

# **FREE TRADE AGREEMENT BETWEEN CANADA AND THE REPUBLIC OF PERU**

Canada and the Republic of Peru ("Peru"), hereinafter referred to as "the Parties", resolved to:

STRENGTHEN the special bonds of friendship and cooperation among their peoples;

CONTRIBUTE to the harmonious development and expansion of world and regional trade and to provide a catalyst to broader international cooperation;

BUILD on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization and other multilateral and bilateral instruments of cooperation;

PROMOTE hemispheric economic integration;

CREATE an expanded and secure market for the goods and services produced in their territories, as well as new employment opportunities and improved working conditions and living standards in their respective territories;

REDUCE distortions to trade;

ESTABLISH clear and mutually advantageous rules to govern their trade;

ENSURE a predictable commercial framework for business planning and investment;

ENHANCE the competitiveness of their firms in global markets;

UNDERTAKE each of the preceding in a manner that is consistent with environmental protection and conservation, enhance and enforce environmental laws and regulations and strengthen cooperation on environmental matters;

PROTECT, ENHANCE AND ENFORCE basic workers' rights, strengthen cooperation on labour matters and build on their respective international commitments on labour matters;

PROMOTE sustainable development;

ENCOURAGE enterprises operating within their territory or subject to their jurisdiction, to respect internationally recognized corporate social responsibility standards and principles and pursue best practices;

PROMOTE broad-based economic development in order to reduce poverty;

PRESERVE their flexibility to safeguard the public welfare; and, AFFIRMING their respective rights and obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement") and other intellectual property agreements to which both Parties are party;

RECOGNIZING the differences in the level of development and the size of the Parties' economies and the importance of creating opportunities for economic development;

RECOGNIZING that the promotion and the protection of investments of investors of one Party in the territory of the other Party will be conducive to the stimulation of mutually beneficial business activity;

AFFIRMING the rights to use, to the full, the flexibilities established in the TRIPS Agreement, including the protection of public health and in particular the promotion of access to medicines for all, as well as their commitment to the General Council Decisions of 30 August 2003 on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health and of 6 December 2005 on the Amendment of the TRIPS Agreement;

RECOGNIZING that states must maintain the ability to preserve, develop and implement their cultural policies for the purpose of strengthening cultural diversity, given the essential role that cultural goods and services play in the identity and diversity of societies and the lives of individuals;

and AFFIRMING their commitment to respect the values and principles of democracy and promotion and protection of human rights and fundamental freedoms as proclaimed in the Universal Declaration of Human Rights;

HAVE AGREED as follows:

## **Section A. Initial Provisions**

### **Chapter One. Initial Provisions and General Definitions**

#### **Article 101. Establishment of the Free Trade Area**

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

#### **Article 102. Relation to other Agreements**

1. The Parties affirm their existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which such Parties are party.
2. In the event of any inconsistency between this Agreement and such other agreements, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.

#### **Article 103. Relation to Multilateral Environmental Agreements**

In the event of any inconsistency between this Agreement and the specific trade obligations set out in the Multilateral Environmental Agreements (MEAs) referred to in Annex 103, such obligations shall prevail to the extent of the inconsistency, provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the Party chooses the alternative that is the least inconsistent with the other provisions of this Agreement.

#### **Article 104. Extent of Obligations**

Each Party is fully responsible for the observance of all provisions of this Agreement and shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the sub-national governments and authorities within its territory.

## **Section B. General Definitions**

#### **Article 105. Definitions of General Application**

For purposes of this Agreement, unless otherwise specified:

Agreement on the Environment means the Agreement on the Environment between Canada and the Republic of Peru;

Commission means the Joint Commission established under Article 2001 (Joint Commission);

Coordinators means the Agreement Coordinators established under Article 2002 (Agreement Coordinators);

Customs Valuation Agreement means the WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994;

days means calendar days, including weekends and holidays;

Dispute Settlement Understanding (DSU) means the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes;

enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;

existing means in effect on the date of entry into force of this Agreement;

GATS means the WTO General Agreement on Trade in Services;

GATT 1994 means the WTO General Agreement on Tariffs and Trade 1994;

goods of a Party means domestic products as these are understood in the GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party;

Harmonized System (HS) means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes, Chapter Notes and subheading notes;

heading means any four-digit number, or the first four digits of any number, used in the nomenclature of the Harmonized System;

measure includes any law, regulation, procedure, requirement or practice;

national means a natural person who has the nationality of a Party or is a citizen according to Article 107, or is a permanent resident of a Party;

originating means qualifying under the rules of origin set out in Chapter Three (Rules of Origin);

person means a natural person or an enterprise;

person of a Party means a national, or an enterprise of a Party;

preferential tariff treatment means the application of the respective duty rate under this Agreement pursuant to the tariff elimination schedule to an originating good;

sanitary or phytosanitary measure means any measure referred to in Annex A, paragraph 1 of the SPS Agreement;

SPS Agreement means the WTO Agreement on the Application of Sanitary and Phytosanitary Measures;

state enterprise means an enterprise that is owned, or controlled through ownership interests, by a Party;

subheading means any six-digit number, or the first six digits of any number, used in the nomenclature of the Harmonized System;

tariff classification means the classification of a good or material under a chapter, heading or subheading of the Harmonized System;

tariff elimination schedule means the provisions of Annex 203.2;

TRIPS Agreement means the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights;

WTO Agreement means the Marrakesh Agreement Establishing the World Trade Organization, done on 15 April 1994.

## **Article 106. Reference to other Agreements**

Where this Agreement refers to or incorporates by reference other agreements or legal instruments in whole or in part, such references include related footnotes, interpretative and explanatory notes. Except where the references are by way of affirming existing rights, such references also include, as the case may be, successor agreements to which the Parties are parties or amendments binding on the Parties.

## **Article 107. Country-specific Definitions**

For purposes of this Agreement, unless otherwise specified:

citizen means with respect to Canada, a natural person who is a citizen of Canada under Canadian legislation.

natural person who has the nationality of a Party means with respect to Peru, Peruvians by birth, naturalization or option in accordance with Articles 52 and 53 of the Constitución Política del Perú.

national government means:

(a) with respect to Canada, the Government of Canada; and

(b) with respect to Peru, the national level of government.

sub-national government means:

- (a) with respect to Canada, provincial, territorial, or local governments; and
- (b) with respect to Peru, regional or local governments.

territory means:

- (a) with respect to Canada,
  - (i) the land territory, air space, internal waters and territorial sea of Canada;
  - (ii) the exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS); and
  - (iii) the continental shelf of Canada, as determined by its domestic law, consistent with Part VI of UNCLOS;
- (b) 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 its domestic law and international law.

### **Annex 103. Multilateral Environmental Agreements**

- (a) the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington on 3 March 1973, as amended on 22 June 1979;
- (b) the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal on 16 September 1987, as amended 29 June 1990, as amended 25 November 1992, as amended 17 September 1997, as amended 3 December 1999;
- (c) the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, done at Basel on 22 March 1989;
- (d) the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, done at Rotterdam on 10 September 1998; and
- (e) the Stockholm Convention on Persistent Organic Pollutants, done at Stockholm on 22 May 2001.

## **Chapter Two. National Treatment and Market Access for Goods**

### **Article 201. Scope and Coverage**

Except as otherwise provided in this Agreement, this Chapter applies to trade in goods of a Party.

### **Section A. National Treatment**

#### **Article 202. National Treatment**

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994, including its interpretive notes, and to this end Article III of the GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis*.
2. Paragraph 1 does not apply to the measures set out in Annex 202.2.

### **Section B. Tariff Elimination**

#### **Article 203. Tariff Elimination**

1. Except as otherwise provided in this Agreement, no Party may increase any existing customs duty, or adopt any new customs duty, on an originating good.
2. Except as otherwise provided in this Agreement, each Party shall eliminate its customs duties on originating goods, in accordance with Annex 203.2.
3. During the tariff elimination process the Parties agree to apply to originating goods traded between them the lesser of the

customs duties resulting from a comparison between the rate established in accordance with Annex 203.2 and the existing rate pursuant to Article II of GATT 1994.

4. On the request of a Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in Annex 203.2. Notwithstanding Article 2001 (Administration of this Agreement - The Joint Commission), a joint decision by the Parties to accelerate the elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to Annex 203.2 for that good when approved by each Party in accordance with its applicable legal procedures.

5. For greater certainty, a Party may:

(a) increase a customs duty to the level established in Annex 203.2 following a unilateral reduction; and

(b) maintain or increase a customs duty as authorized by this Agreement, the Dispute Settlement Body of the WTO or any agreement under the WTO Agreement.

## **Section C. Special Regimes**

### **Article 204. Temporary Admission of Goods**

1. Each Party shall grant duty-free temporary admission for the following goods, regardless of their origin and regardless of whether like, directly competitive or substitutable goods are available in the territory of the Party:

(a) professional equipment including equipment for the press or television, software, and broadcasting and cinematographic equipment, necessary for carrying out the business activity, trade or profession of a person who qualifies for temporary entry pursuant to Chapter Twelve (Temporary Entry for Business Persons);

(b) goods admitted for sports purposes and goods intended for display or demonstration; and

(c) commercial samples and advertising films and recordings.

2. Each Party, at the request of the person concerned and for reasons its customs authority considers valid, shall extend the time limit for temporary admission beyond the period initially fixed.

3. No Party may condition the duty-free temporary admission of a good referred to in subparagraphs 1 (a) or (b), other than to require that such good:

(a) be imported by a national or resident of the other Party who seeks temporary entry;

(b) be used solely by or under the personal supervision of such person in the exercise of the business activity, trade, profession or sport of that person;

(c) not be sold or leased while in its territory;

(d) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable on exportation of the good;

(e) be capable of identification when exported;

(f) be exported on the departure of that person or within such other period related to the purpose of the temporary admission; and

(g) be admitted in no greater quantity than is reasonable for its intended use.

4. No Party may condition the duty-free temporary admission of a good referred to in subparagraph 1(c), other than to require that such good:

(a) be imported solely for the solicitation of orders for goods, or services provided from the territory, of the other Party or a non-Party;

(b) not be sold, leased or put to any use other than exhibition or demonstration while in its territory;

(c) be capable of identification when exported;

(d) be exported within such period as is reasonably related to the purpose of the temporary importation;

(e) be imported in no greater quantity than is reasonable for its intended use; and

(f) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable on exportation of the good.

5. Where a good is temporarily admitted duty-free under paragraph 1 and any condition a Party imposes under paragraphs 3 and 4 has not been fulfilled, the Party may impose:

(a) the customs duty and any other charge that would be owed on entry or final importation of the good; and

(b) any penalties provided for under its law.

6. Each Party shall adopt procedures providing for the expeditious release of goods admitted under this Article. To the extent possible, such procedures shall provide that when such a good accompanies a national or resident of the other Party who is seeking temporary entry, the good shall be released with the entry of that national or resident.

7. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs port other than that through which it was admitted.

8. Each Party shall provide that its customs authority or other competent authority refund the security to the importer or another person responsible for a good admitted under this Article and release the importer or the other person of any liability for failure to export the good on presentation of satisfactory proof to the customs authority of the importing Party that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.

9. Except as otherwise provided in this Agreement, no Party:

(a) may prevent a vehicle or container used in international traffic that enters its territory from the territory of the other Party to exit its territory on any route that is reasonably related to the economic and prompt departure of such vehicle or container;

(b) may require any security or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a vehicle or container;

(c) may condition the release of any obligation, including any security, that it imposes in respect of the entry of a vehicle or container into its territory on its exit through any particular port of departure; or

(d) may require that the vehicle or carrier bringing a container from the territory of the other Party into its territory be the same vehicle or carrier that takes such container to the territory of the other Party.

10. For purposes of paragraph 9, "vehicle" means a truck, a truck tractor, a tractor, a trailer unit or trailer, a locomotive, or a railway car or other railroad equipment.

## **Article 205. Goods Re-entered after Repair or Alteration**

1. No Party may apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily exported from its territory to the territory of the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in the territory of the Party from which the good was exported for repair or alteration.

2. No Party may apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of the other Party for repair or alteration.

3. For purposes of this Article, repair or alteration does not include an operation or process that:

(a) destroys the essential characteristics of a good or creates a new or commercially different good; or

(b) transforms an unfinished good into a finished good.

## **Article 206. Duty-free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials**

Each Party shall grant duty-free entry to commercial samples of negligible value and to printed advertising materials imported from the territory of the other Party, regardless of their origin, but may require that:

(a) such samples be imported solely for the solicitation of orders for goods, or services provided from the territory, of the

other Party or a non-Party; or

(b) such advertising materials be imported in packets that each contain no more than one copy of each such material and that neither such materials nor packets form part of a larger consignment.

## **Section D. Non-Tariff Measures**

### **Article 207. Import and Export Restrictions**

1. Except as otherwise provided in this Agreement, no Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of the GATT 1994, and to this end Article XI of the GATT 1994 is incorporated into and made a part of this Agreement, mutatis mutandis.

2. The Parties understand that the GATT 1994 rights and obligations incorporated by paragraph 1 prohibit, subject to Article XI:2 of the GATT 1994, a Party from adopting or maintaining: (a) export and import price requirements, except as permitted in enforcement of countervailing and antidumping duty orders and undertakings; or (b) voluntary export restraints inconsistent with Article VI of the GATT 1994, as implemented under Article 18 of the SCM Agreement and Article 8.1 of the AD Agreement.

3. Paragraphs 1 and 2 do not apply to the measures set out in Annex 202.2. 4. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, no provision of this Agreement shall be construed to prevent the Party from:

(a) limiting or prohibiting the importation from the territory of the other Party of such good of that non-Party; or

(b) requiring as a condition of export of such good of the Party to the territory of the other Party, that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.

5. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, on the request of a Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing, or distribution arrangements in the other Party.

6. No Party may, as a condition for engaging in importation or for the import of a good, require a person of the other Party to establish or maintain a contractual relationship with a distributor in its territory.

7. Nothing in paragraph 6 prevents a Party from requiring the designation of an agent for the purpose of facilitating communications between regulatory authorities of the Party and a person of the other Party.

8. For purposes of paragraph 6, "distributor" means a person of a Party who is responsible for the commercial distribution, concession, or representation in the territory of that Party of goods of the other Party.

### **Article 208. Import Licensing**

1. No Party may adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.

2. Each Party shall notify the other Party of any existing import licensing procedures promptly after entry into force of this Agreement.

3. Each Party shall publish any new import licensing procedure and any modification to its existing import licensing procedures or list of products, whenever practicable 21 days prior to the effective date of the requirement but in all events no later than such effective date.

4. Each Party shall notify the other Party of any other new import licensing procedures and any modification to its existing import licensing procedures within 60 days of publication. Such publication shall be in accordance with the procedures as set out in the Import Licensing Agreement.

5. Notification provided under paragraphs 2 and 4 shall:

(a) include the information specified in Article 5 of the Import Licensing Agreement; and

(b) be without prejudice as to whether the import licensing procedure is consistent with this Agreement.

### **Article 209. Administrative Fees and Formalities**

1. Each Party shall ensure, in accordance with Article VIII:1 of the GATT 1994, that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III:2 of the GATT 1994, and antidumping and countervailing duties) imposed on or in connection with importation or exportation are limited to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.

2. No Party may require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party. 3. Each Party shall make available and maintain through the Internet a current list of the fees and charges it imposes in connection with importation or exportation.

## **Article 210. Export Taxes**

No Party may adopt or maintain any duty, tax, or other charge on the export of any good to the territory of the other Party, unless such duty, tax, or charge is also adopted or maintained on any such good when destined for domestic consumption.

## **Article 211. Customs Valuation**

The Customs Valuation Agreement shall govern the customs valuation rules applied by the Parties to their reciprocal trade.

## **Section E. Geographical Indications for Wines and Spirits**

### **Article 212. Geographical Indications for Wines and Spirits**

Pursuant to Part II, Section 3 of the TRIPS Agreement and as set out in Annex 212, each Party shall provide the legal means to protect geographical indications for wines and spirits.

## **Section F. Agriculture**

### **Article 213. Scope and Coverage**

1. This section applies to the measures adopted or maintained by the Parties related to agricultural goods.
2. For agricultural goods, in the event of any inconsistency between this Section and any other Section or Chapter of this Agreement, this Section shall prevail to the extent of the inconsistency.

### **Article 214. Administration and Implementation of Tariff-rate Quotas**

1. Each Party shall implement and administer its TRQs in accordance with Article XIII of the GATT 1994 and the Import Licensing Agreement.
2. Each Party shall ensure that:
  - (a) its procedures for administering its TRQs are transparent, made available to the public, timely, non-discriminatory, responsive to market conditions and minimally burdensome to trade;
  - (b) subject to subparagraph (c), any person of a Party that fulfills that Party's legal and administrative requirements shall be eligible to apply and to be considered for an import license or an in-quota quantity allocation under the Party's TRQs;
  - (c) it does not, under its TRQs:
    - (i) allocate any portion of an in-quota quantity to a producer or a producer's group,
    - (ii) condition access to an in-quota quantity on purchase of domestic production,
    - (iii) limit access to an in-quota quantity only to processors, or
    - (iv) allocate any portion of an in-quota quantity to a distributor or a distributor's group;
  - (d) only national governments, sub-national governments or state enterprises administer its TRQs, and that such administration is not delegated to other persons except as otherwise provided in this Agreement; and



(e) it allocates in-quota quantities under its TRQs in commercially viable shipping quantities and, to the maximum extent possible, in the amounts that importers request.

3. Each Party shall make every effort to administer its TRQs in a manner that allows importers to fully utilize them.

4. No Party may condition application for or use of an in-quota quantity allocation under a TRQ on the re-export of an agricultural good.

5. No Party may count food aid or other non-commercial shipments in determining whether an in-quota quantity under a TRQ has been filled.

