period, when it is required by the customs authority of the importing Party.

2. In the event that the good is temporarily admitted or stored under control of the customs authority of the importing Party, the validation period of the Proof of Origin may be extended by the amount of time the customs authority has authorized such operations.

3. Proofs of Origin which are submitted to the customs authority of the importing Party after the final date for submission specified in paragraph 1 may be accepted for the purpose of granting preferential tariff treatment, where the failure to submit these documents by the final date set is due to exceptional circumstances.

## **Article 63. Supporting Documents**

The documents referred to in paragraph 5 of Article 54 and paragraph 4 of Article 57 used for the purposes of proving that the goods covered by a Proof of Origin qualify as originating goods of the exporting Party may consist of, inter alia, the following:

(a) direct evidence of the processes carried out by the exporter or producer to obtain the goods concerned; (b) documents proving the originating status of the materials used in a Party, where the documents are used in accordance with its laws and regulations;

(c) documents proving the working or processing of materials in a Party, where these documents are used in accordance with its laws and regulations; or

(d) Proofs of Origin stating the originating status of the materials used, issued or made out in a Party.

## **Article 64. Preservation of Documents and Records**

1. The exporter to whom a Certificate of Origin was issued shall keep the documents referred to in paragraph 5 of Article 54 for at least five years after the date on which the Certificate of Origin was issued.
2. The competent authority of the exporting Party or its certification bodies issuing a Certificate of Origin shall keep a record of the Certificate of Origin, as well as the supporting information required for the certification, for at least five years after the date on which the Certificate of Origin was issued.
3. The approved exporter who has made out an origin declaration shall keep a copy of the origin declaration as well as the documents referred to in paragraph 4 of Article 57 for at least five years after the date on which the origin declaration was made out.
4. The producer of a good who provides a declaration referred to in subparagraphs 6(a) and 6(b) of Article 54 shall keep the records relating to the origin of the good for at least five years after the date on which the Certificate of Origin was issued or after the date on which the declaration referred to in subparagraph 6(a) of Article 54 was given by the producer to the exporter, except where the Certificate of Origin is not issued based on the declaration provided by the producer.
5. The producer of a good referred to in subparagraph 3(b) of Article 57 shall keep the records relating to the origin of the good for at least five years after the date on which the declaration referred to in subparagraph 3(b) of Article 57 was given by the producer to the approved exporter, except where the origin declaration is not made out based on the declaration provided by the producer.
6. The records to be kept in accordance with this Article may include electronic records.

## **Article 65. Minor Errors**

The customs authority of the importing Party shall disregard minor errors, such as slight discrepancies or omissions, typing errors or protruding from the designated field, provided that these minor errors are not such as to create doubts concerning the accuracy of the information included in the Proof of Origin.

## **Article 66. Verifications Process**

1. In order to ensure the proper application of this Chapter, the Parties shall assist each other to carry out verification of the information related to the Proof of Origin, in accordance with this Agreement and their respective laws and regulations.
2. For the purpose of determining whether a good imported from the other Party meets the requirements of this Chapter, the importing Party may conduct a verification through its relevant authority by means of:
  - (a) request of information relating to a Proof of Origin from the importer;
  - (b) request of information relating to a Proof of Origin from the competent authority of the exporting Party on the basis of the Proof of Origin;
  - (c) request of information relating to a Proof of Origin from the exporter, the approved exporter or the producer, keeping documents and records in accordance with Article 64 through the competent authority of the exporting Party; and
  - (d) request to the exporting Party to check the facilities used in the production of the good, through a visit by the competent authority of the exporting Party along with the relevant authority of the importing Party as an observer to the premises of the exporter, the approved exporter or the producer, keeping documents and records in accordance with Article 64 and to provide the collected information after the visit.
3. For the purposes of paragraph 2, the relevant authority of the importing Party shall return a copy of the Proof of Origin to the competent authority of the exporting Party giving the reasons for the request for the verification. Any documents or information obtained suggesting that the information given in the Proof of Origin is incorrect shall be forwarded to the competent authority of the exporting Party in support of such request.
4. (a) For the purposes of subparagraphs 2(b) and 2(c), the competent authority of the exporting Party shall provide the information requested in a period not exceeding three months after the date of receipt of the request.  
(b) If the relevant authority of the importing Party considers necessary, it may require additional information relating to the Proof of Origin. If additional information is requested by the relevant authority of the importing Party, the competent authority of the exporting Party shall provide the information requested in a period not exceeding two months after the date of receipt of the request.
5. (a) When requesting the exporting Party to conduct a visit pursuant to subparagraph 2(d), the relevant authority of the importing Party shall deliver a written communication with such request to the exporting Party at least 30 days before the proposed date of the visit, the receipt of which is to be confirmed by the exporting Party.  
(b) The communication referred to in subparagraph 5(a) shall include:
  - (i) the identity of the relevant authority of the importing Party issuing the communication;
  - (ii) the name of the exporter, the approved exporter or the producer, keeping documents and records in accordance with

Article 64 in the exporting Party, whose premises are requested to be visited;

- (iii) the proposed date and place of the visit;
- (iv) the objective and scope of the proposed visit, including specific reference to the good subject of the verification referred to in the Proof of Origin; and
- (v) the names and titles of the officials of the relevant authority of the importing Party to be present during the visit.

(c) The exporting Party shall respond in writing to the importing Party, within 30 days after the receipt of the communication referred to in subparagraph 5(a), if it accepts or refuses to conduct the visit requested pursuant to subparagraph 2(d). (d) The exporting Party shall provide within 60 days or any other mutually agreed period after the last day of the visit, to the relevant authority of the importing Party the information obtained pursuant to subparagraph 2(d).

6. The relevant authority of the importing Party shall, within 12 months after the exporting Party receives the request for verification, provide the competent authority of the exporting Party with a written determination of whether or not the good meets the requirements of this Chapter, including findings of fact and the legal basis for the determination.

7. (a) The relevant authority of the importing Party may deny preferential tariff treatment to a good where the importer of the good does not respond to a request for information related to a Proof of Origin from the relevant authority of the importing Party pursuant to subparagraph 2(a).

(b) The relevant authority of the importing Party may deny preferential tariff treatment, and a written determination thereof shall be sent to the competent authority of the exporting Party, where:

- (i) the requirements to provide the information within the period referred to in paragraph 4 or subparagraph 5(d) or to respond to the communication referred to in subparagraph 5(a) within the period referred to in subparagraph 5(c) are not met;
- (ii) the request referred to in subparagraph 2(d) is refused; or
- (iii) the information provided to the relevant authority of the importing Party pursuant to subparagraphs 2(b), 2(c) and 2(d) is not sufficient to prove that the good meets the requirements of this Chapter.

(c) The customs authority of the importing Party may suspend preferential tariff treatment to the goods covered by the Proof of Origin concerned while awaiting the results of the verification. However, the suspension of the preferential tariff treatment shall not be a reason to stop the release of the goods.

(d) A Party may suspend preferential tariff treatment to an importer on any subsequent import of a good when the relevant authority had already determined that an identical good from the same producer was not eligible for such treatment, until it is demonstrated that the good complies with the provisions under this Chapter.

## **Article 67. Penalties**

Each Party shall adopt or maintain appropriate penalties or other measures against violations of its laws and regulations relating to the provisions of this Chapter.

## **Article 68. Confidentiality**

1. Each Party shall maintain in accordance with its laws and regulations, the confidentiality of information provided to it as confidential by the other Party pursuant to this Chapter, and shall protect that information from disclosure.

2. Information obtained by the relevant authority of the importing Party pursuant to this Chapter:

- (a) may only be used by such authority for the purposes of this Chapter; and
- (b) shall not be used by the importing Party in any criminal proceedings carried out by a court or a judge, unless permission to use such information is requested by and provided to the importing Party through the diplomatic channels or other channels established in accordance with the applicable laws and regulations of the exporting Party.

## **Article 69. Sub-committee on Rules of Origin**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Rules of Origin (hereinafter referred to in this Article as "the Sub-Committee"). 2. The functions of the Sub-Committee shall be:

- (a) reviewing and making appropriate recommendations, as necessary, to the Commission on:
  - (i) the effective, uniform and consistent administration of this Chapter, including its interpretation, application and enhancement of cooperation in this regard;
  - (ii) any amendments to Annex 3, taking into account the amendment of the Harmonized System, as well as Annex 4 proposed by either Party; and
  - (iii) the Operational Procedures referred to in Article 70;
- (b) considering any other matter related to this Chapter, such as tariff classification and customs valuation related to the determination of origin, calculation of the qualifying value content, and development of an electronic certification system, as the Parties may agree;

(c) reporting the findings of the Sub-Committee to the Commission; and

(d) other functions assigned by the Commission.

3. The Sub-Committee shall hold meetings at such times and venues or by means, as may be agreed by the Parties.

## **Article 70. Operational Procedures**

Upon entry into force of this Agreement, the Commission may adopt Operational Procedures that provide detailed guidelines regarding the provisions of this Chapter.

## **Article 71. Miscellaneous**

Communications between the importing Party and the exporting Party shall be conducted in the English language.

## **Article 72. Transitional Provisions for Goods In Transit or Storage**

This Agreement may be applied to goods which comply with the provisions of this Chapter, and which on the date of entry into force of this Agreement, are either in transit from the exporting Party to the importing Party or in temporary storage in a bonded warehouse under customs control. Such application shall be subject to the submission to the customs authority of the importing Party, within four months after the date of entry into force of this Agreement, of a Certificate of Origin issued retrospectively or an origin declaration, together with the documents pursuant to Article 60 showing that the goods comply with the consignment criteria established in Article 52.

# **Chapter 4. Customs Procedures and Trade Facilitation**

## **Article 73. Scope of Application**

1. This Chapter shall apply to customs procedures required for the clearance of goods traded between the Parties and for customs control on goods traded between the Parties, including means of transport, which enter or leave the customs territory of the Parties.

2. This Chapter shall be implemented by the Parties in accordance with the laws and regulations of each Party. Note: For the purposes of this Article and Article 75, the term "customs territory" means the territory in which customs laws of a Party apply.

## **Article 74. Objectives**

The objectives of this Chapter are:

(a) to establish a framework to ensure transparency, proper application of customs laws and prompt clearance of goods; and

(b) to promote cooperation in the field of customs procedures, with a view to facilitating trade in goods between the Parties and preventing, investigating and repressing any violation of customs laws.

## **Article 75. Definition**

For the purposes of this Chapter, the term "customs laws" means the statutory and regulatory provisions relating to the importation, exportation and transit or storage of goods, as they relate to prohibitions, restrictions and other similar controls with respect to the movement of controlled goods across the boundary of the customs territory of each Party.

## **Article 76. Transparency**

1. Each Party shall ensure that all relevant information of general application pertaining to its customs laws is readily available to any interested person, in English to the extent possible.

2. When information that has been made available must be revised due to changes in its customs laws, each Party shall, to the extent possible, make the revised information readily available in English sufficiently in advance of the entry into force of the changes to enable interested persons to take account of them, unless such an advance notice is precluded.

3. At the request of any interested person of the Parties, each Party shall provide, as quickly and accurately as possible, information relating to the specific customs matters raised by the interested person and pertaining to its customs laws. Each Party shall supply not only the information specifically requested but also any other pertinent information which it considers the interested person should be made aware of.

4. Each Party shall designate one or more enquiry points to answer reasonable enquiries from any interested person of the Parties concerning customs matters, and shall make publicly available, including through its website, the names and addresses of such enquiry points.

## **Article 77. Information and Communications Technology**

Each Party shall promote the use of information and communications technology in its customs procedures.

## **Article 78. Risk Management**

In order to facilitate their customs procedures, the Parties shall maintain risk management systems that enable them to concentrate inspection activities on high risk goods and that simplify the clearance, including release, and movement of low risk goods.

## **Article 79. Customs Clearance**

1. The Parties shall apply their respective customs procedures in a predictable, consistent and transparent manner.
2. For prompt customs clearance, including release, of goods traded between the Parties each Party shall:
  - (a) simplify its customs procedures;
  - (b) harmonize its customs procedures, to the extent possible, with relevant international standards and recommended practices such as those made under the auspices of the Customs Co-operation Council;
  - (c) promote cooperation, wherever appropriate, between its customs authority and:
    - (i) other national authorities of the Party; and
    - (ii) the trading communities of the Party; and
  - (d) adopt or maintain customs procedures:
    - (i) for checking of the information, including documents, relating to the clearance of goods prior to the arrival of goods to be imported; and
    - (ii) for allowing goods to be released for importation without being placed in customs warehouses as soon as its customs authority has examined them or decided not to examine them, provided that:
      - (A) no offence has been found;
      - (B) the import license or any other documents required have been acquired;
      - (C) all permits relating to the customs procedures concerned have been acquired; and
      - (D) any duties and taxes have been paid or that appropriate action has been taken to ensure their collection.

## **Article 80. Separate and Expedited Customs Procedures for Shipment**

Each Party shall adopt or maintain separate and expedited customs procedures for shipment. Such procedures shall provide a simplified clearance of goods after submission of all the necessary customs documents in accordance with the laws and regulations of each Party.

## **Article 81. Advance Rulings**

The importing Party shall adopt or maintain, in accordance with its laws and regulations, procedures of advance ruling that is issued prior to the importation of a good, concerning the tariff classification of the good, the customs valuation of the good and the qualification of the good as an originating good of the exporting Party under the provisions of Chapter 3, where a written application is made with all the necessary information by importers of the good or their authorized representatives, or exporters or producers of the good in the exporting Party or their authorized representatives and the importing Party has no reasonable grounds to deny the issuance.

## **Article 82. Review**

Each Party shall, in relation to any decision concerning customs matters taken by the Party, provide affected parties with easily accessible processes of administrative and judicial review. Such review shall be independent of the official or office making the decision.