6. On request of the exporting Party, the importing Party shall consult with the exporting Party regarding the administration of the importing Party's TRQs and licenses. Such consultations shall be deemed to satisfy the requirements of Article 2104 (Dispute Settlement - Consultations).

## **Article 215. Agricultural Export Subsidies**

1. The Parties share the objective of the multilateral elimination of agricultural export subsidies and shall work together toward an agreement in the WTO to eliminate those subsidies and avoid its reintroduction in any form.

2. A Party shall not maintain, introduce or reintroduce agricultural export subsidies on any agricultural good originating in or shipped from its territory that are exported directly or indirectly to the territory of the other Party.

3. If either Party maintains, introduces or re-introduces an export subsidy on a product that is exported to the other Party, the Party applying the measure shall, at the request of the other Party, consult with a view to agreeing on specific measures that the Parties may adopt to counter the effects of such export subsidy, including an increase of the rate of duty on such imports up to the applied Most-Favoured Nation (MFN) tariff. Such consultations shall be deemed to satisfy the requirements of Article 2104 (Dispute Settlement - Consultations).

## **Article 216. State Trading Enterprises**

1. The rights and obligations of the Parties with respect to state trading enterprises shall be governed by Article XVII of the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994, which are incorporated into and made part of this Agreement, mutatis mutandis.

2. The Parties agree to cooperate in the WTO negotiations to ensure transparency regarding the operation and maintenance of state trading enterprises.

## **Article 217. Domestic Support Measures for Agricultural Products**

1. The Parties agree to cooperate in the WTO agricultural negotiations in order to achieve a substantial reduction of production and trade-distorting domestic support measures.

2. If either Party maintains, introduces or re-introduces a domestic support measure that the other Party considers to distort bilateral trade covered by this Agreement, the Party applying the measure shall, at the request of the other Party, consult with a view to avoiding the nullification and impairment on the concessions granted under this Agreement. Such consultations shall be deemed to satisfy the requirements of Article 2104 (Dispute Settlement - Consultations).

## **Article 218. Price Band System**

Except as otherwise provided in this Agreement, Peru may maintain its Price Band System established in the D.S. N° 115-2001-EF and its amendments, with respect to the products subject to the application of the system as set out in Annex 218.

## **Section G. Institutional Provisions**

### **Article 219. Committee on Trade In Goods**

1. The Parties hereby establish a Committee on Trade in Goods, comprising representatives of each Party.

2. The Committee shall meet on the request of a Party or the Commission to consider matters under this Chapter, Chapter Three (Rules of Origin) and Chapter Four (Origin Procedures and Trade Facilitation).

3. The Committee's functions shall include, inter alia:

(a) promoting trade in goods between the Parties, including through consultations on accelerating tariff elimination under this Agreement and other issues as appropriate;

(b) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures, and, if appropriate, referring such matters to the Commission for its consideration;

(c) providing to the Committee on Trade-Related Cooperation advice and recommendations on technical assistance needs regarding matters relating to this Chapter, Chapter Three (Rules of Origin) Chapter Four (Origin Procedures and Trade Facilitation) and Chapter Seven (Emergency Action and Trade Remedies);

(d) reviewing future amendments to the Harmonized System to ensure that each Party's obligations under this Agreement are not altered and consulting to resolve any conflicts between:

(i) subsequent amendments to Harmonized System 2007 and Annex 203.2, or

(ii) Annex 203.2 and national nomenclatures; and

(e) consulting on and endeavouring to resolve any difference that may arise between the Parties on matters related to the classification of goods under the Harmonized System.

## **Article 220. Agricultural Sub-committee**

1. At the request of a Party, the Parties shall establish a Sub-Committee on Agriculture comprising representatives of both Parties.

2. The Sub-Committee shall have the following functions:

(a) monitoring and promoting cooperation on the implementation and administration of Section F, in a way that real access to agricultural goods is ensured;

(b) providing a forum for the Parties to consult on issues resulting from the implementation and administration of this Agreement for agricultural goods;

(c) consulting the Parties on matters related to Section F in coordination with other committees, sub-committees and other working groups established in this Agreement;

(d) evaluating agricultural trade development under this Agreement, its impacts in the agricultural sector of each party and the operation of the Agreement's tools, and recommending any necessary actions to the Committee on Trade in Goods;

(e) submitting to the Committee on Trade in Goods for its consideration any matter arising under this article;

(f) reporting to the Committee on Trade in Goods any matter relating to Section F; and

(g) undertaking any additional work that the Committee on Trade in Goods may assign.

3. The Sub-Committee shall meet within 60 days of a request by a Party or as otherwise agreed by the Parties. The meetings of the Sub-Committee shall be presided by the representatives of the hosting Party of the meeting. The Sub-Committee shall inform the Committee on Trade in Goods of the results of its meetings.

4. All the decisions taken by the Sub-Committee shall be reached by consensus.

## **Section H. Definitions**

### **Article 221. Definitions**

For purposes of this Chapter:

AD Agreement means the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994;

advertising films and recordings means recorded visual media or audio materials, consisting essentially of images and/or sound, showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of a Party, provided that such materials are of a kind suitable for exhibition to prospective customers but not

for broadcast to the general public;

agricultural export subsidies means export subsidies defined in Article 1(e) of the WTO Agreement on Agriculture;

agricultural goods means those goods referred to in Article 2 of the WTO Agreement on Agriculture;

commercial samples of negligible value means commercial samples having a value, individually or in the aggregate as shipped, of not more than one U.S. dollar, or the equivalent amount in the currency of the other Party, or so marked, torn, perforated or otherwise treated that they are unsuitable for sale or use except as commercial samples;

consular transactions means requirements that goods of a Party intended for export to the territory of the other Party must first be submitted for the supervision of the consul of the importing Party in the territory of 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;

consumed means

(a) actually consumed; or

(b) further processed or manufactured so as to result in a substantial change in the value, form or use of the good or in the production of another good;

customs duty includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

(a) charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994, in respect of like, directly competitive or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(b) antidumping or countervailing duty that is applied pursuant to a Party's domestic law; or

(c) fee or other charge in connection with importation commensurate with the cost of services rendered. duty-free means free of customs duty;

goods admitted for sports purposes means sports requisites for use in sports contests, demonstrations or training in the territory of the Party into whose territory such goods are temporarily admitted;

goods intended for display or demonstration includes their component parts, ancillary apparatus and accessories;

import licensing means an administrative procedure requiring the submission of an application or other documentation, other than that generally required for customs clearance purposes, to the relevant administrative body as a prior condition for importation into the territory of the importing Party;

Import Licensing Agreement means the WTO Agreement on Import Licensing Procedures;

printed advertising materials means those goods classified in Chapter 49 of the Harmonized System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials and posters, that are used to promote, publicize or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge;

SCM Agreement means the WTO Agreement on Subsidies and Countervailing Measures; and

TRQ means a tariff rate quota set out in Annex 203.2, subparagraphs 1(j) through (n).

## **Chapter Three. Rules of Origin**

### **Article 301. Originating Goods**

Except as otherwise provided in this Chapter, a good shall originate in the territory of a Party where:

(a) the good is wholly obtained or produced entirely in the territory of one or both of the Parties, as defined in Article 318;

(b) the good fulfills the requirements set out for that good in Annex 301 as a result of production occurring entirely in the territory of one or both of the Parties;

(c) the good is produced entirely in the territory of one or both of the Parties, exclusively from originating materials; or

(d) except as provided in Annex 301 or except for a good of Chapters 01 through 21, headings 39.01 through 39.15 or Chapters 50 through 63 of the Harmonized System, the good is produced entirely in the territory of one or both of the Parties but one or more of the non-originating materials used in the production of the good cannot satisfy the requirements set out in Annex 301 because both the good and the non-originating materials are classified in the same subheading, or heading that is not further subdivided into subheadings, provided that the value of the non-originating materials classified as or with the good does not exceed 55 per cent of the transaction value of the good; and the good satisfies all the other applicable requirements of this Chapter.

## **Article 302. Minimal Operations**

Except for sets or assortments of goods referred to in Article 310 or Annex 301, a good shall not be considered to be an originating good merely by reason of one or more of the following operations:

- (a) packaging, re-packaging or breaking up for retail sale of the good;
- (b) oiling, or applying anti-rust paint or protective coatings to the good; or
- (c) disassembly of the good into its parts.

## **Article 303. Value Test**

1. Except as provided in paragraph 2, where the applicable rule of origin in Annex 301 for the tariff provision under which a good is classified specifies a value test, the value test shall be satisfied provided the value of non-originating materials used in the production of the good does not exceed a given percentage of the transaction value of the good.

2. For purposes of a good classified under headings 87.01 through 87.08, at the choice of an exporter or a producer of such good, the value test shall be satisfied provided the value of non-originating materials used in the production of the good does not exceed a given percentage of either the transaction value or the net cost of the good.

3. The value of non-originating materials used by the producer in the production of a good shall not, for purposes of satisfying the value test under either paragraph 1 or 2, include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good.(1)

4. For purposes of calculating the net cost of a good under paragraph 2, the producer of the good may:

- (a) calculate the total cost incurred with respect to all goods produced by that producer, subtract any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, as well as non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocate the resulting net cost of those goods to the good;
- (b) calculate the total cost incurred with respect to all goods produced by that producer, reasonably allocate the total cost to the good, and then subtract any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs that are included in the portion of the total cost allocated to the good; or
- (c) reasonably allocate each cost that forms part of the total cost incurred with respect to the good so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, or non-allowable interest costs. (2)

(1) Paragraph 3 applies to intermediate materials. The "value of non-originating materials" in paragraphs 1 and 2 shall not include: (i) the value of any non-originating materials used by another producer to produce an originating material that is subsequently acquired and used in the production of the good by the producer of the good, or (ii) the value of non-originating materials used by the producer to produce an originating intermediate material.

(2) For greater certainty, sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs included in the value of materials used in the production of the good shall not be subtracted out of the net cost in the calculation under paragraph 2.

## **Article 304. Value of Materials**

1. For purposes of Articles 303 and 307, the value of non-originating materials, including non-originating component goods referred to in Article 310, shall be:

(a) the transaction value or the customs value of the materials at the time of their importation into a Party, adjusted, if necessary, to include freight, insurance, packing and all other costs incurred in transporting the materials to the place of importation; or

(b) in the case of domestic transactions, the value of the materials determined in accordance with the principles of the Customs Valuation Agreement in the same manner as international transactions, with such modifications as may be required by the circumstances.

2. Notwithstanding paragraph 1, the value of an intermediate material shall be:

(a) the total cost incurred with respect to all goods produced by the producer of the good that can be reasonably allocated to that intermediate material; or

(b) the sum of all costs that comprise the total cost incurred with respect to that intermediate material that can be reasonably allocated to that intermediate material.

## **Article 305. Intermediate Materials Used In Production**

1. If a non-originating material satisfies the requirements set out in Article 301 in the territory of one or both of the Parties, the resulting good shall be considered as originating and no account shall be taken of the non-originating material contained therein when that good is used in the subsequent production of another good.

2. For purposes of determining the origin of a good, a producer of a good may designate any intermediate material as a material to be taken into account as an originating or non-originating material, as the case may be, in determining whether the good satisfies the applicable requirements of the rules of origin.

## **Article 306. Accumulation**

1. For purposes of determining whether a good is an originating good, a good originating in the territory of one or both of the Parties shall be considered as originating in the territory of either of the Parties.

2. For purposes of determining whether a good is an originating good, the production of the good in the territory of one or both of the Parties by one or more producers shall, at the choice of the exporter or producer of the good for which preferential tariff treatment is claimed, be considered to have been performed in the territory of either of the Parties by that exporter or producer, provided that:

(a) all non-originating materials used in the production of the good satisfy the requirements set out in Annex 301 entirely in the territory of one or both of the Parties; and

(b) the good satisfies all other applicable requirements of this Chapter.

3. Subject to paragraph 4, where each Party has a trade agreement that, as contemplated by the WTO Agreement, concerns the establishment of a free trade area, with the same non-Party, the territory of the non-Party shall be deemed to form part of the territory of the free trade area established by this Agreement, for purposes of determining whether a good is an originating good under this Agreement.

4. A Party shall give effect to paragraph 3 only once provisions with effect equivalent to paragraph 3 are in force between each Party and the non-Party. The Parties may agree to limit such provisions to specified goods or to apply under specified conditions.

## **Article 307. De Minimis**

1. Except as provided in paragraphs 2 through 4, a good shall be considered to be an originating good if the value of all non-originating materials used in the production of the good that do not undergo an applicable change in tariff classification set out in Annex 301 does not exceed 10 per cent of the transaction value of the good, provided that:

(a) if the rule of origin of Annex 301 applicable to the good contains a percentage for the maximum value of non-originating materials, the value of such non-originating materials shall be included in calculating the value of non-originating materials; and

(b) the good satisfies all other applicable requirements of this Chapter.

2. Paragraph 1 does not apply to a non-originating material used in the production of a good of Chapters 01 through 21 of the Harmonized System unless the non-originating material is provided for in a different subheading from the good for which origin is being determined under this Article. Nevertheless, paragraph 1 does apply when the good and the non-originating material are classified in the same subheading, provided that the material is different from the good.

3. A good of Chapters 50 through 60 of the Harmonized System that does not originate because certain non-originating fibres or yarns used in the production of the good do not fulfil the requirements set out in Annex 301, shall nonetheless be considered an originating good if the total weight of all such fibres or yarns does not exceed 15 per cent of the total weight of that good.

4. A good of Chapters 61 through 63 of the Harmonized System that does not originate because certain non-originating fibres or yarns used in the production of the component of the good that determines the tariff classification of that good do not fulfil the requirements set out for that good in Annex 301, shall nonetheless be considered an originating good if the total weight of all such fibres or yarns in that component does not exceed 15 per cent of the total weight of that component.

## **Article 308. Fungible Goods and Materials**

1. For purposes of determining whether a good is an originating good:

(a) where originating and non-originating fungible materials are used in the production of a good, the determination of whether the materials are originating materials may be made in accordance with any of the inventory management methods recognized in, or otherwise accepted by, the Generally Accepted Accounting Principles of the Party in which the production is performed; and

(b) where originating and non-originating fungible goods are physically combined or mixed in inventory in a Party and exported in the same form to another Party, the determination of whether the good is an originating good may be made in accordance with any of the inventory management methods recognized in, or otherwise accepted by, the Generally Accepted Accounting Principles of the Party from which the good is exported.

2. A Party shall ensure that the person that selected an inventory management method pursuant to paragraph 1 for a particular fungible good or material continues to use such inventory management method for that fungible good or material throughout the fiscal year of that person.

## **Article 309. Indirect Materials**

An indirect material shall be considered to be an originating material without regard to where it is produced.

## **Article 310. Sets or Assortments of Goods**

Except as provided in Annex 301, a set or assortment of goods, as referred to in General Rule 3 of the Harmonized System, shall be considered as originating, provided that:

(a) all the component goods, including packaging materials and containers, are originating; or

(b) where the set or assortment contains non-originating component goods, including packaging materials and containers, the value of the non-originating goods, including any non-originating packaging materials and containers for the set or assortment of goods, does not exceed 15 percent of the transaction value of the set or assortment of goods.

## **Article 311. Accessories, Spare Parts and Tools**

Accessories, spare parts and tools delivered with a good that form part of the good's standard accessories, spare parts or tools, shall be considered as originating if the good is an originating good, and shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable requirements set out in Annex 301 provided that:

(a) the accessories, spare parts and tools are not invoiced separately from the good, whether or not each is listed or detailed on the invoice; and

(b) the quantities and value of such accessories, spare parts, or tools are customary for the good.

## **Article 312. Packaging Materials and Containers for Retail Sale**

Except as provided for in Article 310, packaging materials and containers in which a good is packaged for retail sale shall be disregarded in determining:

- (a) whether all the non-originating materials undergo the applicable requirements set out in Annex 301; or
- (b) whether the good meets the requirements set out in subparagraphs (a) and (c) of Article 301.

### **Article 313. Packing Materials and Containers for Shipment**

Packing materials, containers, pallets or similar articles, in which a good is packed for shipment shall be disregarded in determining whether that good is originating.

### **Article 314. Transit and Transshipment**

An originating good that is exported from a Party shall maintain its originating status only if the good:

- (a) does not undergo further production or any other operation outside the territories of the Parties, other than unloading, reloading or any other operation necessary to preserve it in good condition or to transport the good to the territory of a Party; and
- (b) remains under customs control while outside the territories of the Parties.

### **Article 315. Interpretation and Application**

For purposes of this Chapter:

- (a) the basis for tariff classification in this Chapter is the Harmonized System;
- (b) where applying subparagraph (d) of Article 301, the determination of whether a heading or subheading under the Harmonized System provides for both a good and the materials that are used in the production of the good shall be made on the basis of the nomenclature of the heading or subheading and the relevant Section or Chapter Notes, in accordance with the General Rules for the Interpretation of the Harmonized System; and
- (c) all costs referred to in this Chapter shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

### **Article 316. Consultation and Modifications**

1. The Parties shall consult regularly to ensure that this Chapter is administered effectively, uniformly, and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this Chapter in accordance with Chapter Four (Origin Procedures and Trade Facilitation).
2. A Party that considers that this Chapter requires modification to take into account developments in production processes, lack of supply of originating materials or other matters may submit a proposed modification along with supporting rationale and any studies to the other Party for consideration and appropriate action under Chapter Two (National Treatment and Market Access for Goods).