## **Article 83. Customs Cooperation and Exchange of Information**

1. The Parties shall cooperate and exchange information with each other in the field of customs procedures within the

available resources of their respective customs authorities. Such cooperation and exchange of information include mutual administrative assistance and technical assistance.

2. Cooperation and exchange of information pursuant to paragraph 1 shall be implemented as provided for in the Implementing Agreement.

3. Paragraph 1 of Article 7 shall not apply to the exchange of information under this Article.

## **Article 84. Penalties**

Each Party shall adopt or maintain appropriate sanctions or other measures against violations of its customs laws, for the purposes of this Chapter.

## **Article 85. Sub-committee on Customs Procedures and Trade Facilitation**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Customs Procedures and Trade Facilitation (hereinafter referred to in this Article as "the Sub-Committee").

2. The functions of the Sub-Committee shall be:

(a) reviewing the implementation and operation of this Chapter;

(b) identifying areas, relating to this Chapter, to be improved for facilitating trade between the Parties;

(c) reporting the findings of the Sub-Committee to the Commission;

(d) consulting on tariff classification issues to resolve any difference that may arise between the Parties; and Note: If the issue is not resolved in the course of consultations referred to in this subparagraph, it shall be referred to the Harmonized System Committee of the Customs Co-operation Council.

(e) other functions assigned by the Commission.

3. The Sub-Committee shall be composed of government officials of the Parties.

4. The Sub-Committee shall hold meetings at such times and venues or by means, as may be agreed by the Parties.

## **Chapter 5. Sanitary and Phytosanitary Measures**

### **Article 86. Scope of Application**

This Chapter shall apply to all sanitary and phytosanitary (hereinafter referred to as "SPS") measures of the Parties under the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement (hereinafter referred to as "SPS Agreement"), that may, directly or indirectly, affect trade in goods between the Parties.

### **Article 87. Reaffirmation of Rights and Obligations**

The Parties reaffirm their rights and obligations relating to SPS measures under the SPS Agreement.

### **Article 88. Enquiry Points**

Each Party shall designate an enquiry point which is able to answer all reasonable enquiries from the other Party regarding SPS measures and, if appropriate, to provide the relevant information.

### **Article 89. Sub-committee on Sps Measures**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on SPS Measures (hereinafter referred to in this Article as "the Sub-Committee"). 2. The functions of the Sub-Committee shall be:

(a) reviewing the implementation and operation of this Chapter;

(b) exchanging information on such matters as occurrences of SPS incidents in the Parties, and change or introduction of SPS-related regulations and standards of the Parties, which may, directly or indirectly, affect trade in goods between the Parties in order to improve mutual understanding of each Party's SPS measures including their administrative procedures;

(c) notifying either Party of information on potential SPS risks recognized by the other Party;

(d) undertaking science-based technical consultations to identify and address specific issues between the Parties that may arise from the application of SPS measures;

(e) consulting on cooperative efforts between the Parties in international fora in relation to SPS measures;

(f) discussing technical cooperation between the Parties on SPS measures including capacity building, technical assistance and exchange of experts subject to the availability of appropriated funds and the applicable laws and regulations of each

Party; and

(g) other functions assigned by the Commission.

3. The Sub-Committee shall be composed of government officials of the Parties with necessary expertise relevant to the issues to be discussed.

4. The Sub-Committee shall hold meetings at such times and venues or by means, as may be agreed by the Parties.

5. For the purposes of this Article, the Sub-Committee shall be coordinated by:

(a) in the case of Japan, the Ministry of Foreign Affairs, or its successor; and

(b) in the case of Peru, the Ministry of Foreign Trade and Tourism, or its successor.

## **Chapter 6. Technical Regulations, Standards and Conformity Assessment Procedures**

### **Article 90. Scope of Application**

1. This Chapter shall apply to technical regulations, standards and conformity assessment procedures as defined in the Agreement on Technical Barriers to Trade in Annex 1A to the WTO Agreement (hereinafter referred to as "TBT Agreement"), that may affect the trade in goods between the Parties.

2. This Chapter shall not apply to:

(a) purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies; or

(b) SPS measures as defined in Annex A of the SPS Agreement.

### **Article 91. Objectives**

The objectives of this Chapter are:

(a) to increase and facilitate trade between the Parties, through the improvement of the implementation of the TBT Agreement;

(b) to ensure that technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to trade; and (c) to enhance joint cooperation between the Parties.

### **Article 92. Definitions**

For the purposes of this Chapter, the terms and definitions set out in Annex 1 of the TBT Agreement shall apply.

### **Article 93. Reaffirmation of Rights and Obligations**

The Parties reaffirm their rights and obligations relating to technical regulations, standards and conformity assessment procedures under the TBT Agreement.

### **Article 94. International Standards**

1. Each Party shall use relevant international standards and guides or recommendations to the extent provided in paragraph 4 of Article 2 and paragraph 4 of Article 5 of the TBT Agreement, as a basis for its technical regulations and conformity assessment procedures.

2. Each Party shall encourage its national standardizing bodies to cooperate with the relevant national standardizing bodies of the other Party in international standardizing activities. Such cooperation may take place in regional and international standardizing bodies of which they are both members.

### **Article 95. Technical Regulations**

1. Each Party shall give positive consideration to accepting as equivalent technical regulations of the other Party, even if these regulations differ from its own, provided it is satisfied that these regulations adequately fulfill the objectives of its own regulations.

2. Where a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall, at the request of the other Party, explain its decision.

3. At the request of a Party that has an interest in developing a technical regulation similar to a technical regulation of the other Party, such other Party shall provide, to the extent practicable, relevant information, including studies or documents, except for confidential information, on which it has relied in its development.

## **Article 96. Conformity Assessment**

1. The Parties recognize that a broad range of mechanisms exists to facilitate the acceptance in a Party of the results of conformity assessment procedures conducted in the other Party. Each Party shall, on request of the other Party, provide information on the range of such mechanisms used in its Area.
2. Where a Party does not accept the results of a conformity assessment procedure conducted in the other Party, it shall, on request of the other Party and subject to the laws and regulations of that Party, explain the reasons for its decision so that corrective action may be taken by the other Party when appropriate.
3. Each Party shall, whenever possible, accredit, designate or recognize conformity assessment bodies in the other Party on terms no less favorable than those it accords to conformity assessment bodies in its Area. If a Party accredits, designates or recognizes a body assessing conformity with a particular technical regulation or standard in its Area and it refuses to accredit, designate or recognize a body in the other Party assessing conformity with that technical regulation or standard, it shall, on request, explain the reasons for its refusal.
4. Where a Party declines a request from the other Party to enter into negotiations to conclude an arrangement for recognition in its Area of the results of conformity assessment procedures conducted by conformity assessment bodies in the other Party, it shall explain the reasons for its decision.

## **Article 97. Transparency**

1. Each Party shall notify electronically to the other Party's enquiry point, established under Article 10 of the TBT Agreement, at the same time it submits its notification to the WTO Secretariat in accordance with the TBT Agreement:
  - (a) its proposed technical regulations and conformity assessment procedures; and
  - (b) its technical regulations and conformity assessment procedures adopted to address urgent problems of safety, health, environmental protection or national security arising or threatening to arise.
2. The notification of technical regulations and conformity assessment procedures shall include a link to or, if requested by the other Party, a copy of, the English version of such technical regulations and conformity assessment procedures, where possible, or in case of voluminous copies, an English summary of such technical regulations and conformity assessment procedures that includes the main requirements thereof.
3. The Parties shall endeavor to allow a period of at least 60 days following the notification of proposed technical regulations and conformity assessment procedures for the public and the other Party to provide written comments, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise. A Party shall give positive consideration to a reasonable request for extending the comment period.
4. Each Party shall, on request of the other Party, provide information regarding the objectives of, and rationale for, a technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.
5. Each Party shall endeavor to ensure that all adopted technical regulations and conformity assessment procedures are available on official websites that are freely and publicly available. The Parties shall exchange the list of official websites in a period of 60 days from the entry into force of this Agreement and any modification to that list, when appropriate.
6. Where a Party detains at a port of entry a good exported from the other Party due to a perceived failure to comply with a technical regulation, it shall endeavor to immediately notify the importer of the reasons for the detention of the good.

## **Article 98. Technical Cooperation**

The Parties shall give positive consideration to supply each other cooperation and technical assistance, to the extent possible, in order to, inter alia:

- (a) encourage the enforcement of this Chapter;
- (b) encourage the enforcement of the TBT Agreement;
- (c) strengthen the corresponding bodies of standardization, technical regulation and conformity assessment, including the formation and training of the human resources; and
- (d) increase the collaboration in international organizations in the areas of standardization and conformity assessment.

## **Article 99. Sub-committee on Technical Regulations, Standards and Conformity Assessment Procedures**

1. The Parties hereby establish a Sub-Committee on Technical Regulations, Standards and Conformity Assessment Procedures (hereinafter referred to in this Article as "the Sub-Committee").
2. The functions of the Sub-Committee shall be:
  - (a) monitoring the implementation and operation of this Chapter;
  - (b) promptly addressing any issue that a Party raises related to the development, adoption or application of technical regulations, standards and conformity assessment procedures under this Chapter and the TBT Agreement;



- (c) enhancing joint cooperation in the development and improvement of technical regulations, standards and conformity assessment procedures;
  - (d) exchanging information on technical regulations, standards and conformity assessment procedures;
  - (e) reviewing this Chapter in light of any developments under the WTO Committee on Technical Barriers to Trade established under Article 13 of the TBT Agreement, and if necessary, developing recommendations for amendments to this Chapter;
  - (f) as it considers appropriate, reporting to the Commission on the implementation and operation of this Chapter;
  - (g) establishing, if necessary to achieve the objectives of this Chapter, ad hoc working groups to deal with specific issues or sectors;
  - (h) exchanging information on the work in regional and multilateral fora engaged in activities related to technical regulations, standards and conformity assessment procedures;
  - (i) taking any steps the Parties may consider that will assist them in implementing this Chapter and the TBT Agreement and in facilitating trade between the Parties; and
  - (j) other functions assigned by the Commission.
3. The Sub-Committee shall be composed of government officials of the Parties.
4. The Sub-Committee shall hold meetings at such times and venues or by means, as may be agreed by the Parties. 5. For the purposes of this Article, the Sub-Committee shall be coordinated by:
- (a) in the case of Japan, the Ministry of Foreign Affairs, or its successor; and
  - (b) in the case of Peru, the Ministry of Foreign Trade and Tourism, or its successor.
6. The authorities referred to in paragraph 5 will be responsible for coordinating with the relevant institutions and persons in their Areas as well as ensuring that such institutions and persons are convened when necessary.

## **Article 100. Information Exchange**

Any information or explanation requested by a Party pursuant to this Chapter shall be provided by the other Party, in print or electronically, within a reasonable period of time agreed between the Parties and, if possible, within 60 days.

# **Chapter 7. Cross-border Trade In Services**

## **Article 101. Scope of Application**

1. This Chapter shall apply to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party. Such measures include measures affecting:
- (a) the supply of a service;
  - (b) the purchase or use of, or payment for, a service;
  - (c) the access to and the use of services offered to the public generally, including distribution, transport or telecommunications networks and services, in connection with the supply of a service;
  - (d) the presence in its Area of a service supplier of the other Party; and
  - (e) the provision of a bond or other form of financial security as a condition for the supply of a service.
2. This Chapter shall not apply to:
- (a) in respect of air transport services, measures affecting traffic rights, however granted, or measures affecting services directly related to the exercise of traffic rights, other than measures affecting:
    - (i) aircraft repair and maintenance services;
    - (ii) the selling and marketing of air transport services; and
    - (iii) computer reservation system (CRS) services; and
  - (b) government procurement as defined in Article 144.
3. Articles 103, 106, 110 and 111 shall also apply to measures by a Party affecting the supply of a service by covered investments. Note: The Parties understand that none of the provisions of this Chapter, including this paragraph and any of its Annexes, is subject to Article 18 (Settlement of Investment Disputes between a Contracting Party and an Investor of the Other Contracting Party) of the BIT.
4. This Chapter shall not impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in that Party and shall not confer any right on that national with respect to that access or employment.
5. This Chapter shall not apply to services supplied in the exercise of governmental authority. A service supplied in the exercise of governmental authority means a service which is supplied neither on a commercial basis nor in competition with one or more service suppliers.
6. Annex 7 provides for supplementary provisions to this Chapter, including scope of application and definitions, and the BIT, on measures by a Party affecting trade in financial services.

Note: For the purposes of this paragraph, "trade in financial services" refers to trade in financial services as defined in subparagraph 1(f) of Article 2 of Annex 7.

## **Article 102. Definitions**

1. For the purposes of this Chapter:

- (a) the term "aircraft repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from services and does not include so-called line maintenance;
  - (b) the term "computer reservation system (CRS) services" means services provided by computerized systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;
  - (c) the term "covered investments" means, with respect to a Party, investments of an investor of the other Party in the Area of the Party existing on the date of entry into force of this Agreement or established, acquired or expanded thereafter;
  - (d) the term "cross-border trade in services" or "cross-border supply of services" means the supply of a service:
    - (i) from the Area of a Party into the Area of the other Party;
    - (ii) in the Area of a Party by a person of that Party to a person of the other Party; or
    - (iii) by a national of a Party in the Area of the other Party;
  - (e) the term "enterprise of a Party" means an enterprise constituted or organized under the laws of a Party; (f) the term "existing" means in effect on the date of entry into force of this Agreement, except for entry 35 of Part 1 of Annex 5;
  - (g) the term "measure adopted or maintained by a Party" means any measure adopted or maintained by:
    - (i) any level of government or authority of a Party; and
    - (ii) non-governmental bodies in the exercise of powers delegated by any level of government or authority of a Party;
  - (h) the term "national" means a natural person who is a national of a Party under its laws;
  - (i) the term "selling and marketing of air transport services" means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions;
  - (j) the term "service supplier" means a person that supplies or seeks to supply a service; Note: Where the service is not supplied or sought to be supplied directly by an enterprise but through its covered investments such as a branch or a representative office, the service supplier (i.e. the enterprise) shall, nonetheless, through such covered investments be accorded the treatment provided for service suppliers under this Chapter. Such treatment shall be extended to the covered investments through which the service is supplied or sought to be supplied and need not be extended to any other parts of the service supplier located outside the Area of a Party where the service is supplied or sought to be supplied.
  - (k) the term "supply of a service" includes the production, distribution, marketing, sale and delivery of a service; and
  - (l) the term "traffic rights" means the rights for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership and control.
2. For the purposes of this Chapter, an enterprise is: (a) "owned" by a person if more than 50 percent of the equity interests in it is beneficially owned by the person; and (b) "controlled" by a person if the person has the power to name a majority of its directors or otherwise to legally direct its actions.

## **Article 103. Subsidies**

1. Each Party shall promptly and at least annually inform the other Party of the introduction of any new subsidy or grant which significantly affects trade in services covered by its specific commitments under the GATS.
2. A Party which considers that it is adversely affected by a subsidy or grant of the other Party may request consultations with the other Party on such matters. The other Party shall accord sympathetic consideration to such requests. Note: "Consultations" referred to in this Chapter does not mean consultations under Article 208.
3. If the results of the negotiations referred to in paragraph 1 of Article XV of the GATS (or the results of any similar negotiation undertaken in other multilateral fora in which the Parties participate) enter into force for the Parties, they shall jointly review the results of the negotiations with a view to incorporating into this Chapter, as appropriate, any discipline agreed in such negotiations.

## **Article 104. National Treatment**

Each Party shall accord to services and service suppliers of the other Party treatment no less favorable than that it accords, in like circumstances, to its own services and service suppliers. Note: For greater certainty, nothing in this Article shall be construed to require either Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

## **Article 105. Most-favored-nation Treatment**

Each Party shall accord to services and service suppliers of the other Party treatment no less favorable than that it accords, in like circumstances, to services and service suppliers of any non-Party.

## **Article 106. Market Access**

Neither Party shall maintain or adopt either on the basis of a regional subdivision or on the basis of its entire Area measures defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; Note: This subparagraph does not cover measures of a Party which limit inputs for the supply of services.
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; and
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

## **Article 107. Local Presence**

Neither Party shall require a service supplier of the other Party to establish or maintain a representative office, a branch or any form of enterprise, or to be resident, in its Area as a condition for the cross-border supply of a service.

## **Article 108. Non-conforming Measures**

1. Articles 104 through 107 shall not apply to:

(a) any existing non-conforming measure that is maintained by:

(i) with respect to Japan:

(A) the central government or a prefecture, as set out in its Schedule in Part 1 of Annex 5; or

(B) a local government other than prefectures; and

(ii) with respect to Peru:

(A) the central government or a regional government, as set out in its Schedule in Part 2 of Annex 5; or

(B) a local government;

(b) the continuation or prompt renewal of any nonconforming measure referred to in subparagraph (a); or

(c) an amendment or modification to any nonconforming measure referred to in subparagraph (a), to the extent that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with Articles 104 through 107.

2. Articles 104 through 107 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out in its Schedule in Annex 6.

## **Article 109. Notification**

1. In the case where a Party makes an amendment or modification to any existing non-conforming measure as set out in its Schedule in Annex 5 in accordance with subparagraph 1(c) of Article 108, the Party shall notify the other Party, as soon as possible, of such amendment or modification.

2. In the case where a Party adopts any measure after the entry into force of this Agreement, with respect to sectors, sub-sectors or activities as set out in its Schedule in Annex 6, the Party shall, to the extent possible, notify the other Party of such measure.

## **Article 110. Transparency**

Further to Chapter 1:

(a) each Party shall endeavor, to the extent possible, to respond to inquiries from interested persons regarding its regulations relating to the subject matter of this Chapter; and

(b) where each Party adopts regulations relating to the subject matter of this Chapter, it shall, to the extent possible, publish comments received from the public and results of its consideration with respect to the proposed regulations.

Note: For greater certainty, a Party may consolidate the comments and results, and publish them in a separate document from the one that sets forth the final regulations.

## **Article 111. Domestic Regulation**

1. Where a Party requires authorization for the supply of a service, its competent authorities shall, within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of that Party shall provide, without undue delay, information concerning the status of the application.
2. With a view to ensuring that any measure adopted or maintained by a Party in any services sector relating to the qualification requirements and procedures, technical standards and licensing requirements of service suppliers of the other Party does not constitute an unnecessary barrier to trade in services, each Party shall ensure that such measure:  
(a) is based on objective and transparent criteria, such as the competence and ability to supply the service; (b) is not more burdensome than necessary to ensure the quality of the service; and  
(c) in the case of licensing procedures, is not in itself a restriction on the supply of the service.
3. Paragraph 2 is binding upon a Party only in sectors in which it has undertaken specific commitments in its Schedule under the GATS. Paragraph 2 shall be applied, to the extent possible, to the sectors where a Party has not undertaken specific commitments in its Schedule under the GATS.

Note: For the purposes of this paragraph, the term "sector" means one or more, or all, sub-sectors of the service concerned, as specified in a Party's Schedule under the GATS.

4. The Parties affirm their commitments with respect to the development of any necessary disciplines pursuant to paragraph 4 of Article VI of the GATS. To the extent that any such disciplines are adopted by the WTO Members, the Parties shall review them jointly with a view to incorporating them into this Chapter as appropriate.

## **Article 112. Recognition**

1. For the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of service suppliers, and subject to the requirements of paragraph 4, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.
2. Where a Party recognizes, autonomously, or by an agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in a non-Party, nothing in Article 105 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the other Party.
3. A Party that is a party to an agreement or arrangement referred to in paragraph 2, whether existing or future, shall afford adequate opportunity for the other Party, if that other Party is interested, to negotiate its accession to such an agreement or arrangement, or to negotiate one comparable with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education or experience obtained, requirements met, or licenses or certifications granted in that other Party should be recognized.
4. Neither Party shall accord recognition in a manner that would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of service suppliers, or a disguised restriction on cross-border trade in services.

## **Article 113. Payments and Transfers**

1. Each Party shall permit all transfers and payments relating to the cross-border supply of services to be made freely and without delay into and out of its Area.
2. Each Party shall permit such transfers and payments relating to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer or payment.
3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory and good faith application of its laws relating to:  
(a) bankruptcy, insolvency or the protection of the rights of creditors;  
(b) issuing, trading or dealing in securities, futures, options or derivatives;  
(c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offences; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

4. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are in conformity with the Articles of Agreement of the International Monetary Fund, provided that a Party shall not impose restrictions on any capital transactions inconsistently with the obligations under this Chapter regarding such transactions, except under Article 13, or at the request of the International Monetary Fund.

## **Article 114. Implementation**

The Parties shall consult to review the implementation of this Chapter and consider other matters of mutual interest affecting cross-border trade in services within the framework of the Commission established under Article 14.

## **Article 115. Denial of Benefits**

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party that is an enterprise of the other Party, where the former Party establishes that the enterprise is owned or controlled by persons of a non-Party, and the former Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

2. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party that is an enterprise owned or controlled by persons of a non-Party and that has no substantial business activities in the Area of the other Party.

# **Chapter 8. Telecommunications Services**

## **Article 116. Scope of Application**

1. This Chapter shall apply to:

(a) measures adopted or maintained by a Party relating to access to and use of public telecommunications transport networks and services;

(b) measures adopted or maintained by a Party relating to obligations of suppliers of public telecommunications transport networks and services; and

(c) other measures adopted or maintained by a Party relating to public telecommunications transport networks and services.

2. Articles 125 and 131 shall also apply to telecommunications services.

3. This Chapter shall not apply to measures by a Party affecting broadcasting services, including cable distribution of radio and television programming, as defined in its laws and regulations.

4. Nothing in this Chapter shall be construed to:

(a) require a Party to authorize a service supplier of the other Party to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services other than specifically provided in this Agreement;

(b) require a Party (or require a Party to oblige service suppliers under its jurisdiction) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally; or

(c) prevent a Party from prohibiting persons operating private networks from using their networks to supply public telecommunications transport networks or services to third persons.

## **Article 117. Definitions**

For the purposes of this Chapter:

(a) the term "cost-oriented" means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

(b) the term "end user" means a final consumer of or subscriber to a public telecommunications transport network or service, including a service supplier other than a supplier of public telecommunications transport networks or services;

(c) the term "essential facilities" means facilities of a public telecommunications transport network or service that:

(i) are exclusively or predominantly provided by a single or limited number of suppliers; and

(ii) cannot feasibly be economically or technically substituted in order to provide a service;

(d) the term "leased circuits" means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, particular users;

(e) the term "major supplier" means a supplier which has the ability to materially affect the terms of participation, having regard to price and supply, in the relevant market for basic telecommunications services as a result of:

- (i) control over essential facilities; or
- (ii) use of its position in the market;

Note 1: For Peru, rural telephone companies that have at least 80 percent of their total fixed subscriber lines in operation in rural areas may not be considered as major suppliers.

Note 2: For the purposes of this Chapter, basic telecommunications services do not include non-public telecommunications services and value added services. Each Party may classify which services in its Area are value-added services.

(f) the term "non-discriminatory" means treatment no less favorable than that accorded to any other user of like public telecommunications transport networks or services under like circumstances;

(g) the term "public telecommunications transport network" means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points; (h) the term "public telecommunications transport service" means any telecommunications transport service required, explicitly or in effect, by a Party to be offered to the public generally, typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information. Such services may include, inter alia, telegraph, telephone, telex and data transmission;

(i) the term "telecommunications" means the transmission and reception of signals by any electromagnetic means including by photonic means;

(j) the term "telecommunications regulatory body" means the body responsible for the regulation of telecommunications; and

(k) the term "users" means consumers of, subscribers to or suppliers of public telecommunications transport networks or services.

## **Article 118. Access and Use**

1. Each Party shall ensure that any service supplier of the other Party is accorded access to and use of public telecommunications transport networks and services in a timely fashion, on transparent, reasonable and nondiscriminatory terms and conditions. This obligation shall be applied, inter alia, through paragraphs 2 through 6.

2. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications transport network or service offered within or across the border of that Party, including private leased circuits, and to this end shall ensure, subject to the provisions of paragraphs 5 and 6, that such suppliers are permitted:

- (a) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply their services;
- (b) to interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by other service suppliers;
- (c) to use operating protocols of their choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally; and
- (d) to perform switching, signaling and processing functions.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications transport networks and services for the movement of information within and across borders, including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in either Party or in any other member of the WTO.

4. Notwithstanding the provisions of paragraph 3, a Party may take such measures as are necessary:

- (a) to ensure the security and confidentiality of messages; or
- (b) to protect the personal data of users of public telecommunications transport networks or services, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks and services other than as necessary:

- (a) to safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their ability to make their networks or services available to the public generally; or
- (b) to protect the technical integrity of public telecommunications transport networks or services.

6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications transport networks and services may include:

- (a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with public telecommunications transport networks and services;
- (b) requirements, where necessary, for the interoperability of public telecommunications transport services and to encourage the achievement of the goals set out in Article 131;

(c) type approval of terminal or other equipment which interfaces with public telecommunications transport networks and technical requirements relating to the attachment of such equipment to such networks;

(d) restrictions on inter-connection of private leased or owned circuits with public telecommunications transport networks or services or with circuits leased or owned by other service suppliers; or

(e) notification, permit, registration and licensing. Note: For greater certainty, this Article shall not prohibit a Party from requiring any service supplier of the other Party to obtain a license, concession, or other type of authorization to supply public telecommunications transport networks or services in its Area.

## **Article 119. Number Portability**

Each Party shall ensure that suppliers of public telecommunications transport networks or services in its Area provide number portability for mobile services and any other services designated by that Party, to the extent technically feasible, on a timely basis and on reasonable terms and conditions. Note: For the purposes of this Article, Peru may take into account the economic feasibility of providing number portability.

## **Article 120. Competitive Safeguards**

1. Each Party shall adopt and maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.
2. The anti-competitive practices referred to in paragraph 1 shall include, in particular:
  - (a) engaging in anti-competitive cross-subsidization;
  - (b) using information obtained from competitors with anti-competitive results; and
  - (c) not making available to other suppliers of public telecommunications transport networks or services, on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to supply services.

## **Article 121. Treatment by Major Suppliers**

Each Party shall ensure that a major supplier in its Area accords to suppliers of public telecommunications transport networks and services of the other Party treatment no less favorable than that such major supplier accords in like circumstances to itself, its subsidiaries and affiliates, or any non-affiliated service suppliers regarding:

- (a) the availability, provisioning, rates or quality of like telecommunications services; and
- (b) the availability of technical interfaces necessary for interconnection.

Note: For Japan, this Article shall be applied only to a major supplier which has control over essential facilities.

## **Article 122. Resale**

Each Party shall ensure that suppliers of public telecommunications transport services in its Area do not impose unreasonable or discriminatory conditions or limitations on the provision of the resale services by suppliers of public telecommunications transport networks or services of the other Party.

## **Article 123. Interconnection**

1. Each Party shall ensure that a major supplier in its Area provides interconnection for the facilities and equipments of suppliers of public telecommunications transport networks and services of the other Party at any technically feasible point in the network. Such interconnection shall be provided:
  - (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates; (b) with a quality no less favorable than that provided by such major supplier for its own like services, or for like services of non-affiliated service suppliers or of its subsidiaries or other affiliates;
  - (c) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier of public telecommunications transport networks or services of the other Party need not pay for network components or facilities that it does not require for the services to be provided; and
  - (d) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.
2. Each Party shall require major suppliers in its Area to make publicly available reference interconnection offers or other standard interconnection offers containing the rates, terms and conditions that the major suppliers offer generally to suppliers of public telecommunications transport networks or services.