### **Article 317. Short Supply**

1. For purposes of determining the origin of a good of Chapters 50 through 63 of the Harmonized System, at the request of an interested entity of a Party, a Party shall, to the extent possible within 45 days of receiving the request, temporarily allow fibre, yarn or fabric from a non-Party to be considered originating, if the Party determines, based on information it considers necessary that the fibre, yarn, or fabric is not available in commercial quantities in a timely manner in the territory of any Party. Each Party shall implement such short-supply allowances in accordance with its applicable legal procedures.
2. The Party receiving a request for a short supply allowance pursuant to paragraph 1 shall notify the other Party of the request to the extent possible within 10 days of receiving the request. A Party may decline to grant a short-supply allowance if the other Party does not also grant such an allowance.
3. The Committee on Trade in Goods shall establish procedures to guide the administration of the short-supply allowances referred to in paragraphs 1 and 2.

## Article 318. Definitions

For purposes of this Chapter:

aquaculture means the farming of aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from seedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production, such as regular stocking, feeding or protection from predators;

customs value means the value determined in accordance with the Customs Valuation Agreement;

fungible goods or fungible materials means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

Generally Accepted Accounting Principles means the principles used in the territory of each Party, which provide substantial authorized support to the recording of income, costs, expenses, assets and liabilities involved in the disclosure of information and preparation of financial statements. These principles may be broad guidelines of general application, as well as those standards, practices and procedures normally employed in accounting;

good means any merchandise, product, article or material;

goods wholly obtained or produced entirely in the territory of one or both of the Parties means:

(a) minerals and other non-living natural resources extracted in or taken from the territory of one or both of the Parties;

(b) plants and plant products harvested or gathered in the territory of one or both of the Parties;

(c) live animals born and raised in the territory of one or both of the Parties;

(d) goods obtained from live animals in the territory of one or both of the Parties;

(e) goods obtained from hunting, trapping, fishing or aquaculture in the territory of one or both of the Parties;

(f) goods (fish, shellfish and other marine life) taken from the sea, seabed or subsoil outside the territory of one or both of the Parties, by a vessel registered or recorded with a Party, or leased or chartered by an enterprise established in the territory of a Party, and entitled to fly its flag, or listed with a Party;

(g) goods produced on board a factory ship from the goods referred to in subparagraph (f), provided such factory ship is registered or recorded with a Party, or leased or chartered by an enterprise established in the territory of a Party, and entitled to fly its flag, or listed with a Party;

(h) goods, other than fish, shellfish and other marine life, taken or extracted from the seabed, ocean floor or subsoil, outside the territories of the Parties by a Party or a person of a Party, provided that such Party or person of such Party has rights to exploit such seabed, ocean floor or subsoil;

(i) goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in a non-Party;

(j) waste and scrap derived from production in the territory of one or both of the Parties; and

(k) goods produced in the territory of one or both of the Parties exclusively from goods referred to in subparagraphs (a) through (j), or from their derivatives, at any stage of production;

indirect material means a good used in the production, testing or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

(a) fuel and energy;

(b) tools, dies and moulds;

(c) spare parts and materials used in the maintenance of equipment and buildings;

(d) lubricants, greases, compounding materials and other materials used in the production or the operation of equipment and buildings; (e) gloves, glasses, footwear, clothing, safety equipment and safety 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 the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

intermediate material means a material that is produced by a producer of a good and used in the production of that good;

listed with a Party means a foreign registered ship bare-boat chartered to a citizen of a Party or a permanent resident or a corporation of a Party, which is listed in the Register of Ships of the Party for the duration of the charter and whose registration in the foreign country is suspended for the duration of the charter;

material means a good that is used in the production of another good, and includes a part or an ingredient;

net cost means total cost minus sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

non-allowable interest costs means interest costs incurred by a producer that exceed 1000 basis points above the applicable national government interest rate identified for comparable maturities; non-originating good or non-originating material means a good or material that does not qualify as originating under this Chapter;

other costs means all costs recorded on the books of the producer that are not product costs or period costs;

period costs means those costs other than product costs that are expensed in the period in which they are incurred, including selling expenses and general and administrative expenses;

product costs means those costs that are associated with the production of a good and include the value of materials, direct labour costs, and direct overhead;

producer means a person who grows, mines, raises, harvests, fishes, traps, hunts, manufactures, processes or assembles a good;

production means growing, mining, harvesting, raising, fishing, hunting, trapping, manufacturing, processing or assembling a good;

reasonably allocate means to apportion in a manner appropriate to the circumstances;

royalties means payments of any kind, including payments under technical assistance or similar agreements, made as consideration for the use or right to use any copyright, literary, artistic or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance or similar agreements that can be related to specific services such as:

(a) personnel training, without regard to where performed; and

(b) if performed in the territory of one or both Parties, engineering, tooling, die-setting, software design and similar computer services, or other services; sales promotion, marketing and after-sales service costs means the following costs related to sales promotion, marketing and after-sales service:

(a) sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature (product brochures, catalogues, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(b) sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(c) salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), travelling and living expenses, membership and professional fees, for sales promotion, marketing and after-sales service personnel;

(d) recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(e) product liability insurance;

(f) office supplies for sales promotion, marketing and after-sales service of goods, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(g) telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(h) rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centres;

(i) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centres, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer; and

(j) payments by the producer to other persons for warranty repairs;

shipping and packing costs means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding costs of preparing and packaging the good for retail sale;

tariff provision means a chapter, heading or subheading of the Harmonized System;

total cost means all product costs, period costs and other costs for a good incurred in the territory of one or both of the Parties. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

transaction value means the price actually paid or payable for a good or material with respect to a transaction of the producer of the good, adjusted in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of the Customs Valuation Agreement;

transaction value of the good, including for purposes of Article 310 and Annex 301 the transaction value of sets or assortments of goods, means:

(a) the transaction value of a good when sold by the producer at the place of production; or

(b) the customs value of that good, and adjusted, if necessary, to exclude any costs incurred subsequent to the good leaving the place of production, such as freight and insurance.

## **Chapter Four. Origin Procedures and Trade Facilitation**

### **Section A. Origin Procedures**

#### **Article 401. Certificate of Origin**

1. The Parties shall establish, no later than the date of entry into force of this Agreement, a Certificate of Origin for the purpose of certifying that a good being exported from the territory of a Party into the territory of the other Party qualifies as an originating good. The Certificate of Origin may thereafter be modified as the Parties may decide.

2. Each Party shall permit the Certificate of Origin to be provided to its respective competent authority in English, French or Spanish. Each Party may nonetheless require the importer to submit a translation of the Certificate of Origin into a language required by its domestic law.

3. Each Party shall:

(a) require an exporter in its territory to complete and sign a Certificate of Origin for any exportation of a good for which an importer may claim preferential tariff treatment upon importation of the good into the territory of the other Party; and

(b) provide that where an exporter in its territory is not the producer of the good, the exporter may complete and sign a Certificate of Origin on the basis of:

(i) its knowledge of whether the good qualifies as an originating good, based on information in the exporter's possession,

(ii) its reasonable reliance on the producer's written representation that the good qualifies as an originating good, or

(iii) a completed and signed Certificate of Origin for the good, voluntarily provided to the exporter by the producer.

4. Each Party shall permit a Certificate of Origin to apply to:

(a) a single importation of one or more goods into the Party's territory; or

(b) multiple importations of identical goods into the Party's territory that occur within a specified period not exceeding 12

months.

5. Each Party shall ensure that the Certificate of Origin is accepted by its competent authority for four years after the date on which the Certificate of Origin was signed.

## **Article 402. Obligations Regarding Importations**

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

- (a) make a written declaration, based on a valid Certificate of Origin, that the good qualifies as an originating good;
- (b) have the Certificate of Origin in its possession at the time the declaration is made;
- (c) provide, on the request of that Party's competent authority, the Certificate of Origin and, if required by that competent authority, such other documentation relating to the importation of the good in accordance with the domestic law of the importing Party; and
- (d) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that the Certificate of Origin on which a declaration was based contains information that is not correct.

2. For the purpose of subparagraph 1(c), where the competent authority of the importing Party determines that the Certificate of Origin has not been completed in accordance with Article 401, the importing Party shall ensure that the importer is granted a period of not less than five working days to provide the competent authority with a corrected Certificate of Origin.

3. Where an importer claims preferential tariff treatment for a good imported from the territory of the other Party:

- (a) the importing Party may deny preferential tariff treatment to the good if the importer fails to comply with any requirement under this Chapter; and
- (b) the importing Party shall not subject the importer to penalties for making an incorrect declaration, if the importer voluntarily makes a correction of the declaration pursuant to subparagraph 1(d).

4. Each Party, through its competent authority, may require an importer to demonstrate that a good for which the importer claims preferential tariff treatment was shipped in accordance with Article 314 (Rules of Origin - Transit and Transshipment) by providing:

- (a) bills of lading or waybills indicating the shipping route and all points of shipment and transshipment prior to the importation of the good; and
- (b) where the good is shipped through or transhipped outside the territories of the Parties, a copy of the customs control documents indicating to that competent authority that the good remained under customs control while outside the territories of the Parties.

5. Where a good would have qualified as an originating good when it was imported into the territory of a Party, but no claim for preferential tariff treatment was made at the time of importation, the importing Party shall permit the importer, within a period of at least one year or for such longer period specified by the importing Party's law after the date of importation, to make a claim for preferential tariff treatment and apply for a refund of any excess duties paid as a result of the good not having been accorded preferential tariff treatment, on presentation to the importing Party of:

- (a) a written declaration stating that the good was originating at the time of importation; (b) the Certificate of Origin; and
- (c) such other documentation relating to the importation of the good as the importing Party may require.

## **Article 403. Exceptions**

A Party shall not require a Certificate of Origin for:

- (a) an importation of a good whose customs value does not exceed US\$1,000 or its equivalent amount in the Party's currency, or such higher amount as it may establish, except that it may require that the invoice accompanying the importation include a statement from the exporter certifying that the good qualifies as an originating good; or
- (b) an importation of a good for which the importing Party has waived the requirement for a Certificate of Origin; provided

that the importation does not form part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of Articles 401 and 402.

## **Article 404. Obligations Regarding Exportations**

1. Each Party shall provide that:

(a) on request of its competent authority, an exporter in its territory, or a producer in its territory that has provided a Certificate of Origin to that exporter in accordance with subparagraph 3(b)(iii) of Article 401, shall provide a copy of the Certificate of Origin to that competent authority;

(b) where an exporter or a producer in its territory has provided a Certificate of Origin and has reason to believe that the Certificate of Origin contains or is based on incorrect information, the exporter or producer shall promptly notify in writing any change that could affect the accuracy or validity of the Certificate of Origin to every person to whom the exporter or producer has provided the Certificate of Origin; and

(c) a false certification by an exporter or a producer in its territory that a good to be exported to the territory of the other Party is originating, shall be subject to penalties equivalent to those that would apply to an importer in the territory of the exporting Party that makes a false statement or representation in connection with an importation, with appropriate modifications.

2. Each Party may apply such measures as the circumstances may warrant where an exporter or a producer in its territory fails to comply with any requirement of this Chapter.

3. Neither Party may impose penalties on an exporter or a producer in its territory that voluntarily provides written notification pursuant to subparagraph 1(b) with respect to the making of an incorrect certification.

## **Article 405. Records**

1. Each Party shall provide that an exporter or a producer in its territory that provides a Certificate of Origin in accordance with Article 401 shall maintain, for a minimum of five years after the date the certification was issued or for such longer period as specified in the Party's laws and regulations, all records necessary to demonstrate that the good for which the producer or exporter provided the Certificate of Origin was an originating good, including records concerning:

(a) the purchase of, cost of, value of, shipping of and payment for, the exported good;

(b) the purchase of, cost of, value of, and payment for all materials, including indirect materials, used in the production of the exported good; and (c) the production of the good in the form in which it was exported.

2. Each Party shall require an importer claiming preferential tariff treatment for a good imported into its territory to maintain documentation relating to the importation of the good, including a copy of the Certificate of Origin, for five years after the date of importation of the good or for such longer period as specified in the Party's laws and regulations.

3. Where a Party requires importers, exporters and producers in its territory to maintain documentation or records in relation to the origin of a good, in accordance with that Party's laws and regulations, it shall permit them to do so in any medium, provided that the documentation or records can be retrieved and printed.

4. A Party may deny preferential tariff treatment to a good that is the subject of an origin verification where the exporter, producer or importer of the good that is required to maintain records or documentation under this Article:

(a) fails to maintain records or documentation relevant to determining the origin of the good in accordance with the requirements of the Chapter; or

(b) denies access to such records or documentation.

## **Article 406. Origin Verifications**

1. For purposes of determining whether a good imported into its territory from the territory of the other Party qualifies as an originating good, a Party may, through its competent authority, conduct a verification by means of:

(a) verification letters that request information from the exporter or producer of the good in the territory of the other Party;

(b) written questionnaires to the exporter or producer of the good in the territory of the other Party;

(c) visits to the premises of an exporter or producer in the territory of the other Party to review the records referred to in paragraph 1 of Article 405 and observe the facilities used in the production of the good; or

(d) such other procedures as the Parties may agree.

2. For purposes of verifying the origin of a good, the importing Party may request the importer of the good to voluntarily obtain and supply written information voluntarily provided by the exporter or producer of the good in the territory of the other Party, provided that the importing Party shall not consider the failure or refusal of the importer to obtain and supply such information as a failure of the exporter or producer to supply the information or as a ground for denying preferential tariff treatment.

3. Each Party shall allow an exporter or producer who receives a verification letter or a questionnaire pursuant to subparagraphs 1(a) and (b) not less than 30 days from the date of receipt of such letter or questionnaire to provide the information and documentation required or the completed questionnaire. On written request by the exporter or producer made during that period, the importing Party may grant the exporter or producer a single extension of the deadline for a period not exceeding 30 days.

4. Where an exporter or producer fails to provide the information and documentation required by a verification letter or fails to return a duly completed questionnaire within the period or extension set out in paragraph 3, an importing Party may deny preferential tariff treatment to the good in question in accordance with the procedures set out in paragraphs 15 and 16.

5. Prior to conducting a verification visit pursuant to subparagraph 1(c), a Party shall, through its competent authority:

(a) deliver a written notification of its intention to conduct the visit:

(i) to the exporter or producer whose premises are to be visited,

(ii) to the competent authority of the Party in whose territory the visit is to occur, and

(iii) if requested by the Party in whose territory the visit is to occur, to the embassy of that Party in the territory of the Party proposing to conduct the visit, and

(b) obtain the written consent of the exporter or producer whose premises are to be visited.

6. The notification referred to in paragraph 5 shall include:

(a) the name of the entity issuing the notification;

(b) the name of the exporter or producer whose premises are to be visited;

(c) the date and place of the proposed verification visit;

(d) the scope of the proposed verification visit, including specific reference to the good that is the subject of the verification;

(e) the names and titles of the officials performing the verification visit; and

(f) the legal authority for the verification visit.

7. Where, within 30 days of receipt of a notification pursuant to paragraph 5, an exporter or producer has not given its written consent to a proposed verification visit, the notifying Party may deny preferential tariff treatment to the good that would have been the subject of the visit.

8. The Party whose competent authority receives notification pursuant to subparagraph 5(a)(ii), may, within 15 days of receipt of the notification, postpone the proposed verification visit for a period not exceeding 60 days from the date of such receipt or for such longer period as the Parties may decide.

9. Each Party shall allow, when the exporter or producer receives notification pursuant to subparagraph 5(a)(i), the exporter or producer to, on a single occasion, within 15 days of receipt of the notification, request the postponement of the proposed verification visit for a period not exceeding 60 days from the date of such receipt or for such longer period as agreed to by the notifying Party.

10. A Party shall not deny preferential tariff treatment to a good based solely on the postponement of a verification visit pursuant to paragraphs 8 or 9.

11. A Party shall permit an exporter or a producer whose good is the subject of a verification visit by the other Party to

designate two observers to be present during the visit, provided that:

(a) the observers shall only participate as such; and

(b) the failure of the exporter or producer to designate observers shall not result in the postponement of the visit.

12. Where a Party conducts a verification of origin involving a value test, "de minimis" calculation or any other provision in Chapter Three (Rules of Origin) to which Generally Accepted Accounting Principles may be relevant, it shall apply such principles as are applicable in the territory of the other Party.

13. Where the producer of a good calculates the net cost of the good as set out in Article 303 (Rules of Origin - Value Test), the importing Party shall not verify, during the time period over which the net cost is being calculated, whether the good satisfies the value test.

14. The Party conducting a verification shall provide the exporter or producer whose good is the subject of the verification with a written determination of whether the good qualifies as an originating good, including findings of fact and the legal basis for the determination.

15. Where a Party determines as a result of an origin verification that the good that is the subject of the verification does not qualify as an originating good, the Party shall include in its written determination under paragraph 14 a written notice of intent to deny preferential tariff treatment of the good.

16. A written notice of intent under paragraph 15 shall provide for a period of not less than 30 days during which the exporter or producer of the good may provide, with regard to that determination, written comments or additional information that will be taken into account by the Party prior to completing the verification.

17. Where verifications by a Party indicate a pattern of conduct by an exporter or a producer of false or unsupported representations that a good imported into its territory qualifies as an originating good, the Party may withhold preferential tariff treatment to identical goods exported or produced by such person until that person establishes compliance with Chapter Three (Rules of Origin), in accordance with the Party's domestic law.

18. Where, in conducting a verification of origin of a good imported into its territory under this Article, a Party conducts a verification of the origin of a material that is used in the production of the good, the Party shall conduct the verification of the origin of the material in accordance with the procedures set out in paragraphs 1, 2, 3, 5, 6, 8, 9, 10, 11, 13 and 20.

19. Where a Party conducts a verification pursuant to paragraph 18, the Party may consider the material to be non-originating in determining whether the good is an originating good where the producer or supplier of that material does not allow the Party access to information required to make a determination of whether the material is an originating material by the following or other means:

(a) denial of access to its records;

(b) failure to respond to a verification questionnaire or letter; or

(c) refusal to consent, within 30 days of receipt of notification under paragraph 7, to a verification visit.

20. For purposes of this Article, the importing Party shall ensure that all communication to the exporter or producer and to the Party of export be sent by any means that can produce a confirmation of receipt. The periods referred to in this Article will begin from the date of such receipt.

## **Article 407. Uniform Regulations**

1. The Parties may establish and implement, through their respective laws, regulations or administrative policies, Uniform Regulations regarding the interpretation, application and administration of this Chapter.

2. Each Party shall implement any modification of or addition to the Uniform Regulations within such period as the Parties may agree.

## **Section B. Trade Facilitation**

### **Article 408. Objectives and Principles**

1. With the objectives of facilitating trade under this Agreement and cooperating in pursuing trade facilitation initiatives on a multilateral basis, the Parties agree to administer their import and export processes for goods traded under this Agreement

on the basis that:

- (a) procedures be efficient to reduce costs for importers and exporters and simplified where appropriate to achieve such efficiencies;
- (b) procedures be based on any international trade instruments or standards to which the Parties have agreed;
- (c) entry procedures be transparent to ensure predictability for importers and exporters;
- (d) measures to facilitate trade also support mechanisms to protect persons through effective enforcement of and compliance with national requirements;
- (e) the personnel and procedures involved in those processes reflect standards of integrity;
- (f) the development of significant modifications to procedures of a Party include, in advance of implementation, consultations with the representatives of the trading community of that Party;
- (g) procedures be based on risk assessment principles to focus compliance efforts on transactions that merit attention, thereby promoting effective use of resources and encouraging compliance with the obligations of importers and exporters; and
- (h) the Parties encourage cooperation, technical assistance and the exchange of information, including information on best practices, for the purpose of promoting the application of and compliance with the trade facilitation measures agreed upon under this Agreement.

## **Article 409. Transparency**

1. In addition to the obligations set out in Section A of Chapter Nineteen (Transparency), each Party shall publish, including on the internet, its customs laws, customs regulations and general administrative procedures governing customs matters.
2. Each Party shall designate or maintain one or more contact points to address inquiries by interested persons concerning customs matters and make available on the internet information concerning the procedures for making such inquiries. A Party may provide that such contact points be contacted by any means, including electronic mail.
3. To the extent possible, each Party shall publish in advance, including on the internet, any regulations of general application governing customs matters that it proposes to adopt and provide interested persons the opportunity to comment prior to their adoption.

## **Article 410. Release of Goods**

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties.
2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures:
  - (a) for the release of goods within a period no greater than that required to ensure compliance with its law;
  - (b) that allow goods, and to the greatest extent possible controlled or regulated goods, to be released at the first point of arrival, without temporary transfer to warehouses or other facilities; and
  - (c) that allow importers to withdraw goods from customs before all applicable customs duties, taxes, and fees have been paid. Before releasing the goods, a Party may require an importer to provide sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument, covering the ultimate payment of the customs duties, taxes, fees in connection with the importation of the goods.
3. Each Party shall, to the greatest extent possible, ensure that its authorities and agencies involved in border and other export and import controls cooperate and coordinate to facilitate trade by, inter alia, converging import and export data and documentation requirements, and establishing a single location for one-time documentary and physical verification of consignments.
4. Each Party shall adopt or maintain procedures under which goods in need of emergency clearance may be released 24 hours a day, seven days a week, including on holidays.
5. Each Party shall ensure that the requirements of its agencies related to the import and export of goods are coordinated to

facilitate trade, regardless of whether these requirements are administered by an agency or on behalf of that agency by the customs administration. In furtherance of this objective, each Party shall harmonize the data requirements of its respective agencies with the objective of allowing importers and exporters to present all required data to one agency.

6. Each Party shall establish means of consultation with its trade and business communities to promote greater cooperation and the electronic exchange of information between the Party and those communities.

## **Article 411. Automation**

Each Party shall use information technologies that expedites procedures for the release of goods and shall:

(a) establish a means of providing for the electronic exchange of information between customs administrations and the trading community for the purpose of encouraging rapid release procedures;

(b) use international standards for such electronic exchange of information;

(c) develop electronic systems that are compatible as between the Parties' respective customs authorities to facilitate government-to-government exchange of international trade data;

(d) develop a set of common data elements and processes in accordance with WCO Customs Data Model and related WCO recommendations and guidelines;

(e) provide for advance electronic submission and processing of information and data before arrival of the goods to allow for release of goods on arrival;

(f) employ electronic or automated systems for risk analysis and targeting; and

(g) work towards developing or maintaining a fully interconnected and compatible system for a single window in order to facilitate trade between the Parties.

## **Article 412. Risk Management**

1. Each Party shall facilitate and simplify the process and procedures for the release of low-risk goods, and shall improve controls on the release of high-risk goods. For these purposes, the Parties shall base their examination and release procedures and their post-entry verification procedures on risk assessment principles, rather than examining each and every shipment offered for entry in a comprehensive manner for compliance with all import requirements. This shall not preclude the Parties from conducting quality control and compliance reviews, which may require more extensive examinations.

2. The Parties shall cooperate to carry out an express and efficient release of goods. To this end, the Parties should take into account any certification made in the Party of export relating to the supply chain trade.

## **Article 413. Paperless Trade Administration**

1. Each Party shall endeavour to make available by electronic means customs forms that are required for the import or export of goods.

2. Each Party shall, in accordance with its domestic law and procedures, permit the customs forms referred to in paragraph 1 to be submitted in electronic format.

## **Article 414. Cooperation**

1. The Parties shall endeavour to cooperate in international fora, such as the WCO, to achieve mutually-recognized goals, such as those set out in the WCO Framework of Standards to Secure and Facilitate Global Trade.

2. The Parties recognize that technical cooperation between the Parties is fundamental to facilitating compliance with the obligations set forth in this Agreement and for reaching a better degree of trade facilitation.

3. The Parties, through their respective competent authorities, agree to develop a technical cooperation programme in customs-related areas under mutually agreed terms, including scope, timing and cost of cooperative measures.

4. The Parties shall cooperate:



- (a) in the enforcement of their respective customs-related laws or regulations implementing this Agreement;
- (b) to the extent practicable and for purposes of facilitating the flow of trade between them, in such customs-related matters as the collection and exchange of statistics regarding the importation and exportation of goods, the harmonization of documentation used in trade and the standardization of data elements;
- (c) to the extent practicable, to harmonize of customs laboratories' methods and exchange of information and personnel between the customs laboratories;
- (d) to the extent practicable, in jointly organizing training programmes on customs-related issues, such as simulated audit environment exercises, for the officials and users who directly participate in customs procedures;
- (e) in the development of effective mechanisms for communicating with the trade and business communities;
- (f) to the extent practicable, in developing verification standards and a framework to ensure that both Parties act consistently in determining that goods imported into their territories are originating in accordance with Chapter Three (Rules of Origin); and
- (g) to the extent practicable, to exchange information to assist each other in the tariff classification, valuation and determination of origin for preferential tariff treatment and country of origin marking purposes of imported and exported goods.

5. With respect to goods considered originating in accordance with Article 306 (Rules of Origin - Accumulation), the Parties may cooperate with a non-Party to develop procedures based on the principles of this Chapter.

6. Where a Party has reasonable grounds to suspect that an offence related to a fraudulent claim for preferential tariff treatment pursuant to this Agreement has occurred, it may request the other Party to provide it with information pertaining to the offence, including:

- (a) the name and address of persons and companies relevant to the investigation of the offence;
- (b) shipping information relevant to the offence;
- (c) customs clearance and accounting records or equivalent records for goods or materials imported into the territory of the Party;
- (d) information related to the sourcing of materials, including indirect materials used in the production of goods exported from its territory; and
- (e) information related to production capacity of an exporter or producer who has exported goods to the territory of the other Party.

7. Where a Party makes a request pursuant to paragraph 6, it shall:

- (a) make its request in writing;
- (b) specify the grounds for suspicion of a fraudulent claim for preferential tariff treatment that has been made pursuant to this Agreement and the purposes for which the information is sought; and
- (c) identify the requested information with sufficient specificity for the other Party to locate and provide the information.

8. Following the receipt of a request for information pursuant to paragraphs 6 and 7, a Party shall provide relevant information in accordance with its domestic law.

9. Officials of a Party may, with the consent of the other Party, contact or visit an exporter, supplier or producer in the territory of the other Party in order to obtain information to further an investigation related to a suspected fraudulent claim for preferential tariff treatment made pursuant to this Agreement.

10. Each Party shall, where possible on its own initiative, provide the other Party with information relating to fraudulent claims for preferential treatment made pursuant to this Agreement.

11. Nothing in this Chapter shall be construed to require a Party to furnish or to allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's law protecting personal privacy.

12. For purposes of this Article, all documents provided by a Party shall be considered authentic.

13. Where a Party declines or postpones sharing information requested by the other Party pursuant to this Article, the Party shall provide reasons to the other Party.

14. The Parties shall explore negotiating policies and procedures on customs cooperation, such as a Customs Mutual Assistance Agreement.

## **Article 415. Confidentiality**

1. Each Party shall maintain, in accordance with its domestic law, the confidentiality of the information collected pursuant to this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information. Where the Party receiving the information is required by its law to disclose information, that Party shall notify the Party or person who provided that information.

2. Each Party shall ensure that the confidential information collected pursuant to this Chapter shall not be used for purposes other than the administration and enforcement of determinations of origin and of customs matters, except with the permission of the person or Party who provided the confidential information.

3. Notwithstanding paragraph 2, information collected pursuant to this Chapter or Chapter Three (Rules of Origin) may be used in any administrative, judicial or quasi-judicial proceedings instituted for failure to comply with customs related laws and regulations implementing Chapter Three (Rules of Origin) and this Chapter. A Party shall notify the person or Party who provided the information in advance of such use.

## **Article 416. Express Shipments**

1. Each Party shall adopt or maintain separate and expedited customs procedures for express shipments, while maintaining appropriate customs control and selection. These procedures shall:

(a) where applicable, use the World Customs Organization Guidelines for the Immediate Release of Consignments by Customs;

(b) to the extent possible or where applicable, provide for advance electronic submission and processing of information before physical arrival of express shipments to enable their release upon arrival;

(c) to the extent possible, provide for clearance of certain goods with a minimum of documentation;

(d) provide for release of express shipments within a period no greater than that required to ensure compliance within its legislation;

(e) not be limited by a maximum weight; and

(f) consistent with the Party's legislation, provide simplified documentary requirements for the entry of low value goods as determined by that Party.

## **Article 417. Review and Appeal**

1. Each Party shall, in accordance with its domestic law, ensure that decisions (1) made pursuant to this Chapter, are subject to:

(a) at least one level of administrative review independent of either the official or office responsible for the decision under review; and

(b) judicial or quasi-judicial review of the decision taken at the final level of administrative review.

(1) For Peru, for purposes of this Article, "decisions" means an administrative act.

## **Article 418. Penalties**

Each Party shall adopt or maintain measures that allow for the imposition of criminal, civil or administrative penalties for violations of its laws and regulations relating to this Chapter.

## **Article 419. Advance Rulings**

1. Each Party shall, through its competent authority, provide for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory, to an importer in its territory or an exporter or a producer in the territory of the other Party, or its duly authorized representative as provided by domestic law, on the basis of the facts and circumstances presented by such importer, exporter or producer of the good, concerning:

(a) tariff classification, applicable rate of customs duty, any tax applicable on importation or information about the application of quotas;

(b) whether a good re-entered into the territory of a Party after being temporarily exported to the territory of the other Party for repair or alteration qualifies for duty-free treatment in accordance with Article 205 (National Treatment and Market Access for Goods - Goods Reentered after Repair or Alteration);

(c) whether a good is originating in accordance with Chapter Three (Rules of Origin);

(d) such other matters as the Parties may decide upon.

2. Each Party shall adopt or maintain procedures for the issuance of advance rulings, including a detailed description of the information reasonably required to process an application for a ruling and, where practical and useful, a sample of the good.

3. Each Party shall provide that its competent authority:

(a) may, at any time during the course of an evaluation of an application for an advance ruling, request supplemental information to be provided within a period of not less than 30 days, from the person requesting the ruling;

(b) shall, after it has obtained all necessary information from the person requesting an advance ruling, issue the ruling within 150 days; and

(c) shall provide to the person requesting the ruling a full explanation of the reasons for the ruling.

4. Where application for an advance ruling involves an issue that is the subject of:

(a) a verification of origin;

(b) a review by or appeal to the competent authority; or

(c) judicial or quasi-judicial review in its territory; the competent authority may decline or postpone the issuance of the ruling.

5. Each Party shall provide that an advance ruling shall be in effect from its date of issuance, or another date specified in the ruling, and will remain in effect unless relevant facts or circumstances change. Each Party shall apply an advance ruling to importations into its territory of the good for which the ruling was requested, beginning on the date of its issuance or such later date as may be specified in the ruling.

6. Each Party shall provide consistent treatment with respect to the application for advance rulings, provided that the facts and circumstances are identical in all material respects.

7. The issuing Party may modify or revoke an advance ruling after the Party notifies the requester. The issuing Party may modify or revoke a ruling retroactively only if the ruling was based on inaccurate or false information.

8. Each Party shall provide that, where an importer claims that the preferential tariff treatment accorded to an imported good should be governed by an advance ruling, the competent authority may evaluate whether the facts or circumstances of the importation are consistent with those on which the advance ruling was based.

## **Article 420. Trade Facilitation Sub-committee**

1. The Parties hereby establish a Sub-Committee on Trade Facilitation, which shall meet on request of the Committee on Trade in Goods or upon request of either Party. The functions of the Sub-Committee shall include:

(a) proposing to the Committee on Trade in Goods the adoption of customs practices and standards that facilitate commercial exchange between the Parties, in accordance with international standards;

(b) proposing to the Committee on Trade in Goods solutions to disagreements related to:

(i) interpretation, application and administration of this Chapter,

(ii) tariff classification and customs valuation matters related to determinations of origin, and

(iii) practices and procedures adopted by either Party that may affect the flow of trade between the Parties.

(c) any other matter considered appropriate by the Committee on Trade in Goods.

2. If the Sub-Committee on Trade Facilitation does not reach a decision on tariff classification, the Parties shall refer the matter to the WCO for decision. The Parties shall, to the greatest extent possible, apply that decision.

## **Article 421. Future Work Programme**

1. With the objective of developing further steps to facilitate trade under this Agreement, the Parties shall, as appropriate, identify and submit for the consideration of the Commission new measures aimed at facilitating trade between the Parties, taking as a basis the objectives and principles set forth in Article 408 of this Chapter.

2. Through the Parties' respective customs administrations and other border-related authorities as appropriate, the Parties shall review relevant international initiatives on trade facilitation, including, inter alia, the Compendium of Trade Facilitation Recommendations, developed by the United Nations Conference on Trade and Development and the United Nations Economic Commission for Europe, to identify areas where further joint action would facilitate trade between the Parties and promote shared multilateral objectives.

## **Article 422. Implementation**

The obligations in Article 419 shall take effect for Peru three years after the date of entry into force of this Agreement.

## **Article 423. Definitions**

For purposes of this Chapter:

competent authority means:

(a) with respect to Canada, the Canada Border Services Agency or its successor notified in writing to the other Party;

(b) with respect to Peru, Ministerio de Comercio Exterior y Turismo, or the Superintendencia Nacional de Administración Tributaria, or their successors, in accordance with its domestic law, notified in writing to the other Party;

customs administration means the authority that is responsible under the law of a Party for the administration of customs laws and regulations;

identical goods means goods that are the same in all respects, including physical characteristics, quality and reputation, irrespective of minor differences in appearance that are not relevant to a determination of origin of those goods under Chapter Three (Rules of Origin);

pattern of conduct means at least two instances of false or unsupported representations by an exporter or producer of a good resulting in at least two written determinations being sent to that exporter or producer;

WCO means the World Customs Organization.

The following terms shall be interpreted as defined in Chapter Three (Rules of Origin):

(a) indirect material;

(b) material;

(c) net cost of a good;

(d) producer;

(e) production;

(f) customs value.

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

## **Article 501. Objectives**

The objectives of this Chapter are to:

- (a) protect human, animal and plant life or health in the territory of each Party;
- (b) ensure that the Parties' sanitary and phytosanitary measures do not create unjustified barriers to trade; and
- (c) enhance the implementation of the SPS Agreement.

## **Article 502. Scope and Coverage**

This Chapter applies to all sanitary and phytosanitary measures that may, directly or indirectly, affect trade between the Parties.

## **Article 503. Relation to other Agreements**

1. The Parties affirm their existing rights and obligations with respect to each other under the SPS Agreement.
2. The Parties agree to use the WTO dispute settlement procedures for any formal disputes regarding sanitary and phytosanitary measures.

## **Article 504. Committee on Sanitary and Phytosanitary Measures**

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Measures, comprising representatives of each Party from the relevant trade and regulatory agencies, ministries or other institutions who have responsibilities for sanitary and phytosanitary matters.

2. The Committee shall consider, among other things:

(a) the design, implementation and review of technical and institutional co-operation programs;

(b) consultations related to the development and application of sanitary and phytosanitary measures;

(c) as needed and taking into account guidelines developed or being developed by the WTO Committee on Sanitary and Phytosanitary Measures, the Committees of the Codex Alimentarius Commission, the International Plant Protection Convention (IPPC) and the World Organization for Animal Health (OIE), the development of guidelines for the practical implementation of:

(i) mutual recognition and equivalence agreements,

(ii) the recognition of pest- or disease-free areas,

(iii) risk assessment procedures, or

(iv) product control, inspection and approval procedures;

(d) the review and the assessment of progress of specific bilateral market access issues;

(e) the promotion of enhanced transparency of sanitary and phytosanitary measures;

(f) the identification and resolution of sanitary and phytosanitary-related problems;

(g) the promotion of bilateral consultations on sanitary and phytosanitary issues under discussion in multilateral and international fora such as the WTO SPS Committee, the Committees of the Codex Alimentarius Commission, the IPPC, the OIE, and other international and regional fora on food safety, human, animal and plant health;

and (h) the establishment of ad hoc technical working groups, as needed. (1)

4. Unless the Parties otherwise agree, the Committee shall meet no later than six months following the entry into force of this Agreement. The Committee shall establish its rules of procedures and work program at that meeting.