3. Each Party shall ensure that suppliers of public telecommunications transport networks or services of the other Party may interconnect their facilities and equipments with those of major suppliers in its Area pursuant to at least one of the following options:

- (a) a reference interconnection offer, at a minimum, containing a list and description of the interconnection-related services offered, the terms and conditions for such services, the operational and technical requirements, and the procedures or processes that will be used to order and supply such services;
- (b) another standard interconnection offer containing the terms and conditions, and, where possible, rates that the major suppliers offer generally to suppliers of public telecommunications transport networks or services;
- (c) the terms and conditions of an interconnection agreement in force; or
- (d) the terms and conditions provided through negotiation of a new interconnection agreement.

4. Each Party shall ensure that the procedures applicable for interconnection to a major supplier are made publicly available.

5. Each Party shall ensure that a major supplier in its Area makes publicly available either its interconnection agreements, reference interconnection offer or another standard interconnection offer.

6. Each Party shall ensure that a major supplier does not use or provide commercially sensitive or confidential information on suppliers of public telecommunications transport networks or services or end users thereof, which was acquired through its interconnection business with telecommunications facilities of the suppliers of the public telecommunications transport networks or services, for purposes other than such interconnection business.

7. (a) Japan shall apply paragraphs 1 through 3 and 6 only to a major supplier which has control over essential facilities.

(b) Peru may apply paragraphs 1 through 3 and 6 only to a major supplier which has control over essential facilities.

## **Article 124. Provisioning and Pricing of Leased Circuit Services**

Each Party shall ensure that a major supplier in its Area provides suppliers of public telecommunications transport networks and services of the other Party with leased circuit services that are public telecommunications transport networks or services on terms and conditions, and at rates, that are reasonable, non-discriminatory and transparent.

Note: For Japan, this Article shall be applied only to a major supplier which has control over essential facilities.

## **Article 125. Independent Telecommunications Regulatory Body**

- 1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of telecommunications services.
- 2. Each Party shall ensure that the decisions of, and the procedures used by, its telecommunications regulatory body are impartial with respect to all market participants.

## **Article 126. Universal Service**

Each Party has the right to define the kind of universal service obligations it wishes to maintain. Such obligations shall not be regarded as anti-competitive per se, provided that they are administered in a transparent, non-discriminatory and competitively neutral manner, and are not more burdensome than necessary for the kind of universal service defined by the Party.

## **Article 127. Public Availability of Licensing Criteria**

- 1. Where a license, concession, permit, registration or other type of authorization is required for the supply of public telecommunications transport networks or services, each Party shall make publicly available:
  - (a) all the licensing or other authorization criteria and procedures, and the period of time normally required to reach a decision concerning an application for a license, concession, permit, registration or other type of authorization; and
  - (b) the terms and conditions of individual licenses, concessions, permits, registrations or other type of authorizations it has issued.
- 2. The competent authority of a Party shall notify the applicant of the outcome of its application without undue delay after a decision has been taken. In case a decision is taken to deny an application for a license, concession, permit, registration or other type of authorization, the competent authority of the Party shall make known to the applicant, upon request, the reason for the denial.

## **Article 128. Allocation and Use of Scarce Resources**

- 1. Each Party shall carry out any procedures for the allocation and use of scarce resources related to telecommunications,



including frequencies, numbers and rights of way, in an objective, timely, transparent and non-discriminatory manner.

2. Each Party shall make publicly available the current state of allocated frequency bands, but shall not be required to provide detailed identification of frequencies allocated for specific government uses.

3. A Party's measures allocating and assigning spectrum and managing frequency are not measures that are per se inconsistent with Article 106. Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that have the effect of limiting the number of suppliers of public telecommunications transport networks or services, provided that it does so in a manner consistent with other provisions of this Agreement. Such right includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

## **Article 129. Transparency**

Each Party shall ensure that its measures relating to access to and use of public telecommunications transport networks and services are made publicly available, including measures relating to:

(a) tariffs and other terms and conditions of service;

(b) specifications of technical interfaces;

(c) bodies responsible for the preparation, amendment and adoption of standards affecting such access and use;

(d) conditions applying to attachment of terminal or other equipment to the public telecommunications transport networks; and

(e) notifications, permit, registration or licensing requirements, if any.

## **Article 130. Settlement of Telecommunications Disputes**

1. Each Party shall ensure that suppliers of public telecommunications transport networks or services of the other Party may have timely recourse to its telecommunications regulatory body or dispute settlement body to settle disputes in accordance with its laws and regulations.

2. Each Party shall ensure, in accordance with its laws and regulations, that any supplier of public telecommunications transport networks or services aggrieved by a determination or decision of its relevant telecommunications regulatory body may petition that body for reconsideration of that determination or decision. Neither Party shall permit such a petition to constitute grounds for non-compliance with such determination or decision of the said body unless an appropriate authority suspends or withdraws such determination or decision.

Note: Suppliers of public telecommunications transport networks or services may not petition for reconsideration of administrative rulings, unless it is provided for in a Party's laws and regulations.

3. Each Party shall ensure that any supplier of public telecommunications transport networks or services aggrieved by a final determination or decision of its relevant telecommunications regulatory body may obtain judicial review of such determination or decision by an independent judicial authority. Neither Party shall permit such review to constitute grounds for non-compliance with such determination or decision of the said body unless the relevant judicial authority withholds, suspends or repeals such determination or decision.

## **Article 131. Relation to International Organizations**

The Parties recognize the importance of international standards for global compatibility and inter-operability of telecommunications networks and services, and undertake to promote such standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

## **Article 132. Relationship to other Chapters**

In the event of any inconsistency between this Chapter and Chapter 1 except for Articles 10 and 11, Chapter 7 except for Article 8 of Annex 7, Chapter 12 or the BIT, including any of their Annexes, this Chapter shall prevail to the extent of the inconsistency. In the event of any inconsistency between this Chapter and Articles 10 or 11, or Article 8 of Annex 7, such Articles shall prevail to the extent of the inconsistency.

# **Chapter Entry and Temporary Stay of Nationals for Business Purposes**

## **Article 133. General Principles**

1. This Chapter reflects the preferential trading relationship between the Parties, the mutual desire of the Parties to facilitate entry and temporary stay of nationals for business purposes on a reciprocal basis in accordance with Annex 8, the need to establish transparent criteria and procedures for entry and temporary stay, and the need to ensure border security and to protect the domestic labor force and permanent employment in either Party.
2. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with paragraph 1, and, in particular, shall apply expeditiously those measures so as to avoid unduly impairing or delaying trade in goods or services, or conduct of investment activities under this Agreement.

## **Article 134. Scope of Application**

1. This Chapter shall apply to measures affecting the entry and temporary stay of nationals of a Party who enter the other Party for business purposes. Nothing in this Chapter shall be construed to impose obligations with respect to other Chapters.
2. This Chapter shall not apply to measures regarding nationality or citizenship, or residence or employment on a permanent basis.
3. Nothing in this Chapter shall be construed to prevent a Party from applying measures to regulate the entry of nationals of the other Party into, or their temporary stay in, the former Party, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to unduly impair or delay trade in goods or services, or conduct of investment activities under this Agreement. Note: The sole fact of requiring a visa for natural persons of a certain nationality and not for those of others shall not be regarded as unduly impairing or delaying trade in goods or services, or conduct of investment activities under this Agreement.

## **Article 135. Definitions**

For the purposes of this Chapter:

- (a) the term "entry and temporary stay" means entry into and stay in a Party by a national for business purposes of the other Party without the intent to establish permanent residence;
- (b) the term "immigration measures" means any measures affecting entry and temporary stay of nationals for business purposes;
- (c) the term "national" means a natural person who is a national of a Party under its laws; and
- (d) the term "national for business purposes" means a national of a Party who is engaged in the activities referred to in Annex 8.

## **Article 136. Grant of Entry and Temporary Stay**

1. Each Party shall grant entry and temporary stay to nationals for business purposes of the other Party who comply with existing immigration measures applicable to entry and temporary stay in accordance with this Chapter including the provisions of Annex 8.
2. Each Party shall ensure that fees charged by its competent authorities on application for entry and temporary stay do not in themselves represent an unjustifiable impediment to the entry and temporary stay of nationals for business purposes of the other Party under this Chapter and are charged having regard to the administrative costs involved.

## **Article 137. Provision of Information and Facilitation of Procedure**

Further to Article 5, and recognizing the importance to the Parties of transparency of information regarding entry and temporary stay, each Party shall:

- (a) provide to the other Party such materials as will enable that other Party to become acquainted with its measures relating to this Chapter;
- (b) no later than six months after the date of entry into force of this Agreement, prepare, publish and make available in the Parties, explanatory material in a consolidated document regarding the requirements for entry and temporary stay under this Chapter, including references to applicable laws and regulations, in such a manner that will enable nationals of the other Party to become acquainted with them;
- (c) to the extent possible, collect, maintain and, upon request by the other Party, make available to that other Party, in accordance with its laws and regulations, data respecting the granting of entry and temporary stay under this Chapter to nationals for business purposes of the other Party who have been issued immigration documentation; and
- (d) endeavor, to the maximum extent possible, to take measures to simplify the requirements, and to facilitate and expedite the procedures, relating to entry and temporary stay of nationals for business purposes of the other Party in accordance with its laws and regulations.

## **Article 138. Sub-committee on Entry and Temporary Stay of Nationals for Business Purposes**

1. The Parties hereby establish a Sub-Committee on Entry and Temporary Stay of Nationals for Business Purposes (hereinafter referred to in this Article as "the Sub- Committee").
2. The functions of the Sub-Committee shall be:
  - (a) reviewing the implementation and operation of this Chapter;
  - (b) establishing the procedures to exchange information on measures that affect the entry and temporary stay of nationals for business purposes under this Chapter;
  - (c) considering the development of measures to further facilitate the entry and temporary stay of nationals for business purposes on a reciprocal basis;
  - (d) observing the issues established under Article 139; and
  - (e) other functions as assigned by the Commission.
3. The Sub-Committee shall hold meetings at least once every three years, and at such times and venues or by means, as may be agreed by the Parties.

## **Article 139. Cooperation**

Taking into account the principles set out in Article 133, the Parties will:

- (a) exchange views regarding visa policy for the nationals for business purposes referred to in Annex 8;
- (b) exchange views on the implementation of programs and technology in the framework affecting the entry and temporary stay of nationals for business purposes under this Chapter, including those related to the use of biometric technology and advanced passenger information systems; and
- (c) endeavor to coordinate actively in multilateral fora, in order to promote the facilitation of the entry and temporary stay of nationals for business purposes under this Chapter.

## **Article 140. Dispute Settlement**

1. A Party may not initiate the dispute settlement procedures provided for in Chapter 15 regarding a refusal to grant entry and temporary stay under this Chapter unless:
  - (a) the matter involves a pattern of practice; and
  - (b) the nationals for business purposes of the Party concerned have exhausted the administrative remedies, where available, regarding the particular matter.
2. The remedies referred to in subparagraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority of the other Party within one year after the date of the institution of the administrative remedy, and the failure to issue such determination is not attributable to delay caused by the nationals referred to in subparagraph 1(b).

## **Article 141. Immigration Measures**

Nothing in this Agreement shall impose any obligation on either Party regarding its immigration measures, except as specifically identified in this Chapter and Chapters 1, 15 and 16.

## **Article 142. Transparency**

1. Further to Article 5, each Party shall endeavor, to the extent possible, to respond to the inquiries from interested persons regarding applications and procedures relating to the entry and temporary stay of nationals for business purposes.
2. Each Party shall, within a reasonable period of time that should not exceed 20 working days after an application requesting entry visa is considered complete under its domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the Party shall endeavor to provide, without undue delay, information concerning the status of the application.

# **Chapter 10. Government Procurement**

## **Article 143. Scope of Application**

1. This Chapter shall apply to any measure adopted or maintained by a Party relating to government procurement by any contractual means, including through such methods as purchase or as lease, rental, or hire purchase, with or without an

option to buy:

(a) by procuring entities specified in Annex 9;

(b) of goods, services and construction services specified in Annex 9; and

(c) where the value of the contracts to be awarded is estimated to be not less than the thresholds specified in Annex 9 at the time of publication of a notice of intended procurement. Note: Measures adopted or maintained by a Party relating to government procurement include those relating to public work concessions contracts.

2. Neither Party shall prepare, design, or otherwise structure any government procurement contract in order to avoid the obligations under this Chapter. Note: Nothing in this Chapter shall prevent a Party from developing new procurement policies, procedures or contractual means, provided that they are consistent with this Chapter.

## **Article 144. Definitions**

For the purposes of this Chapter:

(a) The term "government procurement" means procurement for governmental purposes of goods, services, or any combination thereof, not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;

(b) the term "in writing" or "written" means any worded or numbered expression that can be read, reproduced, and later communicated. It may include electronically transmitted and stored information;

(c) the term "services" includes construction services, unless otherwise specified;

(d) the term "standard" means a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines, or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a good, service, process, or production method; and

(e) the term "supplier" means a person that provides or could provide goods or services to a procuring entity.

## **Article 145. National Treatment and Non-discrimination**

1. With respect to any measure regarding government procurement covered by this Chapter, each Party shall provide immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party offering such goods and services, treatment no less favorable than that accorded to domestic goods, services and suppliers.

2. With respect to any measure regarding government procurement covered by this Chapter, each Party shall ensure:

(a) that its procuring entities do not treat a locally-established supplier less favorably than another locally-established supplier on the basis of the degree of affiliation to, or ownership by, a natural person or an enterprise of the other Party; and

(b) that its procuring entities do not discriminate against a locally-established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

3. This Article shall not apply to: customs duties and charges of any kind imposed on, or in connection with, importation; the method of levying such duties and charges; other import regulations and formalities; nor to measures affecting trade in services other than measures regarding government procurement covered by this Chapter.