5. Following its initial meeting, the Committee shall meet as required, normally on an annual basis, and report on its activities and work program to the Commission as necessary. The Committee may meet in person, through teleconference, videoconference, or by any other means that ensures its effective operation and the fulfilment of its responsibilities.

6. Upon entry into force of this Agreement, each Party shall designate a Contact Point to coordinate the Committee's agenda and to facilitate communications on trade-related sanitary and phytosanitary matters.

(1) As used in subparagraphs (b) and (g), "consultations" does not mean consultations pursuant to Article 2104 (Dispute Settlement – Consultations).

## **Article 505. Sanitary and Phytosanitary Issue Avoidance and Resolution**

1. The Parties agree to work expeditiously to resolve any specific sanitary and phytosanitary trade-related issues and, to this end, commit to carry out the necessary technical level discussions to resolve any such issue including an assessment of the scientific basis of the measure at issue.

2. The Parties agree to avail themselves of all reasonable options to avoid and resolve sanitary and phytosanitary issues, including meeting in person, using technological means (via teleconference, videoconference) and opportunities that may arise in international fora.

3. In the event that the Parties are unable to resolve an issue expeditiously by technical level discussions, a Party may refer the issue to the Committee. The Committee should consider any matter referred to it as expeditiously as possible.

4. Pursuant to paragraph 3, in the event that the Committee is unable to resolve an issue expeditiously, the Committee shall, upon request of a Party, report promptly to the Commission on the matter.

## **Chapter Six. Technical Barriers to Trade**

### **Article 601. Objectives**

The objectives of this Chapter are to:

(a) improve the implementation of the TBT Agreement;

(b) ensure that standards, technical regulations, and conformity assessment procedures, including those related to metrology, do not create unnecessary obstacles to trade; and

(c) enhance joint cooperation between the Parties in order to resolve specific issues related to the development and application of standards, technical regulations and conformity assessment procedures, thereby facilitating the conduct of international trade in goods.

### **Article 602. Affirmation of the Tbt Agreement**

Further to Article 102 (Initial Provisions and General Definitions - Relation to Other Agreements), the Parties affirm with respect to each other their existing rights and obligations under the TBT Agreement.

### **Article 603. Scope and Coverage**

1. The provisions of this Chapter apply to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures, including those related to metrology, of national government bodies that may affect trade in goods between the Parties.

2. This Chapter does not apply to:

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

(b) sanitary and phytosanitary measures.

### **Article 604. Joint Cooperation**

1. The Parties shall strengthen their joint cooperation in the areas of standards, technical regulations, conformity assessment and metrology with a view to facilitating the conduct of trade between the Parties.

2. Pursuant to paragraph 1, the Parties shall seek to identify, develop and promote bilateral initiatives regarding standards,

technical regulations, conformity assessment procedures and metrology that are appropriate for particular issues or sectors, taking into consideration their experience in regional and multilateral arrangements or agreements. Such initiatives may include: regulatory or technical cooperation programs directed at reaching effective and full compliance with the obligations set forth in this Chapter and the TBT Agreement; initiatives to develop common views on good regulatory practices such as transparency, the use of equivalency and regulatory impact assessment; and the use of mechanisms to facilitate the acceptance of the results of conformity assessment procedures conducted in the other Party's territory.

3. A Party shall give positive consideration to any reasonable sector-specific proposal made by the other Party for further cooperation under this Chapter.

## **Article 605. International Standards**

1. Each Party shall use relevant international standards, guides and recommendations as a basis for its technical regulations and conformity assessment procedures in accordance with Articles 2.4 and 5.4 of the TBT Agreement.

2. In determining whether an international standard, guide, or recommendation exists within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement, each Party shall follow, to the greatest possible extent, the principles set out in Decisions and Recommendations adopted by the Committee since 1 January 1995, G/TBT/1/Rev.8, 23 May 2002, Section IX (Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement), issued by the TBT Committee.

3. 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 through the Parties' activities in regional and international standardizing bodies of which they are both members.

## **Article 606. Technical Regulations**

1. Each Party shall give positive consideration to accepting technical regulations of the other Party as equivalent to its own, even if the regulations differ from its own, provided it is satisfied that the regulations adequately fulfil 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. The Parties recognize that it may be necessary to develop common views, methods and procedures to facilitate the use of equivalency.

3. At the request of a Party that has an interest in developing a technical regulation similar to that of the other Party, the other Party shall provide, to the extent practicable, relevant information, studies, or other documents, except for confidential information, on which it has relied in the development of the technical regulation. The Parties recognize that it may be necessary to agree on the scope of a specific request.

## **Article 607. Conformity Assessment**

1. The Parties recognize that a broad range of mechanisms exists to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in the other Party's territory. For example:

(a) a Party may adopt accreditation procedures for qualifying conformity assessment bodies located in the territory of the other Party;

(b) a Party may recognize the results of conformity assessment procedures conducted in the territory of the other Party;

(c) a Party may agree with the other Party to accept the results of conformity assessment procedures that bodies located in the other Party's territory conduct with respect to specific technical regulations;

(d) a Party may designate conformity assessment bodies located in the territory of the other Party;

(e) a conformity assessment body located in the territory of a Party may enter into voluntary arrangements with a conformity assessment body located in the territory of the other Party to accept the results of each other's assessment procedures; and

(f) the importing Party may rely on a supplier's declaration of conformity.

2. Where a Party does not accept the results of a conformity assessment procedure conducted in the territory of the other Party, it shall, on request of the other Party, explain the reasons for its decision so that corrective action may be taken, when

appropriate, by the requesting Party.

3. Where a Party declines a request of the other Party to enter into negotiations to conclude an agreement for recognition in its territory of the results of conformity assessment procedures conducted by bodies in the other Party's territory, it shall explain the reasons for its decision.

4. Further to paragraph 2 of Article 604, the Parties shall cooperate by:

(a) exchanging information on the range of mechanisms that exist to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in the other Party's territory;

(b) promoting the accreditation of conformity assessment bodies on the basis of relevant international standards and guides;

(c) promoting the acceptance of results of conformity assessment bodies that have been recognized under a relevant multilateral agreement or arrangement between their respective accreditation systems or bodies; and

(d) encouraging their conformity assessment bodies, including accreditation bodies, to participate in cooperation arrangements that promote the acceptance of conformity assessment results.

## **Article 608. Transparency**

1. Each Party shall ensure that transparency procedures regarding the development of technical regulations and conformity assessment procedures allow interested parties to participate at an early appropriate stage when amendments can still be introduced and comments taken into account, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise. Where a consultation process on the development of technical regulations and conformity assessment procedures is open to the public, each Party shall permit persons of the other Party to participate on terms no less favourable than those accorded to its own persons.

2. Each Party shall recommend to standardization bodies in its territory that they observe paragraph 1 with respect to their consultation processes for the development of standards and voluntary conformity assessment procedures.

3. Each Party shall transmit electronically to the other Party's contact point, established under Article 10 of the TBT Agreement at the same time it submits its notification to the WTO Central Registry of Notifications 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.

4. Each Party shall transmit electronically to the other Party's contact point its proposed technical regulations and conformity assessment procedures that are in accordance with the technical content of the relevant international standards and that may have an effect on trade.

5. The transmission of technical regulations and conformity assessment procedures made pursuant to paragraphs 3 and 4 shall include an electronic link to, or a copy of, the full text of the document.

6. Further to subparagraph 3(a) and paragraph 4, each Party shall allow a period of at least 60 days following transmission of proposed technical regulations and conformity assessment procedures for the public and the other Party to provide written comments. A Party shall give positive consideration to a reasonable request for extending the comment period.

7. Each Party shall publish or otherwise make publicly available, in print or electronically, its responses or a summary of its responses, to significant comments it receives, no later than the date it publishes the final technical regulation or conformity assessment procedure.

8. Each Party shall, upon 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.

9. A Party shall give positive consideration to a reasonable request from the other Party, received prior to the end of the comment period following the transmission of a proposed technical regulation, to establish or extend the period of time between the adoption of the technical regulation and the day upon which it is applicable, except where such delay would be ineffective in fulfilling the legitimate objectives pursued.



10. Each Party shall ensure that its adopted technical regulations and conformity assessment procedures are available on official websites that are freely and publicly available.

11 Where a Party detains at a port of entry a good imported from the territory of the other Party on the ground that the good has failed to comply with a technical regulation, it shall immediately notify the importer of the reasons for the detention of the good.

12. Each Party shall implement this Article as soon as is practicable and under no circumstances later than two years from the date of entry into force of this Agreement.

## **Article 609. Country Coordinators on Technical Barriers to Trade**

1. The Country Coordinators designated in Annex 609.1 shall work jointly to facilitate the implementation of this Chapter and the cooperation between the Parties on matters pertaining to this Chapter. 2. The Country Coordinators' functions include:

(a) monitoring the implementation and administration of this Chapter;

(b) promptly addressing any issue that a Party raises, under this Chapter or the TBT Agreement, related to the development, adoption or application of standards, technical regulations or conformity assessment procedures;

(c) enhancing joint cooperation by the Parties in the development and improvement of standards, technical regulations, conformity assessment procedures and metrology;

(d) exchanging information on standards, technical regulations, and conformity assessment procedures;

(e) on a Party's written request, consulting on any matter arising under this Chapter;

(f) reviewing this Chapter in the light of any developments in the TBT Committee or under the TBT Agreement, and, if necessary, developing recommendations for amendments to this Chapter;

(g) reporting to the Commission on the implementation of this Chapter as appropriate;

(h) establishing, if necessary to achieve the objectives of this Chapter, issue- or sector-specific ad hoc working groups;

(i) taking any other steps that the Parties consider will assist them in implementing this Chapter and the TBT Agreement and in facilitating trade between the Parties.

3. Consultations under subparagraph 2(e) shall constitute consultations under Article 2104 (Dispute Settlement - Consultations) and shall be governed by the procedures set out in that Article.

4. The Country Coordinator of each Party is responsible for ensuring that the relevant institutions and persons in its territory participate, as appropriate, in the activities related to this Chapter and for coordinating such participation. The Country Coordinators shall elaborate their own work rules and shall meet at least once a year unless the Parties otherwise agree. The Country Coordinators shall carry out their work through communication channels agreed to by the Parties, which may include electronic mail, videoconferencing or other means.

## **Article 610. Information Exchange**

1. Where a Party makes a reasonable enquiry pursuant to the provisions of Articles 10.1 and 10.3 of the TBT Agreement, the other Party shall answer, in print or electronically, ordinarily within 30 days from the date of receipt of the enquiry, but may extend the period of time for answering by giving notice to the enquiring Party prior to the end of the 30 day period.

2. With respect to information exchanges referred to in paragraph 1, the Parties shall apply recommendations 3 and 4 of Section IV (Procedure for information exchanges) set out in Decisions and Recommendations adopted by the Committee since 1 January 1995, G/TBT/1/Rev. 8, 23 May, 2002, issued by the TBT Committee.

## **Article 611. Definitions**

For the purposes of this Chapter, the terms and definitions of Annex 1 of the WTO Agreement on Technical Barriers to Trade shall apply;

For the purposes of this Chapter:

national government body means a central government body as defined in Annex 1 of the WTO Agreement on Technical Barriers to Trade;

TBT Agreement means the WTO Agreement on Technical Barriers to Trade; and

TBT Committee means the WTO Committee on Technical Barriers to Trade.

## **Chapter Seven. Emergency Action and Trade Remedies**

### **Section A. Emergency Action**

#### **Article 701. Article XIX of the GATT 1994 and the Agreement on Safeguards**

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Agreement on Safeguards, which shall exclusively govern global safeguard actions, including the resolution of any disputes in respect thereof.

2. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of the GATT 1994 and the Agreement on Safeguards, except that a Party taking a global safeguard measure may exclude imports of an originating good of the other Party if the competent investigating authority of that Party concludes that such imports are not a substantial cause of serious injury or threat thereof.

3. A Party may not apply, with respect to the same good, at the same time:

(a) an emergency action; and

(b) a measure under Article XIX of the GATT 1994 and the Agreement on Safeguards.

#### **Article 702. Imposition of an Emergency Action**

1. A Party may apply a measure described in paragraph 2, during the transition period only, if as a result of the reduction or elimination of a duty pursuant to this Agreement, an originating good is being imported into the Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good.

2. If the conditions set out in paragraph 1 and Articles 703 and 704 are met, a Party may to the extent necessary to prevent or remedy serious injury, or threat thereof, and facilitate adjustment:

(a) suspend the further reduction of any rate of duty provided for under this Agreement on the good; or

(b) increase the rate of duty on the good to a level not to exceed the lesser of:

(i) the most-favoured-nation (MFN) applied rate of duty in effect at the time the action is taken, and

(ii) the base tariff rate as provided in the schedule to Annex 203.2.

#### **Article 703. Notification and Consultation**

1. A Party shall, in writing, promptly notify the other Party on and request consultations (1) in connection with: (a) initiating an emergency action proceeding; (b) making a finding of serious injury or threat thereof under the conditions set out in paragraph 1 of Article 702; and (c) applying an emergency action.

2. A Party shall, without delay, provide to the other Party a copy of the public version of any notice or any report by a competent investigating authority, issued in connection with matters notified pursuant to paragraph 1.

3. If a Party accepts a request for consultations made pursuant paragraph 1, the Parties shall enter into consultations to review the notification under paragraph 1 or any document issued in connection with the emergency action proceeding.

4. Any emergency action shall be initiated no later than one year after the date of institution of the proceeding.

(1) As used in this Article, "consultations" does not mean consultations pursuant to Article 2104 (Dispute Settlement – Consultations).

#### **Article 704. Standards for an Emergency Action**

1. No Party may maintain an emergency action:

(a) for a period exceeding three years; or

(b) beyond the expiration of the transition period.

2. No Party may apply an emergency action against a good more than twice. A Party may take a second emergency action only if the period of time that has elapsed since the end of the first action is at least half the period of application of the first action.

3. On the termination of any emergency action, the rate of duty shall be the rate that, according to Annex 203.2 for the staged elimination of the tariff, would have been in effect but for the action.

4. In order to facilitate adjustment in a situation where the expected duration of an emergency action is over one year, the Party applying a measure under Article 702 shall progressively liberalize it at regular intervals during the period of application.

5. A Party taking an emergency action under Article 702 shall provide to the exporting Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action. If the Parties are unable to agree on compensation, the Party against whose goods the action is taken may take tariff action having trade effects substantially equivalent to the action taken under Article 702. The Party taking the tariff action shall apply the action only for the minimum period necessary to achieve the substantially equivalent effects and in any event, only while the measure under Article 702 is being applied.

## **Article 705. Investigation Procedures and Transparency Requirements**

1. Each Party shall ensure the consistent, impartial and reasonable administration of its laws, regulations, decisions and rulings governing all emergency action proceedings.

2. Each Party shall entrust determinations of serious injury, or threat thereof, in an emergency action proceeding to a competent investigating authority. Such determinations shall be subject to review by judicial or administrative tribunals, to the extent provided by domestic law. Negative injury determinations shall not be subject to modification, except by such review. The competent investigating authority empowered under domestic law to conduct such proceedings shall be provided with the necessary resources to enable it to fulfill its duties.

3. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for emergency action proceedings, in accordance with the requirements set out in paragraph 4 and 5 of this Article.

4. A Party shall apply an emergency action only following an investigation by the Party's competent authority in accordance with Articles 3, 4.2(b) and 4.2(c) of the Agreement on Safeguards. To this end, Articles 3, 4.2(b) and 4.2(c) of the Agreement on Safeguards are incorporated into and made part of this Agreement, mutatis mutandis.

5. In the investigation described in paragraph 3, a Party shall comply with the requirements of Article 4.2(a) of the Agreement on Safeguards. To this end, Article 4.2(a) of the Agreement on Safeguards is incorporated into and made part of this Agreement, mutatis mutandis.

## **Section B. Antidumping and Countervailing Measures**

### **Article 706. Antidumping and Countervailing Measures**

1. Each Party retains its rights and obligations under the WTO Agreement, which shall exclusively govern the application of antidumping and countervailing measures.

2. The WTO shall have exclusive jurisdiction in respect of the matters referred to in paragraph 1 and no provision of this Agreement, including the provisions of Chapter Twenty-One (Dispute Settlement), shall be construed as imposing any rights or obligations on the Parties with respect to antidumping or countervailing measures.

### **Article 707. Definitions**

For purposes of this Chapter:

Agreement on Safeguards means the WTO Agreement on Safeguards;

competent investigating authority means:

(a) in the case of Canada, the Canadian International Trade Tribunal, or its successor; and

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

domestic industry means with respect to an imported good, the producers as a whole of the like or directly competitive good operating in the territory of a Party or those whose collective production of the like or directly competitive good constitutes a major proportion of the total domestic production of such good;

emergency action means any emergency action described in Article 702;

serious injury means a significant overall impairment of a domestic industry;

substantial cause means a cause that is important and not less important than any other cause;

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; and

transition period means the seven year period beginning on the entry into force of this Agreement, except where the tariff elimination for the good against which the action is taken occurs over a longer period of time, in which case the transition period shall be the period of the staged tariff elimination for that good.