## **Article 146. Rules of Origin**

A Party shall not apply rules of origin to goods or services imported or supplied for purposes of government procurement covered by this Chapter from the other Party which are different from the rules of origin applied by the former Party in the normal course of trade. Note: Rules of origin to services applied in the normal course of trade shall be understood in accordance with subparagraphs (f) and (g) of Article XXVIII of the GATS.

## **Article 147. Valuation of Contracts**

In determining the value of contracts for the purposes of implementing this Chapter:

(a) valuation shall take into account all forms of remuneration, including any premiums, fees, commissions and interest receivable;

(b) the selection of the valuation method by a procuring entity shall not be used, nor shall any procurement requirement be divided, with the intention of avoiding the application of this Chapter; and

(c) in cases where an intended procurement specifies the need for option clauses, the basis for valuation shall be the total value of the maximum permissible procurement, inclusive of optional purchases.

## **Article 148. Prohibition of Offsets**

1. Each Party shall ensure that its procuring entities do not, in the qualification and selection of suppliers, goods or services, or in the evaluation of tenders and the award of contracts, impose, seek or consider offsets.
2. For the purposes of this Article, offsets means conditions considered, sought or imposed by a procuring entity prior to or in the course of its procurement process that encourage local development or improve its Party's balance of payments accounts, by means of requirements of local content, licensing of technology, investment, counter-trade or similar requirements.

## **Article 149. Technical Specifications**

1. Technical specifications laying down the characteristics of the goods or services to be procured, such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labeling, or the processes and methods for their production and requirements relating to conformity assessment procedures prescribed by procuring entities, shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to trade between the Parties.
2. Any technical specifications prescribed by procuring entities shall, where appropriate:
  - (a) be specified in terms of performance rather than design or descriptive characteristics; and
  - (b) be based on international standards, where such exist; otherwise, on national technical regulations, recognized national standards, or building codes.
3. Each Party shall ensure that its procuring entities do not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin or producer or supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, words such as "or equivalent" are included in the tender documentation.
4. Each Party shall ensure that its procuring entities do not seek or accept, in a manner which would have the effect of precluding fair competition, advice which may be used in the preparation or adoption of any technical specifications for a specific procurement from a person that may have a commercial interest in the procurement.
5. For greater certainty, each Party, including its procuring entities, may, in accordance with this Article, prepare, adopt, or apply technical specifications to promote the conservation of natural resources or protect the environment.

## **Article 150. Tendering Procedures**

1. Each Party shall ensure that its procuring entities award their contracts by tendering procedures in accordance with its laws and regulations, in compliance with this Chapter.
2. Each Party shall ensure that its procuring entities do not provide to any supplier information with regard to a specific procurement in a manner which would have the effect of precluding competition.
3. Each Party shall ensure that its procuring entities conduct procurement in a transparent and impartial manner that:
  - (a) is consistent with this Chapter;
  - (b) avoids conflicts of interest; and
  - (c) prevents corrupt practices.

## **Article 151. Qualification of Suppliers**

1. In the process of qualifying suppliers, each Party shall ensure that its procuring entities do not discriminate against suppliers of the other Party. Qualification procedures shall be consistent with the following:
  - (a) any conditions for participation in tendering procedures shall be published in adequate time to enable interested suppliers to initiate and, to the extent that it is compatible with efficient operation of the procurement process, complete the qualification procedures;
  - (b) any conditions for participation in tendering procedures shall be limited to those which are essential to ensure the potential supplier's capability to fulfill the contract in question;
  - (c) any conditions for participation required from suppliers, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of qualifications, shall be no less favorable to suppliers of the other Party than to domestic suppliers. The financial, commercial and technical capacity of a supplier shall be judged on the basis both of that supplier's global business activity as well as of its activity in the Area of the Party of the procuring entity, taking due account of the legal relationship between the supply organizations;
  - (d) the process of, and the time required for, qualifying suppliers shall not be used in order to keep suppliers of the other Party off a suppliers' list or from being considered for a particular intended procurement;
  - (e) a Party, including its procuring entities, shall not adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement;

(f) procuring entities shall base their determination on the conditions specified in advance in notices or tender documentation;

(g) procuring entities may require relevant prior experience where essential to meet requirements of the procurement;

(h) procuring entities shall recognize as qualified suppliers such suppliers of the other Party who meet the conditions for participation in a particular intended procurement and shall allow them to participate in the procurement. Suppliers requesting to participate in a particular intended procurement who may not yet be qualified shall also be considered, provided there is sufficient time to complete the qualification procedure; (i) procuring entities may maintain permanent lists of qualified suppliers.

The entities shall ensure:

- (i) that suppliers may apply for qualification at any time; and
- (ii) that all qualified suppliers so requesting are included in the lists within a reasonably short time;
- (j) if, after publication of the notice of intended procurement under paragraph 1 of Article 152, a supplier not yet qualified requests to participate in an intended procurement, the Party or the procuring entity shall endeavor to promptly start procedures for qualification;
- (k) any supplier having requested to become a qualified supplier shall be advised by the procuring entities concerned of the decision in this regard. Where a procuring entity rejects an application for qualification or ceases to recognize a supplier as qualified, that entity shall, on request of the supplier, promptly provide a written explanation; and
- (l) each Party shall ensure that:
  - (i) each procuring entity and its constituent parts follow a single qualification procedure, except in cases of duly substantiated need for a different procedure; and
  - (ii) efforts be made to minimize differences in qualification procedures between procuring entities.

2. Nothing in paragraph 1 shall preclude the exclusion of any supplier on grounds such as bankruptcy, liquidation or insolvency, or false declarations relating to a procurement, provided that such an action is consistent with the national treatment and non-discrimination provisions of this Chapter.

## **Article 152. Notice of Intended Procurement**

1. For each case of intended procurement, each Party shall ensure that its procuring entities make publicly available in advance in the appropriate publication listed in Annex 9, a notice of intended procurement inviting interested suppliers to participate in that procurement, except as provided for in Article 157.
2. The information in each notice of intended procurement shall include a description of the intended procurement, any conditions that suppliers must fulfill to participate in the procurement, the name of the procuring entity, the address where all documents relating to the procurement may be obtained and the time-limits for submission of tenders.
3. Each Party shall endeavor to ensure that its procuring entities make publicly available notices of intended procurement in a timely manner through means which offer the widest possible and non-discriminatory access to interested suppliers. These means may be accessible free of charge, through a single electronic point of access.
4. If, after making publicly available a notice of intended procurement in any case of intended procurement, but before the time set for opening or receipt of tenders as specified in the notice or the tender documentation, it becomes necessary to amend or re-issue the notice, the amendment or the re-issued notice shall be made publicly available in the same manner as the original notice. Any significant information given to one supplier with respect to a particular intended procurement shall be given simultaneously to all other suppliers concerned, in adequate time to permit the suppliers to consider such information and to respond to it.

## **Article 153. Notice of Planned Procurement**

Procuring entities are encouraged to publish in the appropriate paper or electronic medium, as early as possible in the fiscal year, a notice regarding their future procurement plans (hereinafter referred to as "notice of planned procurement"). The notice of planned procurement should include the subject matter of the procurement and the planned date of the publication of the notice of intended procurement.

## **Article 154. Time-limits for Tendering**

Each Party shall ensure that:

- (a) any prescribed time-limit is adequate to allow suppliers of the other Party as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures; and
- (b) in determining any such time-limit, its procuring entities, consistent with their own reasonable needs, take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated, the normal time for transmitting tenders by mail from foreign as well as domestic points and the delays in making publicly available notices of

procurement.

## **Article 155. Tender Documentation**

1. Tender documentation provided to suppliers shall contain all information necessary to permit them to prepare and submit responsive tenders.
2. Each Party shall ensure that its procuring entities make tender documentation accessible, or, upon request, forward the tender documentation, to any supplier participating in the tendering procedure, and reply promptly to any reasonable request for explanations relating thereto.
3. Each Party shall ensure that its procuring entities reply promptly to any reasonable request for relevant information submitted by a supplier participating in the tendering procedure, on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract.

## **Article 156. Awarding of Contracts**

1. To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notice of intended procurement or tender documentation and be from a supplier which complies with the conditions for participation. If a procuring entity has received a tender abnormally lower or exceptionally more advantageous than other tenders submitted, it may enquire with the tenderer to ensure that the tenderer can comply with the conditions of participation and be capable of fulfilling the terms of the contract.
2. Unless in the public interest a procuring entity decides not to issue the contract, the entity shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender is either the lowest tender or determined to be the most advantageous in terms of the specific evaluation criteria set forth in the notice of intended procurement or tender documentation.

## **Article 157. Limited Tendering**

1. Articles 151 through 156 need not apply in the following conditions, provided that the tendering procedure under this Article is not used by procuring entities of a Party with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination against the suppliers of the other Party or protection to domestic producers or suppliers:
  - (a) in the absence of tenders in response to the tender pursuant to Articles 151 through 156, or when the tenders submitted have been collusive in accordance with the laws and regulations of the former Party, or not in conformity with the essential requirements in the tender, or from suppliers who do not comply with the conditions for participation provided for in accordance with this Chapter, on condition that the requirements of the initial tender are not substantially modified in the contract as awarded;
  - (b) when, for works of art or for reasons connected with protection of exclusive rights, such as patents or copyrights, or in the absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;
  - (c) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time by means of the tendering procedures pursuant to Articles 151 through 156;
  - (d) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement where a change of supplier for such additional goods or services:
    - (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement; or
    - (ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;
  - (e) when a procuring entity procures prototypes or a first good or service which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. When such contracts have been fulfilled, subsequent procurements of such goods or services shall be subject to Articles 151 through 156;

Note: Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards. It does not extend to quantity production or supply to establish commercial viability or to recover research and development costs.

- (f) for goods purchased on a commodity market;
- (g) for purchases made under exceptionally advantageous conditions which only arise in the very short term. This provision is intended to cover unusual disposals by enterprises which are not normally suppliers, or disposal of assets of businesses in liquidation or receivership. It is not intended to cover routine purchases from regular suppliers; and

(h) in the case of contracts awarded to the winner of a design contest provided that the contest has been organized in a manner which is consistent with the principles of this Chapter, notably as regards the publication, in the sense of Article 152, of a notice of intended procurement to suitably qualified suppliers, to participate in such a contest which shall be judged by an independent jury with a view to design contracts being awarded to the winners.

2. Each Party shall ensure that, whenever it is necessary for its procuring entities to resort to the tendering procedures under paragraph 1, the entities maintain a record or prepare a written report providing specific justification for such procedures.

## **Article 158. Transparency of Procurement Information**

1. Each Party shall ensure that its procuring entities make publicly available, in an appropriate publication listed in Annex 9, after the award of each contract, information such as:

- (a) the description of the goods or services procured and, where possible, their quantity;
- (b) the name and address of the entity awarding the contract;
- (c) the date of award;
- (d) the name and address of the winning tenderer;
- (e) the value of the winning award; and
- (f) the procurement method used.

2. Each Party shall ensure that its procuring entities, on request from a supplier of either Party, promptly provide information including, when the supplier is an unsuccessful tenderer, pertinent information concerning the reasons why its tender was not selected and on the characteristics and relative advantages of the tender selected as well as the name of the winning tenderer.

3. Where a supplier of a Party is an unsuccessful tenderer, the Party may seek, without prejudice to the provisions under Chapter 15, such additional information on the contract award as may be necessary to ensure that the procurement was made fairly and impartially. The other Party shall provide information on both the characteristics and relative advantages of the winning tender and the contract price. Normally, this latter information may be disclosed by the former Party provided it exercises this right with discretion. In cases where release of this information would prejudice competition in future tenders, this information shall be confidential and not be disclosed except after consultation with and agreement of the other Party.

## **Article 159. Challenge Procedures**

1. In the event of a complaint by a supplier that there has been a breach of this Chapter in the context of a government procurement, each Party shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures under the challenge system.

2. Each Party shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers to challenge alleged breaches of this Chapter arising in the context of government procurements in which they have, or have had, an interest.

3. Each Party shall provide its challenge procedures in writing and make them generally available.

4. Each Party shall ensure that documentation relating to all aspects of the process concerning government procurement covered by this Chapter shall be retained at least for three years.

5. The interested supplier may be required to initiate a challenge procedure and notify the procuring entity within specified time-limits from the time when the basis of the complaint is known or reasonably should have been known, but in no case within a period of less than 10 days.

6. Challenges shall be heard by an impartial and independent reviewing authority with no interest in the outcome of the government procurement and the members of which are secure from external influence during the term of appointment. A reviewing authority which is not a court shall either be subject to judicial review or shall have procedures which provide at least the following:

- (a) participants can be heard before an opinion is given or a decision is reached;
- (b) participants can be represented and accompanied;
- (c) participants shall have access to all proceedings;
- (d) proceedings can take place in public;
- (e) opinions or decisions are given in writing with a statement describing the basis for the opinions or decisions; (f) witnesses can be presented; and
- (g) documents are disclosed to the reviewing authority.

7. Challenge procedures shall provide for:

(a) rapid interim measures to correct breaches of this Chapter and to preserve commercial opportunities. Such action may result in suspension of the procurement process. However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures



should be applied;

(b) an assessment and, where appropriate, a decision on the justification of the challenge; and

(c) where appropriate, correction of breaches of this Chapter or compensation for the loss or damages suffered, which may be limited to costs for tender preparation or protest.

8. With a view to the preservation of the commercial and other interests involved, the challenge procedure shall normally be completed within a reasonable time.