## **Chapter Eight. Investment**

### **Section A. Substantive Obligations**

#### **Article 801. Scope and Coverage**

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:

(a) investors of the other Party;

(b) covered investments; and

(c) with respect to Articles 807, 809 and 810, all investments in the territory of the Party.

2. For greater certainty, the provisions of this Chapter do not bind a Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

#### **Article 802. Relation to other Chapters**

1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.

2. A requirement by a Party that a service supplier of the other Party post a bond or other form of financial security as a condition of the cross-border supply of a service into its territory does not of itself make this Chapter applicable to the cross-border supply of the service. This Chapter applies to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that such bond or financial security is a covered investment.

3. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter Eleven (Financial Services).

4. Articles 906 (Cross-Border Trade in Services - Market Access) and 909 (Cross-Border Trade in Services - Domestic Regulation) are hereby incorporated into and made a part of this Chapter and apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment. (1)

(1) It is understood by the Parties that any reservation taken by a Party pursuant to Article 908 (Cross-Border Trade in Services - Non-Conforming Measures) against Article 906 (Cross-Border Trade in Services - Market Access) applies to measures of that Party covered under paragraph 4.

#### **Article 803. National Treatment**

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.
2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.
3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a sub-national government, treatment no less favourable than the treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of the Party of which it forms a part.

## **Article 804. Most-favoured-nation Treatment (2)**

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.
2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments of investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.
3. For greater certainty, the treatment accorded by a Party under this Article means, with respect to a sub-national government, treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of a non-Party.

(2) Article 804 shall be interpreted in accordance with Annex 804.1.

## **Article 805. Minimum Standard of Treatment**

1. Each Party shall accord to covered investments treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security.
2. The concepts of "fair and equitable treatment" and "full protection and security" in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.
3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

## **Article 806. Senior Management and Boards of Directors**

1. A Party may not require that an enterprise of that Party, that is a covered investment, appoint to senior management positions individuals of any particular nationality.
2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise that is a covered investment be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

## **Article 807. Performance Requirements**

1. Neither Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of the other Party or of a non-Party in its territory:
  - (a) to export a given level or percentage of goods;
  - (b) to achieve a given level or percentage of domestic content;
  - (c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

(e) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to transfer technology, a production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority, to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement; or

(g) to supply exclusively from the territory of the Party the goods it produces or the services it provides to a specific regional market or to the world market.

2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with subparagraph 1(f). For greater certainty, Articles 803 and 804 apply to the measure.

3. Neither Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of the other Party or of a non-Party, on compliance with any of the following requirements:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(d) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings. 4. Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of the other Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

5. Paragraphs 1 and 3 do not apply to any requirement other than the requirements set out in those paragraphs.

6. The provisions of:

(a) subparagraphs 1(a), (b) and (c), and 3(a) and (b) do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs;

(b) subparagraphs 1(b), (c), (f) and (g), and 3(a) and (b) do not apply to procurement by a Party or a state enterprise; and

(c) subparagraphs 3(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

## **Article 808. Reservations and Exceptions**

1. Articles 803, 804, 806 and 807 do not apply to:

(a) any existing non-conforming measure that is maintained by (i) a national government, as set out in its Schedule to Annex I, or (ii) a sub-national government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 803, 804, 806 and 807.

2. Articles 803, 804, 806 and 807 do 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 to Annex II.

3. In respect of intellectual property rights, a Party may derogate from Articles 803, 804 and subparagraph 1(f) of Article 807 in a manner that is consistent with the TRIPS Agreement and waivers to the TRIPS Agreement adopted pursuant to Article IX

of the WTO Agreement.

4. The provisions of Articles 803, 804 and 806 do not apply to: (a) procurement by a Party or a state enterprise; or (b) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance.

## **Article 809. Health, Safety and Environmental Measures**

The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement.

## **Article 810. Corporate Social Responsibility**

Each Party should encourage enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate internationally recognized standards of corporate social responsibility in their internal policies, such as statements of principle that have been endorsed or are supported by the Parties. These principles address issues such as labour, the environment, human rights, community relations and anti-corruption. The Parties therefore remind those enterprises of the importance of incorporating such corporate social responsibility standards in their internal policies.

## **Article 811. Compensation for Losses**

1. Each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict, civil strife or a natural disaster.
2. Paragraph 1 shall not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 803 but for subparagraph 4(b) of Article 808.

## **Article 812. Expropriation (3)**

1. Neither Party may nationalize or expropriate a covered investment either directly, or indirectly through measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation"), except for a public purpose (4) , in accordance with due process of law, in a nondiscriminatory manner and on prompt, adequate and effective compensation.
2. Such compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.
3. Compensation shall be paid without delay and shall be fully realizable and freely transferable. Compensation shall be payable in a freely convertible currency and shall include interest at a commercially reasonable rate for that currency from the date of expropriation until date of payment.
4. The investor affected shall have a right under the law of the expropriating Party to prompt review of its case and of the valuation of its investment by a judicial or other independent authority of that Party in accordance with the principles set out in this Article.
5. This Article shall not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the WTO Agreement.

(3) For greater certainty, paragraph 1 of Article 812 shall be interpreted in accordance with Annex 812.1.

(4) The term "public purpose" shall be interpreted in accordance with international law. It is not meant to create any inconsistency with the

same or similar concepts in the domestic law of either Party.

## **Article 813. Transfers**

1. Each Party shall permit all transfers relating to a covered investment to be made freely, and without delay, into and out of its territory. Such transfers include:

(a) contributions to capital;

(b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment;

(c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;

(d) payments made under a contract entered into by the investor, or the covered investment, including payments made pursuant to a loan agreement;

(e) payments made pursuant to Articles 811 and 812; and

(f) payments arising under Section B.

2. Each Party shall permit transfers relating to a covered investment to be made in the convertible currency in which the capital was originally invested, or in any other convertible currency agreed to by the investor and the Party concerned. Unless otherwise agreed by the investor, transfers shall be made at the market rate of exchange applicable on the date of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer 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;

(c) criminal or penal offences;

(d) reports of transfers of currency or other monetary instruments; or

(e) ensuring the satisfaction of judgments in adjudicatory proceedings.

4. Neither Party may require its investors to transfer, or penalize its investors for failing to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party.

5. Paragraph 4 shall not be construed to prevent a Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters in subparagraphs (a) through (e) of paragraph 3.

6. Notwithstanding paragraph 1, a Party may restrict transfers in kind in circumstances where it could otherwise restrict transfers under the WTO Agreement and as set out in paragraph 3.

## **Article 814. Subrogation**

1. If a Party or any agency thereof makes a payment to any of its investors under a guarantee or a contract of insurance it has entered into in respect of an investment, the other Party shall recognize the validity of the subrogation in favour of the Party or agency to any right or title held by the investor.

2. A Party or any agency thereof, which is subrogated to the rights of an investor in accordance with paragraph 1 of this Article, shall be entitled in all circumstances to the same rights as those of the investor in respect of the investment. Such rights may be exercised by the Party or any agency thereof, or by the investor if the Party or any agency thereof so authorizes.

## **Article 815. Denial of Benefits**

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such Party and to



investments of such investor if investors of a non-Party own or control the enterprise and the denying Party 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 enterprises or to its investments.

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such Party and to investments of such investors if investors of a non-Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.

## **Article 816. Special Formalities and Information Requirements**

1. Nothing in Article 803 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of covered investments, such as a requirement that investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 803 or 804, a Party may require an investor of the other Party, or its covered investments, to provide information concerning that investment solely for informational or statistical purposes, provided that such requests are reasonable and not unduly burdensome. The Party shall protect any confidential information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

## **Article 817. Committee on Investment**

1. The Parties hereby establish a Committee on Investment, comprising representatives of each Party.

2. The Committee shall provide a forum for the Parties to consult on issues related to this Chapter that are referred to it by a Party. The Committee shall meet at such times as agreed by the Parties and should work to promote cooperation and facilitate joint initiatives, which may address issues such as corporate social responsibility and investment facilitation.

## **Section B. Settlement of Disputes between an Investor and the Host Party**

### **Article 818. Purpose**

Without prejudice to the rights and obligations of the Parties under Chapter Twenty-One (Dispute Settlement), this Section establishes a mechanism for the settlement of investment disputes.

### **Article 819. Claim by an Investor of a Party on Its Own Behalf**

1. An investor of a Party may submit to arbitration under this Section a claim that the other Party has breached:

(a) an obligation under Section A, other than an obligation under paragraph 4 of Article 802, Articles 809, 810 or 816;

(b) an obligation under subparagraph 3(a) of Article 1305 (Competition Policy, Monopolies and State Enterprises - Designated Monopolies) or paragraph 2 of Article 1306 (Competition Policy, Monopolies and State Enterprises - State Enterprises), only to the extent that a designated monopoly or state enterprise has acted in a manner inconsistent with the Party's obligations under Section A, other than an obligation under paragraph 4 of Article 802, Articles 809, 810 or 816; or

(c) a legal stability agreement referred to in paragraph 2 of this Article, and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

2. A claim by an investor that a tax measure of a Party is in breach of a legal stability agreement between the national government authorities of a Party and the investor concerning an investment may be submitted to arbitration only where:

(a) the legal stability agreement was entered into after 20 June 2007; or

(b) the legal stability agreement existed on 20 June 2007, and

(i) the tax measure was adopted after the date of entry into force of this Agreement; and

(ii) the claim is not related to any tax matter in dispute between the investor or its investment and the Party before the entry

into force of this Agreement,

and in either case, the taxation authorities of the Parties, no later than six months after the investor gives notice of its intention to submit the claim to arbitration, have not jointly determined that the tax measure does not contravene the legal stability agreement. The investor shall refer the issue of whether the tax measure does not contravene the legal stability agreement for a determination to the taxation authorities of the Parties at the same time that it gives notice under Article 821.

## **Article 820. Claim by an Investor of a Party on Behalf of an Enterprise**

1. An investor of a Party, on behalf of an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the other Party has breached:

(a) an obligation under Section A, other than an obligation under paragraph 4 of Article 802, or Articles 809, 810 or 816; or

(b) an obligation under subparagraph 3(a) of Article 1305 (Competition Policy, Monopolies and State Enterprises - Designated Monopolies) or paragraph 2 of Article 1306 (Competition Policy, Monopolies and State Enterprises - State Enterprises), only to the extent that a designated monopoly or state enterprise has acted in a manner inconsistent with the Party's obligations under Section A, other than an obligation under paragraph 4 of Article 802, Articles 809, 810 or 816; or

(c) a legal stability agreement referred to in paragraph 2 of this Article, and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. A claim by an investor, on behalf of an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, that a tax measure of a Party is in breach of a legal stability agreement between the national government authorities of a Party and the enterprise may be submitted to arbitration only where:

(a) the legal stability agreement was entered into after 20 June 2007; or

(b) the legal stability agreement existed on 20 June 2007, and

(i) the tax measure was adopted after the date of entry into force of this Agreement, and

(ii) the claim is not related to any tax matter in dispute between the investor or its investment and the Party before the entry into force of this Agreement, and in either case, the taxation authorities of the Parties, no later than six months after the investor gives notice of its intention to submit the claim to arbitration, have not jointly determined that the tax measure does not contravene the legal stability agreement. The investor shall refer the issue of whether the tax measure does not contravene the legal stability agreement for a determination to the taxation authorities of the Parties at the same time that it gives notice under Article 821.

3. Where an investor makes a claim under this Article and the investor or a non-controlling investor in the enterprise makes a claim under Article 819 arising out of the same events that gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration under Article 824, the claims should be heard together by a Tribunal established under Article 829, unless the Tribunal finds that the interests of a disputing party would be prejudiced thereby.

4. An investment may not make a claim under this Section.

## **Article 821. Notice of Intent to Submit a Claim to Arbitration**

1. The disputing investor shall deliver to the disputing Party a written notice of its intent to submit a claim to arbitration at least six months before the claim is submitted. The notice shall specify:

(a) the name and address of the disputing investor and, where a claim is made under Article 820, the name and address of the enterprise;

(b) the provisions of this Agreement alleged to have been breached and any other relevant provisions;

(c) the issues and the factual basis for the claim, including the measures at issue; and

(d) the relief sought and the approximate amount of damages claimed.

2. The disputing investor shall also deliver, with its Notice of Intent to Submit a Claim to Arbitration, evidence establishing that it is an investor of the other Party.

## **Article 822. Settlement of a Claim Through Consultation**

1. Before a disputing investor may submit a claim to arbitration, the disputing parties shall first hold consultations in an attempt to settle a claim amicably.
2. Consultations shall be held within six months of the submission of the Notice of Intent to Submit a Claim to Arbitration, unless the disputing parties otherwise agree.
3. The place of consultation shall be the capital of the disputing Party, unless the disputing parties otherwise agree.

## **Article 823. Conditions Precedent to Submission of a Claim to Arbitration**

1. A disputing investor may submit a claim to arbitration under Article 819 only if:
  - (a) the disputing investor consents to arbitration in accordance with the procedures set out in this Section;
  - (b) at least six months have elapsed since the events giving rise to the claim;
  - (c) not more than 39 months have elapsed from the date on which the disputing investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage thereby;
  - (d) the disputing investor has delivered the Notice of Intent required under Article 821, in accordance with the requirements of that Article, at least six months prior to submitting the claim; and
  - (e) the disputing investor and, where the claim is for loss or damage to an interest in an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 819, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.
2. A disputing investor may submit a claim to arbitration under Article 820 only if:
  - (a) both the disputing investor and the enterprise consent to arbitration in accordance with the procedures set out in this Section;
  - (b) at least six months have elapsed since the events giving rise to the claim;
  - (c) not more than 39 months have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage thereby;
  - (d) the disputing investor has delivered the Notice of Intent required under Article 821, in accordance with the requirements of that Article, at least six months prior to submitting the claim; and
  - (e) both the disputing investor and the enterprise waive their right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 820, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.
3. A consent and waiver required by this Article shall be in the form provided for in Annex 823.1, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration.
4. An investor may submit a claim relating to taxation measures covered by this Chapter to arbitration under this Section only if the taxation authorities of the Parties fail to reach the joint determinations specified in paragraph 8 of Article 2203 (Exceptions - Taxation), paragraph 2 of Article 819 and paragraph 2 of Article 820 within six months of being notified in accordance with those provisions.
5. A waiver from the enterprise under subparagraphs 1(e) or 2(e) shall not be required only where a disputing Party has deprived a disputing investor of control of an enterprise.
6. Failure to meet any of the conditions precedent provided for in paragraphs 1 through 4 shall nullify the consent of the Parties given in Article 825.

## **Article 824. Submission of a Claim to Arbitration**

1. Except as provided in Annex 824.1, a disputing investor who meets the conditions precedent in Article 823 may submit the claim to arbitration under:

- (a) the ICSID Convention, provided that both the disputing Party and the Party of the disputing investor are parties to the Convention;
- (b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the disputing investor, but not both, is a party to the ICSID Convention;
- (c) the UNCITRAL Arbitration Rules; or
- (d) any other body of rules approved by the Commission as available for arbitrations under this Section.

2. The Commission shall have the power to make rules supplementing the applicable arbitral rules and may amend any rules of its own making. Such rules shall be binding on a Tribunal established under this Section, and on individual arbitrators serving on such a Tribunal.

3. The applicable arbitration rules shall govern the arbitration except to the extent modified by this Section, and supplemented by any rules adopted by the Commission under this Section.

## **Article 825. Consent to Arbitration**

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Section.

2. The consent given in paragraph 1 and the submission by a disputing investor of a claim to arbitration shall satisfy the requirement of:

- (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties;
- (b) Article II of the New York Convention for an agreement in writing; and
- (c) Article I of the Inter-American Convention for an agreement.

## **Article 826. Arbitrators**

1. Except in respect of a Tribunal established under Article 829, and unless the disputing parties agree otherwise, the Tribunal shall comprise three arbitrators. One arbitrator shall be appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, shall be appointed by agreement of the disputing parties.

2. Arbitrators shall:

- (a) have expertise or experience in public international law, international trade or international investment rules or the resolution of disputes arising under international trade or international investment agreements;
- (b) be independent of, and not be affiliated with or take instructions from, either Party or the disputing investor; and
- (c) comply with any Code of Conduct for Dispute Settlement as agreed by the Commission.

3. The disputing parties should agree upon the arbitrators' remuneration. If the disputing parties do not agree on such remuneration before the constitution of the Tribunal, the prevailing ICSID rate for arbitrators shall apply.

4. The Commission may establish rules relating to expenses incurred by the Tribunal.

## **Article 827. Constitution of a Tribunal When a Party Fails to Appoint an Arbitrator or the Disputing Parties Are Unable to Agree on a Presiding Arbitrator**

If a Tribunal, other than a Tribunal established under Article 829, has not been constituted within 90 days after the date that a claim is submitted to arbitration, either disputing party may ask the Secretary-General to appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed, except that the presiding arbitrator shall not be a national of either Party.

## **Article 828. Agreement to Appointment of Arbitrators**

For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on a ground other than citizenship or permanent residence:

- (a) the disputing Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
- (b) a disputing investor referred to in Article 819 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only if the disputing investor agrees in writing to the appointment of each member of the Tribunal; and
- (c) a disputing investor referred to in Article 820 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only if the disputing investor and the enterprise agree in writing to the appointment of each member of the Tribunal.

## **Article 829. Consolidation**

1. A Tribunal established under this Article shall be established under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Section.

2. Where a Tribunal established under this Article is satisfied that claims submitted to arbitration under Article 824 have a question of law or fact in common, the Tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

- (a) assume jurisdiction over, and hear and determine together, all or part of the claims; or
- (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others.

3. A disputing party that seeks an order under paragraph 2 shall request that the Secretary-General establish a Tribunal and shall specify in the request:

- (a) the name of the disputing Party or disputing investors against which the order is sought;
  - (b) the nature of the order sought; and
  - (c) the grounds on which the order is sought.
4. The disputing party shall deliver a copy of the request to the disputing Party or disputing investors against which the order is sought.

5. The disputing parties shall request the Secretary-General to establish a Tribunal comprising three arbitrators within 60 days of receipt of the request. The disputing parties shall ask the Secretary-General to appoint the presiding arbitrator, from the ICSID Panel of Arbitrators. A presiding arbitrator may not be a national of either Party. The disputing parties shall ask the Secretary-General to appoint the two other members from the ICSID Panel of Arbitrators. To the extent arbitrators are not available from that Panel, the disputing parties will leave appointments to the discretion of the Secretary-General. One member shall be a national of the disputing Party and one member shall be a national of the Party of the disputing investors.

6. Where a Tribunal has been established under this Article, a disputing investor that has submitted a claim to arbitration under Article 824 and that has not been named in a request made under paragraph 3 may make a written request to the Tribunal that it be included in an order made under paragraph 2, and shall specify in the request:

- (a) the name and address of the disputing investor;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

7. A disputing investor referred to in paragraph 6 shall deliver a copy of its request to the disputing parties named in a request made under paragraph 3.

8. A Tribunal established under Article 824 shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established under this Article has assumed jurisdiction.

9. On application of a disputing party, a Tribunal established under this Article, pending its decision under paragraph 2, may order that the proceedings of a Tribunal established under Article 824 be stayed unless the latter Tribunal has already adjourned its proceedings.

### **Article 830. Notice to the Non-disputing Party**

A disputing Party shall deliver to the other Party a copy of the Notice of Intent to Submit a Claim to Arbitration and other documents, such as a Notice of Arbitration and Statement of Claim, no later than 30 days after the date that such documents have been delivered to the disputing Party.

### **Article 831. Documents**

1. The non-disputing Party shall be entitled, at its cost, to receive from the disputing Party a copy of:

- (a) the evidence that has been tendered to the Tribunal;
- (b) copies of all pleadings filed in the arbitration; and
- (c) the written argument of the disputing parties.

2. The Party receiving information pursuant to paragraph 1 shall treat the information as if it were a disputing Party.

### **Article 832. Participation by the Non-disputing Party**

1. On written notice to the disputing parties, the non-disputing Party may make submissions to a Tribunal on a question of interpretation of this Agreement.

2. The non-disputing Party shall have the right to attend any hearings held under this Section, whether or not it makes submissions to the Tribunal.

### **Article 833. Place of Arbitration**

Unless the disputing parties agree otherwise, a Tribunal shall hold arbitration in the territory of a Party that is a party to the New York Convention, selected in accordance with:

- (a) the ICSID Additional Facility Rules, if the arbitration is under those Rules or the ICSID Convention; or
- (b) the UNCITRAL Arbitration Rules, if the arbitration is under those Rules.

### **Article 834. Preliminary Objections to Jurisdiction or Admissibility**

Where issues relating to jurisdiction or admissibility are raised as preliminary objections, a Tribunal shall, wherever possible, decide the matter before proceeding to the merits.

### **Article 835. Public Access to Hearings and Documents**

1. Hearings held under this Section shall be open to the public. To the extent necessary to ensure the protection of confidential information, the Tribunal may hold portions of hearings in camera.

2. The Tribunal shall establish procedures for the protection of confidential information and appropriate logistical arrangements for open hearings, in consultation with the disputing parties.

3. All documents submitted to, or issued by, the Tribunal shall be publicly available, unless the disputing parties otherwise agree, subject to the deletion of confidential information.

4. Notwithstanding paragraph 3, any Tribunal award under this Section shall be publicly available, subject to the deletion of confidential information.

5. A disputing party may disclose to other persons in connection with the arbitral proceedings such unredacted documents as it considers necessary for the preparation of its case, but it shall ensure that those persons protect the confidential information in such documents.

6. The Parties may share with officials of their respective national and subnational governments all relevant unredacted documents in the course of dispute settlement under this Agreement, but they shall ensure that those persons protect any confidential information in such documents.

7. As provided under Article 2202 (Exceptions - National Security) and Article 2204 (Exceptions - Disclosure of Information), the Tribunal shall not require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's law protecting the deliberative and policy-making processes of the executive branch of government at the cabinet level, personal privacy or the financial affairs and accounts of individual customers of financial institutions, or which it determines to be contrary to its essential security.

8. To the extent that a Tribunal's confidentiality order designates information as confidential and a Party's law on access to information requires public access to that information, the Party's law on access to information shall prevail. However, a Party should endeavour to apply its law on access to information so as to protect information designated confidential by the Tribunal.

## **Article 836. Submissions by other Persons**

1. Any person, other than a disputing party, that wishes to file a written submission with a Tribunal (the "applicant") shall apply for leave from the Tribunal to file such a submission, in accordance with Annex 836.1. The applicant shall attach the submission to the application.

2. The applicant shall serve its application for leave to file a submission, as well as its submission, on all disputing parties and the Tribunal.

3. The Tribunal shall set an appropriate date for the disputing parties to comment on the application for leave.

4. In determining whether to grant the leave the Tribunal shall consider, among other things, the extent to which:

(a) the applicant's submission would assist the Tribunal in the determination of a factual or legal issue related to the arbitration by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties;

(b) the applicant's submission would address a matter within the scope of the dispute;

(c) the applicant has a significant interest in the arbitration; and

(d) there is a public interest in the subject-matter of the arbitration.

5. The Tribunal shall ensure that:

(a) any applicant's submission does not disrupt the proceedings; and

(b) neither disputing party is unduly burdened or unfairly prejudiced by such submissions.

6. The Tribunal shall decide whether to grant leave to an applicant to file a submission. If the Tribunal grants leave, it shall set an appropriate date for the disputing parties to respond in writing to the submission. By that date, the non-disputing Party may, pursuant to Article 832, address any issues of interpretation of this Agreement presented in the submission.

7. The Tribunal that grants leave to file a submission to an applicant is not required to address the submission at any point in the arbitration, nor is the person that files the submission entitled to make further submissions in the arbitration.

8. Access to hearings and documents by persons that file applications under these procedures shall be governed by the provisions pertaining to public access to hearings and documents under Article 835.

## **Article 837. Governing Law**

1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. Subject to the other terms of this Section, when a claim is submitted to arbitration for a breach of a legal stability agreement referred to in paragraph 2 of Articles 819 or paragraph 2 of Article 820, a Tribunal established under this Section shall apply:

(a) the rules of law specified in the legal stability agreement, or as the disputing parties may otherwise agree; or

(b) if the rules of law have not been specified or otherwise agreed:

(i) the law of the disputing Party, including its rules on the conflict of laws, (5) and

(ii) such rules of international law as may be applicable.

3. An interpretation by the Commission of a provision of this Agreement shall be binding on a Tribunal established under this Section, and any award under this Section shall be consistent with the interpretation.

(5) The "law of the disputing Party" means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case.

## **Article 838. Interpretation of Annexes**

1. Where a disputing Party asserts as a defence that the measure alleged to be a breach is within the scope of a reservation or exception set out in Annex I or Annex II, on request of the disputing Party, the Tribunal shall request the interpretation of the Commission on the issue. The Commission, within 60 days of delivery of the request, shall submit in writing its interpretation to the Tribunal.

2. Further to paragraph 3 of Article 837, a Commission interpretation submitted under paragraph 1 shall be binding on the Tribunal. If the Commission fails to submit an interpretation within 60 days, the Tribunal shall decide the issue.

## **Article 839. Expert Reports**

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a Tribunal, at the request of a disputing party, or on its own initiative unless the disputing parties disapprove, may appoint experts to report to it in writing on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing party, subject to such terms and conditions as the disputing parties may agree.

## **Article 840. Interim Measures of Protection**

A Tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 819 or 820. For purposes of this paragraph, an order includes a recommendation.

## **Article 841. Final Award**

1. Where a Tribunal makes a final award against the disputing Party, the Tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest;

(b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution. The Tribunal may also award costs in accordance with the applicable arbitration rules.

2. Subject to paragraph 1, where a claim is made under paragraph 1 of Article 820:

(a) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise;

(b) an award of restitution of property shall provide that restitution be made to the enterprise; and

(c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

3. A Tribunal may not order a disputing Party to pay punitive damages.

## **Article 842. Finality and Enforcement of an Award**

1. An award made by a Tribunal shall have no binding force except between the disputing parties and in respect of that particular case.



2. Subject to paragraph 3 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

3. A disputing party may not seek enforcement of a final award until:

(a) in the case of a final award made under the ICSID Convention:

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award, or

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or

(ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

4. Each Party shall provide for the enforcement of an award in its territory.

5. If the disputing Party fails to abide by or comply with a final award, the Commission, on delivery of a request by the Party of the disputing investor, shall establish an arbitral panel under Chapter Twenty-One (Dispute Settlement). The requesting Party may seek in such proceedings:

(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and

(b) a recommendation that the disputing Party abide by or comply with the final award.

6. A disputing investor may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention or the Inter-American Convention regardless of whether proceedings have been taken under paragraph 5.

7. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention and Article I of the Inter-American Convention.

## **Article 843. General**

Time when a Claim is Submitted to Arbitration

1. A claim is submitted to arbitration under this Section when:

(a) the request for arbitration under paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;

(b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General; or

(c) the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the disputing Party.

Service of Documents

2. Delivery of notice and other documents on a Party shall be made to:

For Canada: Office of the Deputy Attorney General of Canada

For Peru: Ministerio de Economía y Finanzas

3. In an arbitration under this Section, a disputing Party shall not assert as a defence, counterclaim, right of setoff or otherwise, that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages. Receipts under Insurance or Guarantee Contracts

## **Article 844. Exclusions**

The dispute settlement provisions of this Section and of Chapter Twenty-One (Disputes Settlement) shall not apply to the matters in Annex 844.1.

## **Article 845. Suspension of other Agreements**

1. The Agreement Between Canada and the Republic of Peru for the Promotion and Protection of Investments done in Hanoi on 14 November 2006 (the "FIPA") shall be suspended from the date of entry into force of this Agreement and until such time as this Agreement is no longer in force.

2. Notwithstanding paragraph 1, the FIPA shall remain operative for a period of fifteen years after the entry into force of this Agreement for the purpose of any breach of the obligations of the FIPA that occurred before the entry into force of this Agreement. During this period the right of an investor of a Party to submit a claim to arbitration concerning such a breach shall be governed by the relevant provisions of the FIPA.

## **Article 846. Termination**

Notwithstanding the termination of this Agreement pursuant to Article 2305 (Final Provisions - Termination), this Agreement shall remain in force for a period of fifteen years after the termination for the purpose of any breach of the obligations of this Chapter or subparagraph 3(a) of Article 1305 (Competition Policy, Monopolies and State Enterprises - Designated Monopolies) or paragraph 2 of Article 1306 (Competition Policy, Monopolies and State Enterprises - State Enterprises) that occurred prior to the termination of this Agreement. During this period the right of an investor of a Party to submit a claim to arbitration concerning such a breach shall be governed by the relevant provisions of this Agreement.

## **Section C. Definitions**

### **Article 847. Definitions**

For the purpose of this Chapter: affiliate: a person is an affiliate of another person when:

(a) directly or indirectly, it controls or is controlled by that other person; or

(b) it and the other person are both controlled, directly or indirectly, by the same person;

confidential information means business confidential information and information that is privileged or otherwise protected from disclosure;

covered investment means, with respect to a Party, an investment in its territory of an investor of the other Party existing on the date of entry into force of this Agreement, as well as investments made or acquired thereafter;

disputing investor means an investor that makes a claim under Section B;

disputing Party means a Party against which a claim is made under Section B;

disputing party means the disputing investor or the disputing Party;

enterprise means an enterprise as defined in Article 105 of Chapter One (Initial Provisions and General Definitions – Definitions of General Application) and a branch of any such entity;

enterprise of a Party means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;

equity or debt securities include voting and non-voting shares, bonds, convertible debentures, stock options and warrants;

ICSID means the International Centre for Settlement of Investment Disputes;

ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington on 18 March 1965;

intellectual property rights means copyright and related rights, trademark rights, rights in geographical indications, rights in industrial designs, patent rights, rights in layout designs of integrated circuits, rights in relation to protection of undisclosed information, and plant breeders' rights;

Inter-American Convention means the Inter-American Convention on International Commercial Arbitration, done at Panama on 30 January 1975;

investment means:

(a) an enterprise;

(b) an equity security of an enterprise;

(c) a debt security of an enterprise:

(i) where the enterprise is an affiliate of the investor, or

(ii) where the original maturity of the debt security is at least three years, but does not include a debt security, regardless of original maturity, of a state enterprise;

(d) a loan to an enterprise: (i) where the enterprise is an affiliate of the investor, or (ii) where the original maturity of the loan is at least three years, but does not include a loan, regardless of original maturity, to a state enterprise;

(e) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise;

(f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraphs (c) or (d);

(g) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and

(h) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under:

(i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or

(ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;

but investment does not mean,

(i) claims to money that arise solely from:

(i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of the other Party, or

(ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); and

(j) any other claims to money, that do not involve the kinds of interests set out in subparagraphs (a) through (h);

investment of an investor of a Party means an investment owned or controlled directly or indirectly by an investor of such Party;

investor of a Party (6) means:

(a) in the case of Canada:

(i) Canada or a state enterprise of Canada, or

(ii) a national or an enterprise of Canada,

that seeks to make, is making or has made an investment; a natural person who is a dual citizen shall be deemed to be exclusively a citizen of the State of his or her dominant and effective citizenship; and

(b) in the case of Peru:

(i) a state enterprise of Peru, or

(ii) a national or enterprise of Peru, that seeks to make, is making or has made an investment;

a natural person who is a dual citizen shall be deemed to be exclusively a citizen of the State of his or her dominant and effective citizenship;

investor of a non-Party (7) means an investor other than an investor of a Party, that seeks to make, is making, or has made an investment;

legal stability agreement means an agreement entered into by a national government authority of a Party and an investor of the other Party or a covered investment of such investor that accords certain benefits, including, but not limited to, a commitment to maintain the existing income tax regime during a specified time;

New York Convention means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958;

non-disputing Party means a Party that is not a party to an investment dispute under Section B;

non-disputing party means a person of a Party, or a person of a non-Party with a significant presence in the territory of a Party, that is not a party to an investment dispute under Section B;

Secretary-General means the Secretary-General of ICSID;

taxation authorities means the following until notice in writing to the contrary is provided to the other Party:

(a) for Canada: the Assistant Deputy Minister, Tax Policy, of the Department of Finance Canada; and

(b) for Peru: the Vice Minister of Economy, the Ministry of Economy and Finance;

Tribunal means an arbitration tribunal established under Article 824 or Article 829; and

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on 15 December 1976.

(6) For greater certainty, it is understood that an investor "seeks to make an investment" only when the investor has taken concrete steps necessary to make the investment, such as when the investor has made an application for a permit or license authorizing the establishment of an investment.

(7) For greater certainty, it is understood that an investor "seeks to make an investment" only when the investor has taken concrete steps necessary to make the investment, such as when the investor has made an application for a permit or license authorizing the establishment of an investment.

## **Annex 804.1. Most-Favoured-Nation Treatment**

For greater clarity, treatment "with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments" referred to in paragraphs 1 and 2 of Article 804 does not encompass dispute resolution mechanisms, such as those in Section B, that are provided for in international treaties or trade agreements.

## **Annex 812.1. Indirect Expropriation**

The Parties confirm their shared understanding that:

(a) Indirect expropriation results from a measure or series of measures of a Party that have an effect equivalent to direct expropriation without formal transfer of title or outright seizure;

(b) The determination of whether a measure or series of measures of a Party constitutes an indirect expropriation requires a case-by-case, fact based inquiry that considers, among other factors:

(i) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred,

(ii) the extent to which the measure or series of measures interferes with distinct, reasonable investment-backed expectations, and

(iii) the character of the measure or series of measures;

(c) Except in rare circumstances, such as when a measure or series of measures is so severe in the light of its purpose that it cannot be reasonably viewed as having been adopted and applied in good faith, nondiscriminatory measures of a Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriation.

## **Annex 823.1. Standard Waiver and Consent in Accordance with Article 823 of this Agreement (8)**

In the interest of facilitating the filing of waivers as required by Article 824 of this Agreement, and to facilitate the orderly conduct of the dispute resolution procedures set out in Section B, the following standard waiver forms shall be used, depending on the type of claim.

Claims filed under Article 819 must be accompanied by either Form 1, where the investor is a national of a Party, or Form 2, where the investor is a Party, a state enterprise thereof, or an enterprise of such Party.

Where the claim is based on loss or damage to an interest in an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, either Form 1 or 2 must be accompanied by Form 3.

Claims made under Article 820 must be accompanied by either Form 1, where the investor is a national of a Party, or Form 2, where the investor is a Party, a state enterprise thereof, or an enterprise of such Party, and Form 4.

(8) Subject to Annex 824.1.

### **Form 1. Consent and waiver for an investor of a Party bringing a claim under Article 819 or Article 820 (where the investor is a national of a Party) of the Free Trade Agreement between Canada and the Republic of Peru:**

I, (Name of investor) , consent to arbitration in accordance with the procedures set out in this Agreement, and waive my right to initiate or continue before any administrative tribunal or court under the law of either Party to the Agreement, or other dispute settlement procedures, any proceedings with respect to the measure of (Name of disputing Party) that is alleged to be a breach referred to in Article 819 or Article 820, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of (Name of disputing Party) .

(To be signed and dated.)