## **Article 160. Use of Electronic Means In Government Procurement**

1. The Parties shall seek to provide opportunities for government procurement to be undertaken through the Internet or a comparable computer-based telecommunications network.

2. In order to facilitate commercial opportunities for its suppliers under this Chapter, each Party shall endeavor to adopt or maintain a single electronic portal for access to comprehensive information on government procurement supply opportunities in its Area, and information on measures relating to government procurement shall be available.

3. The Parties shall encourage, to the extent possible, the use of electronic means for the provision of tender documents and the receipt of tenders.

4. The Parties shall endeavor to ensure the adoption of policies and procedures for the use of electronic means in government procurement that:

(a) protect documentation from unauthorized and undetected alteration; and

(b) provide appropriate levels of security for data on, and passing through, the procuring entity's network.

## **Article 161. Exceptions**

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defense purposes.

2. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail, or a disguised restriction on trade, nothing in this Chapter shall be construed to prevent a Party from imposing, enforcing or maintaining measures:

(a) necessary to protect public morals, order or safety;

(b) necessary to protect human, animal or plant life or health;

(c) necessary to protect intellectual property; or

(d) relating to goods or services of handicapped persons, of philanthropic institutions or of prison labor. Note: It is understood that subparagraph (b) includes measures to protect the environment.

## **Article 162. Rectifications or Modifications**

1. A Party shall notify the other Party of its rectifications or, in exceptional cases, other modifications relating to Annex 9, along with the information as to the likely consequences of the change for the mutually agreed coverage provided in this Chapter. If the rectifications or other modifications are of a purely formal or minor nature, notwithstanding Article 223, they shall become effective provided that no objection from the other Party has been raised within 30 days. In other cases, the Parties shall consult the proposal and any claim for compensatory adjustments with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Chapter prior to such rectification or other modification. In the event of an agreement between the Parties not being reached, the Party which has received such notification may have recourse to the dispute settlement procedure under Chapter 15.

2. Notwithstanding any other provision of this Chapter, a Party may undertake reorganizations of its procuring entities, including programs through which the procurement of such entities is decentralized or the corresponding government functions cease to be performed by any government entity, whether or not subject to this Chapter. In cases of reorganizations, compensation need not be proposed. Neither Party shall undertake such reorganizations to avoid the obligations of this Chapter.

## **Article 163. Privatization of Procuring Entities**

When government control over a procuring entity specified in Annex 9 has been effectively eliminated, notwithstanding that the government may possess holding thereof or appoint members of the board of directors thereto, this Chapter shall no longer apply to that entity and compensation need not be proposed. A Party shall notify the other Party of the name of such entity before elimination of government control or as soon as possible thereafter.

## **Article 164. Denial of Benefits**

1. A Party may deny the benefits of this Chapter to an enterprise of the other Party if the enterprise is owned or controlled by persons of a non-Party, and the former Party:
  - (a) does not maintain diplomatic relations with the non-Party; or
  - (b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.
2. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a supplier of the other Party that is an enterprise of the other Party, where the denying Party establishes that the enterprise is owned or controlled by persons of a non-Party and has no substantial business activities in the Area of the other Party.

## **Article 165. Further Negotiation**

In the event that after the entry into force of this Agreement a Party offers a non-Party additional advantages of access to its government procurement market beyond what the other Party has been provided with under this Chapter, the former Party shall, upon request of the other Party, enter into negotiations with the other Party with a view to extending those advantages to the other Party on a reciprocal basis.

## **Article 166. Sub-committee on Government Procurement**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Government Procurement (hereinafter referred to in this Article as "the Sub-Committee").
2. The functions of the Sub-Committee shall be:
  - (a) analyzing available information on each Party's government procurement market, including statistical information;
  - (b) evaluating the effective access of suppliers of a Party to the government procurement market of the other Party covered by this Chapter;
  - (c) monitoring the application of the provisions of this Chapter and providing a forum to identify and address any problems or other issues that may arise;
  - (d) reporting the findings of the Sub-Committee to the Commission; and
  - (e) other functions assigned by the Commission.
3. The Parties shall cooperate, on mutually agreed terms, to increase understanding of their respective government procurement systems, with a view to maximizing for the suppliers of both Parties the access to their respective government procurement markets. For this purpose, each Party shall develop and implement, within one year after the entry into force of this Agreement, concrete measures for the cooperation, which may include training and orientation programs for government personnel or interested suppliers regarding such aspects as how to identify government procurement opportunities and how to participate in the respective government procurement markets. In developing such measures, special attention should be given to Small and Medium Enterprises (SMEs), including micro- enterprises, in each Party.
4. The Sub-Committee shall be composed of government officials of the Parties.
5. The Sub-Committee shall hold meetings at such times and venues or by means, as may be agreed by the Parties.

# **Chapter 11. Intellectual Property Rights**

## **Article 167. General Provisions**

1. The Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property and provide for measures for the enforcement of intellectual property rights against infringement thereof, counterfeiting and piracy, in accordance with the provisions of this Chapter and the international agreements to which both Parties are parties.
2. The Parties shall also promote efficiency and transparency in the administration of intellectual property system.
3. The Parties reaffirm their existing rights and obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement (hereinafter referred to in this Chapter as "the TRIPS Agreement") and other multilateral agreements relating to intellectual property to which both Parties are parties, including multilateral agreements concluded under the auspices of the World Intellectual Property Organization (hereinafter referred to in this Chapter as "the WIPO"). Nothing in this Chapter shall derogate from existing rights and obligations that the Parties have under the TRIPS Agreement or other multilateral agreements relating to intellectual property to which both Parties are parties. Note: For the purposes of this Article and Article 178, the term "existing" means in effect on the date of entry into force of this Agreement.
4. The term "intellectual property" referred to in this Chapter shall mean all categories of intellectual property:
  - (a) that are subject of Articles 174 through 180; and/or
  - (b) that are under the TRIPS Agreement and/or the relevant international agreements referred to in the TRIPS Agreement.

## **Article 168. National Treatment**

Each Party shall accord to nationals of the other Party treatment no less favorable than the treatment it accords to its own nationals with regard to the protection of intellectual property in accordance with Articles 3 and 5 of the TRIPS Agreement. Note: For the purposes of this Article and Article 169:

- (a) "nationals" shall have the same meaning as in the TRIPS Agreement; and
- (b) "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Chapter.

## **Article 169. Most-favored-nation Treatment**

With regard to the protection of intellectual property, any advantage, favor, privilege or immunity granted by a Party to the nationals of a non-Party shall be accorded immediately and unconditionally to the nationals of the other Party, in accordance with Articles 4 and 5 of the TRIPS Agreement.

## **Article 170. Streamlining and Harmonization of Procedural Matters**

1. For the purposes of providing efficient administration of its intellectual property system, each Party shall endeavor to take measures to streamline its administrative procedures concerning intellectual property.
2. Each Party shall use a classification for patents and utility models in accordance with the Strasbourg Agreement Concerning the International Patent Classification, of March 24, 1971, as amended. Each Party shall use a classification of goods and services in accordance with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, of June 15, 1957, as amended.

## **Article 171. Acquisition and Maintenance of Intellectual Property Rights**

1. Where the acquisition of an intellectual property right is subject to the right being granted or registered, each Party shall ensure that, irrespective of whether an application for the granting or registration of an intellectual property right is filed as a national or as an international application under the applicable international agreement, the procedures for granting or registration of the right, subject to compliance with the substantive conditions for acquisition of the right, are conducive to the granting or registration within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.
2. Each Party shall provide a system for the registration of trademarks, industrial designs and patents which shall include:
  - (a) a requirement to provide to the applicant a communication in writing, which may be electronic, of the decision with reasons for a refusal of the application;
  - (b) an opportunity for the applicant to appeal against administrative refusal;
  - (c) an opportunity for the applicant to ask for judicial review of the final administrative refusal; and
  - (d) an opportunity for interested parties:
    - (i) to petition to oppose, if so provided in its laws and regulations, an application or a registration; and
    - (ii) to seek cancellation or invalidation of the registration.

## **Article 172. Transparency**

For the purposes of further promoting transparency in the administration of its intellectual property system, each Party shall take appropriate measures available to the extent possible under its laws and regulations to publish or make available to the public information on applications and/or registrations of intellectual property rights where applicable in its laws and regulations and other relevant information on its intellectual property system.

## **Article 173. Promotion of Public Awareness Concerning Protection of Intellectual Property**

The Parties shall take necessary measures to enhance public awareness of protection of intellectual property including educational and dissemination projects on the use of intellectual property as well as on the enforcement of intellectual property rights.

## **Article 174. Patents**

Each Party shall ensure that any application for a patent is not rejected solely on the ground that the subject matter claimed in the application is related to a computer program. Nevertheless, the provision of this Article shall not prejudice the autonomy of each Party to exclude from patentability computer programs as such.

## **Article 175. Industrial Designs**

Each Party shall ensure adequate and effective protection of industrial designs. Each Party shall also ensure that, at the request of an applicant for industrial design registration, the registrability of the industrial design concerned may be considered by the competent authority based on the design of a part of an article instead of that of the article as a whole.

## **Article 176. Trademarks**

1. Each Party shall grant adequate and effective protection to trademark right holders of goods or services. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements, and combinations of colors as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, each Party may make registrability depend on distinctiveness acquired through use. Each Party may require, as a condition of registration, that signs be visually perceptible.

2. Each Party shall protect well-known marks in accordance with Article 6bis of the Paris Convention for the Protection of Industrial Property (1967) (hereinafter referred to in this Chapter as "the Paris Convention") and paragraphs 2 and 3 of Article 16 of the TRIPS Agreement.

## **Article 177. Geographical Indications**

1. For the purposes of this Article, the term "geographical indications" shall have the same meaning as in paragraph 1 of Article 22 of the TRIPS Agreement. Nonetheless, nothing in this Agreement shall require a Party to amend its laws and regulations on the protection of geographical indications or on the protection of appellations of origin which are consistent with the TRIPS Agreement.

2. Each Party shall ensure adequate and effective protection to geographical indications, in accordance with the TRIPS Agreement and in the manner set out in its laws and regulations.

3. Each of the indication(s) for wines and spirits listed in paragraph 1 of Annex 10 identifies a good as originating in Japan where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin and is protected as a geographical indication within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement under the laws and regulations of Japan. Peru agrees that each of the indication(s) listed in paragraph 1 of Annex 10 is a geographical indication within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement and as such is qualified for protection as a geographical indication in Peru subject to provisions in Section 3 of Part II of the TRIPS Agreement and to Peru's domestic laws and regulations.

4. Each of the indication(s) for wines and spirits listed in paragraph 2 of Annex 10 identifies a good as originating in Peru where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin and is protected as a geographical indication within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement under the laws and regulations of Peru. Japan agrees that each of the indication(s) listed in paragraph 2 of Annex 10 is a geographical indication within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement and as such is qualified for protection as a geographical indication in Japan subject to provisions in Section 3 of Part II of the TRIPS Agreement and to Japan's domestic laws and regulations.

5. Subject to consultations and by mutual consent, the Parties may modify Annex 10 as to geographical indications of the Parties to be protected under this Article. Such modifications shall be confirmed by an exchange of diplomatic notes.

## **Article 178. Copyright and Related Rights**

The Parties reaffirm their existing rights and obligations under the Berne Convention for the Protection of Literary and Artistic Works; the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations; the WIPO Copyright Treaty; and the WIPO Performances and Phonograms Treaty.

## **Article 179. Protection of Undisclosed Information**

Each Party shall ensure in its laws and regulations effective protection of undisclosed information in accordance with Article 39 of the TRIPS Agreement.

## **Article 180. Unfair Competition**

Each Party shall provide for effective protection against acts of unfair competition in accordance with Article 10bis of the Paris Convention.

## **Article 181. Enforcement – General**

1. The Parties shall ensure that the provisions for the enforcement of intellectual property rights in their domestic laws and regulations are consistent with the TRIPS Agreement, in particular Articles 41 through 61.
2. Each Party shall facilitate development of specialized expertise of competent authorities concerned with enforcement of intellectual property rights, in order to ensure effective enforcement of intellectual property rights.
3. Each Party shall endeavor to promote collection and analysis of statistical data and other relevant information concerning infringement of intellectual property rights, especially trade in goods infringing intellectual property rights. Each Party shall further endeavor to promote collection of information on best practices to prevent and combat intellectual property right infringement.
4. Each Party shall endeavor to enhance coordination among, and joint actions by, competent authorities concerned with enforcement of intellectual property rights.

## **Article 182. Enforcement – Border Measures**

1. Each Party shall provide for procedures concerning the suspension at the border by its customs authority, upon request of the right holder or ex officio, of the release of counterfeit trademark or pirated copyright goods which are destined for importation into or exportation from that Party.
2. In the case of the suspension pursuant to paragraph 1 with respect to importation into and exportation from a Party, the competent authorities of the Party suspending the release of the goods shall notify the right holder of the names and addresses of the consignor or consignee, and the importer or exporter, as applicable, of the goods in question.

## **Article 183. Enforcement – Civil Remedies**

Each Party shall ensure that its judicial authorities have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

## **Article 184. Enforcement – Criminal Remedies**

Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity.

## **Article 185. Internet Service Providers**

1. Each Party shall establish a legal framework for the limitation of liabilities of internet service providers (hereinafter referred to in this Article as "ISPs") for the purposes of encouraging ISPs to delete from their servers materials infringing copyright and related rights.
2. Each Party shall establish procedures to enable right holders whose copyright and related rights have been infringed to expeditiously obtain from ISPs the information identifying the suspected infringer, where there are legitimate reasons for such right holders to obtain such information.

## **Article 186. Cooperation**

The Parties, recognizing the growing importance of protection of intellectual property in further promoting trade and investment between them, in accordance with their respective laws and regulations and subject to their available resources, shall cooperate in the field of intellectual property.

## **Article 187. Sub-committee on Intellectual Property Rights**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Intellectual Property Rights (hereinafter referred to in this Article as "the Sub-Committee").

2. The functions of the Sub-Committee shall be:

- (a) reviewing and monitoring the implementation and operation of this Chapter;
- (b) discussing any issues related to intellectual property with a view to enhancing protection of intellectual property and enforcement of intellectual property rights under the provisions of this Chapter and to promoting efficient and transparent administration of intellectual property system;
- (c) discussing, with a view to promoting, cooperation activities formulated on a mutually agreed basis which are relevant to the provisions of this Chapter; and
- (d) reporting the findings and the outcome of discussions of the Sub-Committee to the Commission.

3. The Sub-Committee shall be composed of government officials of the Parties.

## **Article 188. Other Considerations**

1. The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

2. This Chapter should be interpreted and implemented in a manner supportive of the Parties' rights to take measures to protect public health in accordance with the TRIPS Agreement and the decisions by the Ministerial Conference or the General Council of the WTO, related to the TRIPS Agreement and public health. 3. No provision of this Chapter will prevent a Party from adopting appropriate measures, provided that they are consistent with the provisions of this Agreement and any other international agreement to which both Parties are parties, to prevent the abuse of the intellectual property rights referred to in this Chapter by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

## **Chapter 12. Competition**

### **Article 189. Anticompetitive Activities**

1. Each Party shall, in accordance with its laws and regulations, take measures which it considers appropriate against anticompetitive activities, in order to facilitate trade and investment flows between the Parties through the efficient functioning of its markets.

2. For the purposes of this Chapter, the term "anticompetitive activities" means any conduct or transaction that may be subject to penalties or relief under the competition laws and regulations of the respective Parties.

### **Article 190. Cooperation on Controlling Anticompetitive Activities**

1. The Parties shall, in accordance with their respective laws and regulations, cooperate in the field of controlling anticompetitive activities, subject to their respective available resources.

2. The details and procedures concerning the implementation of cooperation under this Article shall be specified in the Implementing Agreement.

### **Article 191. Non-discrimination**

Each Party shall apply its competition laws and regulations in a manner which does not discriminate between persons in like circumstances on the basis of their nationality.

### **Article 192. Procedural Fairness**

Each Party shall implement administrative and judicial procedures in a fair manner to control anticompetitive activities, pursuant to its relevant laws and regulations.

### **Article 193. Transparency**

Each Party shall promote transparency of the implementation of its competition laws and regulations and its competition policy.

### **Article 194. Non-application of Paragraph 1 of Article 7**

Paragraph 1 of Article 7 shall not apply to this Chapter.

## **Chapter 13. Improvement of the Business Environment**

### **Article 195. Basic Principles**

Each Party shall, in accordance with its laws and regulation take appropriate measures to further improve the business environment for the persons of the other Party conducting their business activities in the former Party.

### **Article 196. Sub-committee on Improvement of the Business Environment**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Improvement of the Business Environment (hereinafter referred to in this Chapter as "the Sub-Committee").
2. The functions of the Sub-Committee shall be:
  - (a) reviewing findings reported by a Liaison Office on Improvement of the Business Environment (hereinafter referred to in this Chapter as "the Liaison Office") to be designated by each Party under Article 197;
  - (b) addressing, and seeking ways to promptly resolve, issues related to the business environment on its own initiative or based on the findings reported by the Liaison Office;
  - (c) reporting its findings and decisions, including those on measures that should be taken by the Parties, to the Parties;
  - (d) reviewing, where appropriate, the measures taken by the Parties in relation to such decisions referred to in subparagraph (c);
  - (e) making available to the public, in an appropriate manner, the decisions referred to in subparagraph (c) and the results of the review referred to in subparagraph (d);
  - (f) reporting promptly the findings and decisions referred to in subparagraph (c) to the Commission;
  - (g) cooperating, in an appropriate manner, with other Sub-Committees established under this Agreement, with a view to avoiding unnecessary duplication of works. The forms of such cooperation may include:
    - (i) informing the results of its consideration to such other Sub-Committees;
    - (ii) seeking opinions from such other Sub-Committees;
    - (iii) inviting to the Sub-Committee the members of such other Sub-Committees; and
    - (iv) where appropriate, transferring the relevant issues to such other Sub-Committees; and
  - (h) other functions assigned by the Commission.
3. The Sub-Committee shall be composed of government officials of the Parties. The Sub-Committee may invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be addressed.
4. The Sub-Committee shall hold meetings at such times and venues or by means, as may be agreed by the Parties.

### **Article 197. Liaison Office**

1. Each Party shall designate and maintain the Liaison Office in the Party.
2. The functions of the Liaison Office in each Party shall be:
  - (a) receiving complaints, inquiries and/or requests for consultations from the persons of the other Party with regard to the laws, regulations and other measures of that Party which may adversely affect the business activities of such persons of that other Party;
  - (b) transmitting the complaints, inquiries and/or requests for consultations referred to in subparagraph (a) to relevant authorities of that Party;
  - (c) transmitting responses from the relevant authorities of that Party to the persons that submitted the complaints, made inquiries and/or made requests for consultations;
  - (d) providing necessary information and advice to the persons that submitted the complaints, made inquiries and/or made requests for consultations, in collaboration with relevant authorities of that Party;
  - (e) when necessary, submit to the Sub-Committee the relevant information regarding complaints, inquiries and/or requests for consultations from the persons of that Party with regard to the laws, regulations and other measures of the other Party which may adversely affect the business activities of such persons; and
  - (f) reporting its findings, with regard to the exercise of its functions referred to in subparagraphs (a) through (e), to relevant Sub-Committees and/or the other consulting fora referred to in Article 198.
3. The Liaison Office in each Party shall endeavor to respond within a reasonable period of time to the persons that submitted complaints, made inquiries and/or made requests for consultations.
4. Communications between the Liaison Office in a Party and the persons of the other Party referred to in paragraph 2 may be conducted through an authority or an organization designated as a contact point by the Government of that other Party.
5. For the purposes of subparagraph 2(e), the contact point of a Party may also provide relevant information to its own

Liaison Office.

6. Paragraphs 2 through 5 shall not be construed as to prevent or restrict any contacts made by the persons of a Party directly to relevant authorities of the other Party or to its own Liaison Office.

7. The Liaison Office shall be:

- (a) for Japan, the Ministry of Foreign Affairs, or its successor; and
- (b) for Peru, the Ministry of Foreign Trade and Tourism, or its successor.

## **Article 198. Consulting Fora**

Nothing in this Chapter shall be construed to impede the use of other consulting fora between the Parties for the improvement of the business environment in the Parties.

## **Article 199. Implementation of the Decisions of the Sub-committee**

1. In implementing Article 195, the decisions of the Sub-Committee referred to in Article 196 shall be respected.
2. The Parties may cooperate to facilitate the implementation of the decisions of the Sub-Committee.

# **Chapter 14. Cooperation**

## **Article 200. Basic Principles**

The Parties shall, in accordance with their laws and regulations, promote cooperation under this Agreement for their mutual benefit, in order to liberalize and facilitate trade and investment between the Parties and to promote the well-being of the peoples of the Parties. For this purpose, the Parties shall cooperate between the Governments of the Parties and, where necessary and appropriate, encourage and facilitate cooperation between parties, one or both of whom are entities other than the Governments of the Parties, in the following fields:

- (a) trade and investment promotion;
- (b) industry;
- (c) fisheries;
- (d) science and technology and environment;
- (e) information and communications technology;
- (f) tourism;
- (g) agriculture;
- (h) transport; and
- (i) other fields to be mutually agreed by the Parties.

## **Article 201. Areas and Forms of Cooperation**

The areas and forms of cooperation under this Chapter shall be set forth in the Implementing Agreement.

## **Article 202. Implementation**

The implementation of cooperation under this Chapter shall be subject to the mutual agreement of the Parties as to how to bear the costs of cooperation, as well as to the availability of appropriated funds and the applicable laws and regulations of each Party.

## **Article 203. Sub-committee on Cooperation**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Cooperation (hereinafter referred to in this Article as "the Sub-Committee").
2. The functions of the Sub-Committee shall be:
  - (a) exchanging information on cooperation;
  - (b) reviewing and monitoring the implementation and operation of this Chapter;
  - (c) discussing any issues related to this Chapter;
  - (d) reporting the findings and the outcome of discussions of the Sub-Committee regarding issues relating to the implementation of this Chapter, including the measures to be taken by the Parties, to the Commission;
  - (e) making recommendations, if necessary, of the cooperation activities under this Chapter to the Commission;
  - (f) identifying ways for further cooperation between the Parties; and



(g) other functions assigned by the Commission.

3. The Sub-Committee shall respect existing consultation mechanisms between the Parties for Official Development Assistance and other existing cooperation schemes and, as appropriate, share information with such mechanisms and schemes to ensure effective and efficient implementation of cooperative activities and projects.

4. The Sub-Committee shall be composed of government officials of the Parties. The Sub-Committee may invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed.

5. The Sub-Committee shall hold meetings at such times and venues or by means, as may be agreed by the Parties.

6. The Sub-Committee shall establish its rules and procedures.

## **Chapter 15. Dispute Settlement**

### **Article 204. Scope of Application**

1. Unless otherwise provided for in this Agreement, the dispute settlement procedure of this Chapter shall apply with respect to the avoidance and the settlement of disputes between the Parties regarding the interpretation or application of this Agreement. Any time period, other rules and procedures for arbitral tribunals provided for in this Chapter may be modified by mutual consent of the Parties.

2. Notwithstanding paragraph 1, this Chapter shall not apply to Chapters 5, 6, 12, 13 and 14.

### **Article 205. Cooperation**

The Parties shall at all times endeavor to agree on the interpretation or application of this Agreement, and shall make every attempt through cooperation or other means provided for in this Agreement, to arrive at a prompt and mutually satisfactory resolution of any matter concerning the interpretation or application of this Agreement.

### **Article 206. Good Offices, Conciliation, or Mediation**

1. Good offices, conciliation, or mediation may be requested at any time by either Party. They may begin at any time by agreement of the Parties, and end at any time upon the request of either Party.

2. Until the award of the arbitral tribunal is issued, if the Parties agree, good offices, conciliation, or mediation may continue while procedures of the arbitral tribunal provided for in this Chapter are in progress.

3. Proceedings involving good offices, conciliation, or mediation and positions taken by the Parties during these proceedings, shall be confidential, and without prejudice to the rights of either Party in any further proceedings.

### **Article 207. Choice of Forum**

1. Where a dispute arises regarding any matter covered under this Agreement and another international agreement to which both Parties are parties, including the WTO Agreement, the Party requesting consultations (hereinafter referred to in this Chapter as "the complaining Party") may select the forum in which to settle the dispute.

2. Unless otherwise agreed by the Parties, once the complaining Party has requested the establishment of an arbitral tribunal under an agreement referred to in paragraph 1 with respect to a particular dispute, that procedure selected shall be used to the exclusion of any other procedure for that particular dispute.

### **Article 208. Consultations**

1. Either Party may request in writing consultations to the other Party with respect to any matter regarding the interpretation or application of this Agreement referred to in Article 204.

2. The complaining Party shall deliver the request to the other Party, setting out the reasons for the request, including identification of the measure at issue and an indication of the legal and factual basis for the complaint.

3. The Party to which the request for consultations is made (hereinafter referred to in this Chapter as "the Party complained against") shall respond in writing within 10 days following the date of receipt of such request.

4. The Parties shall start holding consultations in good faith within:

(a) 15 days after the date of receipt of the request for consultations in cases of urgency; or Note: Cases of urgency include those which concern goods or services that lose their quality or current condition in a short period of time; they include perishable goods or such services which lose their trade value after a determined date.

(b) 30 days after the date of receipt of the request for consultations for all other matters.

5. The Party complained against shall endeavor to make available pertinent government agencies or other regulatory bodies

which have expertise in the matter subject to consultations.

6. Consultations under this Article shall be confidential and without prejudice to the right of either Party in any further proceedings. During consultations each Party shall provide sufficient information to enable a full examination of the matter at issue including how it might affect the operation and application of this Agreement and treat any confidential information exchanged on the same basis as the Party providing such information.

7. Consultations may be held in person or by any technological means available to the Parties. Unless otherwise agreed by the Parties; if in person, consultations shall be held alternatively in each Party.

## **Article 209. Establishment of Arbitral Tribunals**

1. The complaining Party may request in writing the establishment of an arbitral tribunal to the Party complained against to consider the matter:

(a) if the Party complained against does not respond within 10 days, or does not enter into consultations within 30 days after the date of receipt of the request for such consultations; or

(b) if the Parties fail to resolve the matter through the consultations under Article 208 within 50 days or within 30 days in cases of urgency, after the date of receipt of the request for such consultations, provided that the complaining Party considers that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired as a result of the failure of the Party complained against to carry out its obligations under this Agreement, or as a result of the application by the Party complained against of measures which are in conflict with its obligations under this Agreement.

Note: For greater certainty, no request for the establishment of an arbitral tribunal based only on nullification or impairment of benefits without allegation of non-compliance with the obligations of this Agreement shall be accepted.

2. Any request to establish an arbitral tribunal pursuant to this Article shall identify the reason of the request, the measure or other issue referred to and the legal and factual basis of the complaint, including the provisions of this Agreement alleged to have been breached and any other relevant provisions of the applicable international law.

3. Unless otherwise agreed by the Parties, the arbitral tribunal shall be selected and carry out its functions in a manner consistent with the provisions of this Chapter.

## **Article 210. Composition of the Arbitral Tribunal**

1. The Parties shall apply the following procedures in establishing an arbitral tribunal:

(a) the arbitral tribunal shall comprise three members;

(b) within 30 days after the date of receipt of the request for the establishment of an arbitral tribunal, each Party shall appoint one arbitrator who may be its national, propose up to four candidates to serve as the third arbitrator who shall be the chair of the arbitral tribunal pursuant to subparagraph (e), and notify the other Party in writing of the appointment and its proposed candidates;

(c) the Parties shall endeavor to agree on and appoint the third arbitrator who shall be the chair within 45 days after the date of receipt of the request for the establishment of an arbitral tribunal, from among the candidates proposed pursuant to subparagraph (b);

(d) if a Party has not appointed the one arbitrator pursuant to subparagraph (b), or if the Parties fail to agree on the third arbitrator pursuant to subparagraph (c), the arbitrator or arbitrators not yet appointed shall be chosen within seven days by lot from the candidates proposed pursuant to subparagraph (b);

(e) the chair of the arbitral tribunal shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be or have been employed by either Party, nor have dealt with the subject raised on the dispute in any capacity; and

(f) the date of the establishment of an arbitral tribunal shall be the date on which the chair is appointed.

2. If an arbitrator appointed under this Article resigns or otherwise becomes unable to act, a replacement arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator. The replacement arbitrator shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended until the replacement arbitrator is appointed.

## **Article 211. Qualifications of Arbitrators**

Arbitrators shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement, or in the resolution of disputes arising under international trade agreements;

(b) be chosen strictly on the basis of objectivity, impartiality, reliability and sound judgment; and

(c) be independent of and not be affiliated with or take instructions from either Party.

## **Article 212. Functions of Arbitral Tribunals**

1. The functions of the arbitral tribunal shall be:

(a) to make an objective assessment of the matter before it, including that of the facts of the case and the applicability of and conformity with this Agreement, and make the necessary findings and rulings for the resolution of the dispute; and  
(b) to consult regularly with the Parties offering them equal opportunities for such consultations and provide adequate opportunities for the development of a mutually satisfactory resolution.

2. The arbitral tribunal may adopt additional rules and procedures consistent with the provisions of this Chapter.

## **Article 213. Proceedings of the Arbitral Tribunal**

1. The Parties have the right to, at least, one hearing before the arbitral tribunal as well as the opportunity to provide initial and rebuttal written submissions. The Parties shall be given the opportunity to attend any of the presentations, statements or rebuttals in the proceedings.

2. The meetings of the arbitral tribunal, the hearing before it, the deliberations, as well as all the documents submitted to it, shall be kept confidential.

3. Notwithstanding paragraph 2, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential, information and written submissions submitted by the other Party to the arbitral tribunal which that other Party has designated as confidential. Where a Party has provided information or written submissions designated to be confidential, the other Party may request a non-confidential summary of the information or written submissions which may be disclosed publicly. The Party to which such a request is made may agree to the request and submit such summary, or refuse the request without needing to ascribe any reasons or justification.

4. Unless otherwise agreed by the Parties within 10 days from the establishment of the arbitral tribunal, the terms of reference shall be: "To examine, in light of the relevant provisions of this Agreement, the matter referred to it in the arbitral tribunal request and to issue the award."

5. Each Party shall bear the costs of the arbitrator appointed by it and its representation in the proceedings of the arbitral tribunal. The other costs of the arbitral tribunal shall be borne by the Parties in equal shares, unless otherwise agreed by the Parties.

6. The venue for the proceedings of the arbitral tribunal shall be decided by mutual consent of the Parties, failing which it shall alternate between the Parties.

7. The language of the proceedings and the documents submitted to and produced by the tribunal, including the award, shall be English. Accordingly, the Parties shall present written submissions as well as oral arguments in English.

8. Any information or written submissions presented by a Party to the arbitral tribunal, including responses to questions raised by the arbitral tribunal, shall be made available to the other Party.

9. The award of the arbitral tribunal shall be drafted without the presence of the Parties, and in the light of the information provided and the statements made.

10. The arbitral tribunal shall attempt to make its decisions, including its award, by consensus but may also make its decisions, including its award, by majority vote.

## **Article 214. Information In the Procedure**

1. On request of either Party or on its own initiative, the arbitral tribunal, to the extent that it deems appropriate, may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter concerned.

2. The arbitral tribunal may seek, from the Parties, such relevant information as it considers necessary and appropriate. The Parties shall respond to any request by the arbitral tribunal for such information.

3. Before the arbitral tribunal seeks information or consults experts, it shall establish appropriate procedures in consultation with the Parties. The arbitral tribunal shall provide the Parties with:

(a) prior notification of its intention to seek information or consult experts pursuant to paragraph 1, and an adequate time period to make observations; and

(b) a copy of any information or opinion of experts obtained pursuant to paragraph 1, and a period of time to submit comments.

4. When the arbitral tribunal takes into consideration any information or opinion of experts sought pursuant to paragraph 1 for the preparation of its award, it may also take into account any comments or observations submitted by the Parties with respect to such information or opinion of experts.

## **Article 215. Consolidation of Proceedings**

The arbitral tribunal may consolidate two or more proceedings regarding the same measure or the same matter with the consent of the Parties.

## **Article 216. Award of the Arbitral Tribunal**

1. The arbitral tribunal shall, within 90 days, or within 60 days in cases of urgency, after the date of its establishment, submit to the Parties its draft award, including the descriptive part and its findings and conclusions, for the purposes of enabling the Parties to review it. When the arbitral tribunal considers that it cannot submit its draft award within the aforementioned 90 or 60 days period, it may extend that period with the consent of the Parties. A Party may submit comments in writing to the arbitral tribunal on the draft award within 15 days after the date of submission of the draft award.
2. The arbitral tribunal shall issue its award, within 30 days after the date of submission of the draft award.
3. The award shall contain:
  - (a) findings on the facts of the case and the applicability of and conformity with this Agreement of the measure at issue, together with the reasons therefor;
  - (b) referential findings about the level of adverse trade effects caused to a Party by the other Party's failure to conform with the obligations of the Agreement; and
  - (c) at the request of either Party, suggested implementation options for the Parties to consider.
4. The arbitral tribunal shall base its awards on relevant provisions of this Agreement, applicable rules of international law, the submissions and arguments of the Parties, and any information provided pursuant to Article 214.
5. The arbitral tribunal may not, in its award, add to or diminish the rights and obligations of the Parties provided for in this Agreement.
6. The award, including its findings, of the arbitral tribunal shall be final and binding for the Parties.

## **Article 217. Suspension and Termination of Procedure**

1. Where the Parties agree, the procedure of the arbitral tribunal may be suspended at any time for a period not exceeding 12 months. In the event of such a suspension, the time-frames set out in paragraph 4 of Article 213, paragraphs 1 and 2 of Article 216 and paragraph 5 of Article 219 shall be extended by the amount of time that it was suspended for. The procedure of the arbitral tribunal shall be resumed at any time upon the request of either Party.
2. If the procedure of the arbitral tribunal has been suspended for more than 12 months, the authority for establishing of the arbitral tribunal shall lapse, unless the Parties agree otherwise. If the authority for establishing the arbitral tribunal lapses and the Parties have not settled the dispute, nothing in this Chapter shall prevent a Party from requesting a new proceeding regarding the same matter.
3. The Parties may agree to terminate the proceedings of the arbitral tribunal at any time by a joint notification to the chair of the arbitral tribunal before the issuance of the award to the Parties.

## **Article 218. Implementation of the Award**

1. The Party complained against shall promptly comply with the award of the arbitral tribunal issued pursuant to Article 216.
2. The Party complained against shall, within 30 days after the date of issuance of the award, notify the complaining Party of the period which it assesses to be reasonable and necessary in order to implement the award.
3. If the complaining Party considers the period of time notified pursuant to paragraph 2 to be unacceptable, the Parties shall hold consultations to decide on a mutually agreed period of time in order to implement the award.
4. If the Parties are not able to agree on a period of time pursuant to paragraph 3 within 45 days after the date of the issuance of the award, the complaining Party may refer the matter to an arbitral tribunal, which shall determine a reasonable period of time to implement the award. In such arbitration, a guideline for the arbitral tribunal should be that the reasonable period of time to implement the award should not exceed 15 months from the date of issuance of the award. However, that time may be shorter or longer, depending upon the particular circumstances.
5. If the Party complained against considers it impracticable to comply with the award within the implementation period as determined pursuant to paragraphs 2 through 4, the Party complained against shall, no later than the expiry of that implementation period, enter into consultations with the complaining Party, with a view to developing mutually satisfactory compensation or any alternative arrangement.
6. Where there is disagreement between the Parties as to whether the Party complained against has complied with the award of the arbitral tribunal referred to in Article 216 within the implementation period as determined pursuant to paragraphs 2 through 4, either Party may refer the matter to an arbitral tribunal.

## **Article 219. Non-implementation – Suspension of Benefits**

1. If no satisfactory compensation or any alternative arrangement has been agreed pursuant to paragraph 5 of Article 218

within 20 days after the date of expiry of the implementation period as determined pursuant to paragraphs 2 through 4 of Article 218, the complaining Party may notify the Party complained against that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement.

2. If the arbitral tribunal to which the matter is referred pursuant to paragraph 6 of Article 218 confirms that the Party complained against has failed to comply with the award within the implementation period as determined pursuant to paragraphs 2 through 4 of Article 218, the complaining Party may, within 30 days after the date of such confirmation by the arbitral tribunal, notify the Party complained against that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement.

3. The suspension of the application of concessions or other obligations under paragraph 1 or 2 may only be implemented at least 30 days after the date of the notification in accordance with the applicable provisions of this Article. Such suspension shall:

(a) not be effected if, in respect of the dispute to which the suspension relates, consultations or proceedings before the arbitral tribunal are in progress;

(b) be temporary, and be discontinued when the Parties reach a mutually satisfactory resolution or where compliance with the award is effected;

(c) be restricted to the same level of nullification or impairment that is attributable to the failure to comply with the award; and

(d) be restricted to the same sector or sectors to which the nullification or impairment relates, unless it is not practicable or effective to suspend the application of concessions or obligations in such sector or sectors.

4. If the Party complained against considers that the requirements for the suspension of the application to it of concessions or other obligations under this Agreement by the complaining Party set out in paragraph 1, 2 or 3 have not been met, it may request consultations with the complaining Party. The complaining Party shall enter into consultations within 10 days after the date of receipt of the request. If the Parties fail to resolve the matter within 30 days after the date of receipt of the request for consultations pursuant to this paragraph, the Party complained against may refer the matter to an arbitral tribunal, which then shall determine whether such requirements have been met.

5. Notwithstanding subparagraph 1(e) of Article 210, the arbitral tribunal that is established for the purposes of Article 218 and this Article shall, wherever possible, have, as its arbitrators, the arbitrators of the original arbitral tribunal. If this is not possible, the arbitrators to the arbitral tribunal that is established for the purposes of Article 218 and this Article shall be appointed pursuant to paragraph 1 of Article 210. Unless the Parties agree on a different period, the arbitral tribunal established under Article 218 and this Article shall issue its award within 60 days after the date when the matter is referred to it. Such award shall be binding on the Parties.

## **Chapter 16. Final Provisions**

### **Article 220. Annexes, Appendices and Notes**

The Annexes, Appendices and Notes to this Agreement constitute an integral part thereof.

### **Article 221. Table of Contents and Headings**

The table of contents and the headings of the Chapters, Sections and Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

### **Article 222. Entry Into Force**

This Agreement shall enter into force on the first day of the second month following the month in which the Governments of the Parties exchange diplomatic notes informing each other that their respective legal procedures necessary for entry into force of this Agreement have been completed, unless the Parties agree otherwise. It shall remain in force unless terminated pursuant to Article 224.

### **Article 223. Amendments**

1. The Parties may agree to any amendment to this Agreement. Such amendment shall be approved by the Parties in accordance with their respective legal procedures, and shall enter into force on the date to be agreed by the Parties. Any amendment shall constitute an integral part of this Agreement.

2. Notwithstanding paragraph 1, amendments may be agreed by the exchange of diplomatic notes between the Governments of the Parties, regarding only:

(a) Annex 1, provided that the amendments are made in accordance with the amendment of the Harmonized System, and include no change on the rates of customs duty to be applied by a Party to the originating goods of the other Party in

accordance with Annex 1;  
(b) Annex 3;  
(c) Annex 4; or  
(d) Annex 10, in accordance with paragraph 5 of Article 177.

## **Article 224. Termination**

Unless the Parties agree otherwise, either Party may terminate this Agreement by giving a written notification to the other Party and the termination shall be effective one year after the date of receipt by the other Party.

## **Article 225. Authentic Texts**

1. The texts of this Agreement in the Japanese, Spanish and English languages shall be equally authentic. In the event of any divergence among the texts, the English text shall prevail.
2. Notwithstanding the first sentence of paragraph 1:
  - (a) (i) Part 2 of Annex 1 is in the Japanese and English languages, such texts being equally authentic; and
  - (ii) Part 3 of Annex 1 is in the Spanish and English languages, such texts being equally authentic;
  - (b) Annex 4 is only in the English language;
  - (c) (i) Part 1 of Annex 5 and Part 1 of Annex 6 are in the Japanese and English languages, such texts being equally authentic; and
  - (ii) Part 2 of Annex 5 and Part 2 of Annex 6 are in the Spanish and English languages, such texts being equally authentic;
  - (d) (i) Part 1 of Annex 8 is in the Japanese and English languages, such texts being equally authentic; and
  - (ii) Part 2 of Annex 8 is in the Spanish and English languages, such texts being equally authentic; and
  - (e) (i) Part 1 of Annex 9 is in the Japanese and English languages, such texts being equally authentic; and
  - (ii) Part 2 of Annex 9 is in the Spanish and English languages, such texts being equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement. DONE at Tokyo on this thirty-first day of May in the year 2011 in two originals in the Japanese, Spanish and English languages.

For Japan:

For the Republic of Peru: Ferreyros