### **Form 2. Consent and waiver for an investor of a Party bringing a claim under Article 819 or Article 820 (where the investor is a Party, a state enterprise thereof, or an enterprise of such Party) of the Free Trade Agreement between Canada and the Republic of Peru:**

I, (Name of declarant) , on behalf of (Name of investor) , consent to arbitration in accordance with the procedures set out in this Agreement, and waive the right of (Name of investor) to initiate or continue before any administrative tribunal or court under the law of either Party to the Agreement, or other dispute settlement procedures, any proceedings with respect to the measure of (Name of disputing Party) that is alleged to be a breach referred to in Article 819 or Article 820, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages before an administrative tribunal or court under the law of (Name of disputing Party).

I hereby solemnly declare that I am duly authorised to execute this consent and waiver on behalf of (Name of investor) .

(To be signed and dated.)

### **Form 2. Waiver of an enterprise that is the subject of a claim by an investor of a Party under Article 819 of the Free Trade Agreement between Canada and the Republic of Peru:**

I, (Name of declarant) , waive the right of (Name of the enterprise) to initiate or continue before any administrative tribunal or court under the law of either Party to this Agreement, or other dispute settlement procedures, any proceedings with respect to the measure of (Name of disputing Party) that is alleged by (Name of investor) to be a breach referred to in Article 819, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of (Name of disputing Party) .

I hereby solemnly declare that I am duly authorised to execute this waiver on behalf of (Name of the enterprise) .

(To be signed and dated.)

#### **Form 4. Consent and waiver of an enterprise that is the subject of a claim by an investor of a Party under Article 820 of the Free Trade Agreement between Canada and the Republic of Peru:**

I, (Name of declarant) , on behalf of (Name of enterprise) , consent to arbitration in accordance with the procedures set out in this Agreement, and waive the right of (Name of enterprise) to initiate or continue before any administrative tribunal or court under the law of either Party to the Agreement, or other dispute settlement procedures, any proceedings with respect to the measure of (Name of disputing Party) that is alleged by (Name of investor) to be a breach referred to in Article 820, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages before an administrative tribunal or court under the law of (Name of disputing Party) .

I hereby solemnly declare that I am duly authorised to execute this consent and waiver on behalf of (Name of the enterprise) .

(To be signed and dated.)

#### **Annex 824.1. Submission of a Claim to Arbitration**

1. An investor of Canada may not submit to arbitration under Section B a claim that Peru has breached an obligation under Section A:

(a) on its own behalf under subparagraphs 1(a) or (b) of Article 819; or

(b) on behalf of an enterprise of Peru that is a juridical person that the investor owns or controls directly or indirectly under subparagraphs 1(a) or (b) of Article 820,

if the investor or the enterprise, respectively, has alleged the breach of the obligation under Section A in proceedings before a court or administrative tribunal of Peru.

2. An investor of Canada may not submit to arbitration under Section B a claim that Peru has breached a legal stability agreement referred to in paragraph 3 of Article 819 and paragraph 3 of Article 820:

(a) on its own behalf under subparagraph 1(c) of Article 820; or

(b) on behalf of an enterprise of Peru that is a juridical person that the investor owns or controls directly or indirectly under subparagraph 1(c) of Article 820,

if the investor or the enterprise, respectively, has alleged that breach in proceedings before a court or administrative tribunal of Peru or has submitted that claim to any other binding dispute settlement proceedings.

3. For greater certainty, if an investor of Canada elects to submit:

(a) a claim described in paragraph 1 to a court or administrative tribunal of the Republic of Peru; or

(b) a claim described in paragraph 2 to a court or administrative tribunal of the Republic of Peru or to any other binding dispute settlement proceedings,

that election shall be definitive and the investor may not thereafter submit the same claim to arbitration under Section B.

#### **Annex 836.1. Submissions by Other Persons**

1. Applications for leave to file submissions by other persons shall:

(a) be made in writing, dated and signed by the applicant, and include the applicant's address and other contact details;

(b) be no longer than five typed pages;

(c) describe the applicant, including, where relevant, its membership and legal status (e.g., company, trade association or other nongovernmental organization), its general objectives, the nature of its activities, and any parent organization (including any organization that directly or indirectly controls the applicant);

(d) disclose whether the applicant has any affiliation, direct or indirect, with any disputing party;

- (e) identify any government, person or organization that has provided any financial or other assistance in preparing the submission;
- (f) specify the nature of the interest that the applicant has in the arbitration;
- (g) identify the specific issues of fact or law in the arbitration that the applicant has addressed in its written submission;
- (h) explain, by reference to the factors specified in paragraph 4 of Article 836, why the Tribunal should accept the submission; and
- (i) be made in a language of the arbitration.

2. Submissions filed by other persons shall:

- (a) be dated and signed by the person filing the submission;
- (b) be concise, and in no case longer than 20 typed pages, including any appendices;
- (c) set out a precise statement supporting the person's position on the issues; and
- (d) only address matters within the scope of the dispute.

### **Annex 844.1. Exclusions from Dispute Settlement**

1. A decision by Canada following a review under the Investment Canada Act (1985, ch. 28, 1st supp.), with respect to whether or not permit an acquisition that is subject to review, shall not be subject to the dispute settlement provisions of Section B of this Chapter or of Chapter Twenty-One (Dispute Settlement).

2. A decision by a Party to prohibit or restrict the acquisition of an investment in its territory by an investor of the other Party, or its investment, pursuant to Article 2202 (Exceptions - National Security) of Chapter Twenty-Two (Exceptions) shall not be subject to the dispute settlement provisions of Section B of this Chapter or of Chapter Twenty-One (Dispute Settlement).

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

### **Article 901. Scope and Coverage**

1. This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party, including measures affecting:

- (a) the production, distribution, marketing, sale and delivery of a service;
- (b) the purchase or use of, or payment for, a service;
- (c) the access to and use of distribution, transport or telecommunications networks and services in connection with the supply of a service;
- (d) the presence in its territory 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 provision of a service.

2. This Chapter does not apply to:

- (a) financial services as defined in Chapter Eleven (Financial Services);
- (b) air services (1) and related services in support of air services, other than:
  - (i) aircraft repair and maintenance services,
  - (ii) the selling and marketing of air transport services, and
  - (iii) computer reservation system ("CRS") services;
- (c) procurement by a Party or a state enterprise; and
- (d) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

3. This Chapter does 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 its territory and does not confer any right on that national with respect to that access or employment.

(1) For greater certainty, the term "air services" includes but is not limited to traffic rights.

## **Article 902. Subsidies**

The Parties note their mutual obligations related to subsidies in Article XV of the GATS and affirm their commitment respecting the development of any necessary disciplines pursuant to Article XV. To the extent that any such disciplines are adopted by the WTO Members, the Parties shall, as appropriate, review them jointly with a view to determining whether this Article should be supplemented.

## **Article 903. National Treatment**

1. Each Party shall accord to service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to its own service suppliers.

2. The treatment accorded by a Party under paragraph 1 means, with respect to measures adopted or maintained by a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to service suppliers of the Party of which it forms a part.

## **Article 904. Most-favoured-nation Treatment**

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

## **Article 905. Standard of Treatment**

Each Party shall accord to service suppliers of the other Party the better of the treatment required by Articles 903 and 904.

## **Article 906. Market Access**

Neither Party may adopt or maintain measures that:

(a) impose limitations on:

(i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test,

(ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test,

(iii) the total number of service operations or the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test, (2) or

(iv) 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; or

(b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

(2) Subparagraph (a)(iii) of this Article does not cover measures of a Party that limit inputs for the supply of services.

## **Article 907. Local Presence**

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



## **Article 908. Non-conforming Measures**

1. Articles 903, 904, 906 and 907 do not apply to:

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

(i) the national level of government, as set out by that Party in its Schedule to Annex I,

(ii) a sub-national (3) level of government, as set out by that Party in its Schedule to Annex 1, or

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 903, 904, 906 and 907.

2. Articles 903, 904, 906 and 907 do not apply to measures that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out in its Schedule to Annex II.

(3) For purposes of this Article, sub-national level of government does not include local level of government.

## **Article 909. Domestic Regulation (4)**

1. The Parties note their mutual obligations related to domestic regulation in Article VI:4 of the GATS and affirm their commitment respecting the development of any necessary disciplines pursuant to Article VI:4. To the extent that any such disciplines are adopted by the WTO Members, the Parties shall, as appropriate, review them jointly with a view to determining whether this Article should be supplemented.

2. Pending the incorporation of disciplines pursuant to paragraph 1, the Parties shall aim to ensure that measures relating to qualification requirements and procedures, technical standards, and licensing requirements are:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service; and

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. Where authorisation is required for the supply of a service, the competent authorities of that Party will, within a reasonable period of time after the submission of an application that is considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

(4) Nothing in paragraph 2 may be the subject of dispute settlement procedures in Chapter Twenty-One (Dispute Settlement).

## **Article 910. Recognition (5)**

1. For the purposes of fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services 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 on an agreement or arrangement with the country concerned or may be accorded autonomously.

2. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford, if the other Party is interested, adequate opportunity for the other Party to negotiate accession to such an agreement or arrangement or to negotiate a comparable agreement or arrangement. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that the education, experience, licences or certifications obtained or requirements met in that other Party's territory should be recognized.

3. No Party may accord recognition in a manner that would constitute a means of discrimination in the application of its

standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.

4. The Parties shall endeavour to ensure that the relevant professional bodies in their respective territories of professional service sectors to be determined by the Working Group within six months following entry into force of this Agreement:

(a) exchange information on existing standards and criteria for the authorization, licensing and certification of professional service providers;

(b) meet within 12 months to discuss the development of an agreement or arrangement referred to in paragraph 1;

(c) be guided by Annex 910.4 for the negotiations of such agreement or arrangement; and

(d) provide notification following the conclusion of an agreement or arrangement to the Commission.

5. On receipt of a notification referred to in subparagraph 4(d), the Commission shall review the agreement or arrangement within a reasonable time to determine whether it is consistent with this Agreement. Based on the Commission's review, each Party shall ensure that its respective competent authorities, where appropriate, implement the agreement within a mutually agreed time.

(5) Where a Party recognizes, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, nothing in Article 904 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 territory of the other Party.

## **Article 911. Temporary Licensing**

1. Where the Parties agree, each Party shall encourage the relevant bodies in its territory to develop procedures for the temporary licensing of professional services suppliers of the other Party.

2. Each Party shall consider establishing a work program to provide for the temporary licensing in its territory of nationals of the other Party who are licensed as engineers in the territory of the other Party. To this end, each Party shall coordinate with the relevant professional bodies of its territory as appropriate.

3. To this end, the Working Group shall consult with the relevant professional bodies to obtain their recommendations on:

(a) the development of procedures for the temporary licensing of engineers to permit them to practice as engineers in each jurisdiction in each of the Parties' territory;

(b) the development of model procedures for adoption by the competent authorities throughout each of the Parties' territory to facilitate the temporary licensing of engineers;

(c) the engineering specialties to which priority should be given in developing temporary licensing procedures; and

(d) other matters relating to the temporary licensing of engineers identified by the Working Group.

4. The Working Group shall request that the relevant professional bodies make recommendations on the matters referred to in paragraph 3 within 18 months of the date of their first meeting.

5. The Working Group shall encourage the relevant professional bodies of each Party to meet at the earliest opportunity with a view to cooperating in the development of joint recommendations, within two years following the entry into force of this Agreement, on the matters referred to in paragraph 3. The Working Group shall request an annual report from the relevant professional bodies on the progress achieved in developing recommendations.

6. The Working Group shall promptly review a recommendation made pursuant to paragraphs 4 or 5 to ensure its consistency with this Agreement. If the recommendation is consistent with this Agreement, the Working Group shall encourage the competent authorities of each Party to implement the recommendation within one year.

## **Article 912. Transfers and Payments**

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 territory.

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 on the date of transfer.

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.

### **Article 913. Denial of Benefits**

Subject to prior notification in accordance with Article 1902 (Transparency - Notification and Provision of Information) and consultations (6), a Party may deny the benefits of this Chapter to a service supplier of the other Party:

(a) where the Party establishes that the service is being provided by an enterprise owned or controlled by nationals of a non-Party, and the denying Party 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;

(b) if the service supplier is an enterprise owned or controlled by persons of a non-Party that has no substantial business activities in the territory of the other Party; or

(c) if the service supplier is an enterprise owned or controlled by persons of the denying Party and the enterprise has no substantial business activities in the territory of the other Party.

(6) For purposes of this Article, "consultation" does not mean "consultations" pursuant to Article 2104 (Dispute Settlement – Consultations).

### **Article 914. Working Group**

1. The Parties shall establish a Working Group at the entry into force of this Agreement comprising representatives of each Party. The representatives of each Party shall be:

For Canada: Director Services Trade Policy Division Department of Foreign Affairs and International Trade

For Peru: Vice Minister of Foreign Trade Ministry of Foreign Trade and Tourism or any successors.

2. The Working Group's functions shall include:

(a) meeting annually, or as otherwise agreed by the representatives, to review matters concerning the implementation and operation of this Chapter and consider issues of interest to the Parties affecting cross-border trade in services;

(b) coordinating enquiries from one Party to the other for information regarding measures that pertain to or may affect cross-border trade in services; (7)

(c) considering the development of procedures to increase the transparency of measures described in Article 908;

(d) reviewing the professional service sectors referred to in paragraph 4 of Article 910; and

(e) monitoring the work and developments of the relevant professional bodies in each Party regarding mutual recognition agreements on authorization, licensing and certification of professional service providers, and providing reports annually or as otherwise agreed to the Commission on initiatives and progress undertaken by the Parties with respect to the implementation of Article 910.

(7) With respect to Peru, the ability of small administrative agencies to respond to enquiries may depend on resources and budget constraints.

### **Article 915. Definitions**

For purposes of this Chapter:

aircraft repair and maintenance services mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

computer reservation system ("CRS") services mean services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

cross-border trade in services or cross-border supply of services means the supply of a service:

(a) from the territory of one Party into the territory of the other Party;

(b) in the territory of one Party by a person of that Party to a person of the other Party; or

(c) by a national of a Party in the territory of the other Party, but does not include the supply of a service in the territory of a Party by a covered investment, as defined in Article 847 (Investment – Definitions);

enterprise means an enterprise as defined in Chapter One (Initial Provisions and General Definitions), and a branch of an enterprise;

enterprise of a Party means an enterprise organized or constituted under the laws of a Party and a branch located in the territory of a Party and carrying out business activities there;

measures adopted or maintained by a Party means measures adopted or maintained by:

(a) national or sub-national governments and authorities; and

(b) non-governmental bodies in the exercise of any regulatory, administrative or other governmental authority delegated by national or sub-national governments and authorities;

professional services means services, the supply of which requires specialized post secondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Party, but does not include services supplied by trades-persons or vessel and aircraft crew members;

selling and marketing of air transport services mean 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; and

service supplier of a Party means a person of that Party that seeks to supply or supplies a service (8).

(8) For purposes of Articles 903, 904 and 905, the treatment that a Party is required to accord to a service provider of the other Party pursuant to these Articles shall extend to the relevant service(s) provided by that service provider. For purposes of Articles 903, 904 and 906 "services suppliers" has the same meaning as "services and service suppliers" as used in Articles XVII, II and XVI of the GATS, respectively.

## **Chapter Ten. Telecommunications**

### **Article 1001. Scope and Coverage**

1. This Chapter applies 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;

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

(d) measures adopted or maintained by a Party relating to the supply of value-added services.

2. This Chapter does not apply to any measure of a Party affecting the transmission by any means of telecommunications, including broadcast and cable distribution of radio or television programming intended for reception by the public.

3. Nothing in this Chapter shall be construed to:

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

(b) require a Party (or require a Party to compel any enterprise) 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 networks or services to third persons.

## **Article 1002. Access to and Use of Public Telecommunications Transport Networks and Services (1)**

1. Subject to a Party's right to restrict the supply of a service in accordance with its Reservations in Annexes I and II, a Party shall ensure that enterprises of the other Party are accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions. This obligation shall be applied, *inter alia*, through paragraphs 2 through 6.

2. Each Party shall ensure that enterprises of the other Party have access to and use of any public telecommunications transport networks and services offered within or across its borders, including private leased circuits, and to this end shall ensure, subject to paragraphs 5 and 6, that such enterprises are permitted to:

(a) purchase or lease and attach terminal or other equipment that interfaces with the public telecommunications transport networks;

(b) interconnect private leased or owned circuits with public telecommunications transport networks and services of that Party or with circuits leased or owned by another enterprise;

(c) perform switching, signaling, and processing functions; and

(d) use operating protocols of their choice.

3. Each Party shall ensure that enterprises of the other Party may use public telecommunications transport networks and services for the movement of information in its territory or across its borders, including for intra-corporate communications of such enterprises, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.

4. Further to Article 2201 (Exceptions - General Exceptions), and notwithstanding paragraph 3, a Party may take such measures as are necessary to:

(a) ensure the security and confidentiality of messages; or

(b) protect the non-public information of users of public telecommunications transport services provided that such measures are not applied in a manner that 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 or services other than as necessary to:

(a) 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;

(b) protect the technical integrity of public telecommunications transport networks and services; or

(c) ensure that service suppliers of the other Party do not supply services that they are not entitled to supply pursuant to the Party's Reservations in Annexes I and II. 6. Provided that conditions for access to and use of public telecommunications transport networks or services satisfy the criteria set out in paragraph 5, such conditions may include:

(a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks and services;

(b) requirements, where necessary, for the inter-operability of such services;

(c) type approval of terminal or other equipment that interfaces with the network and technical requirements relating to the

attachment of such equipment to such networks;

(d) restrictions on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; and

(e) notification, registration and licensing.

(1) For greater certainty, this Article does not prohibit any Party from requiring an enterprise to obtain a license, concession, or other type of authorization to supply any public telecommunications service within its territory.

## **Article 1003. Conduct of Major Suppliers**

### Treatment by Major Suppliers (2)

1. Each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications transport services of the other Party treatment no less favourable than such major suppliers accord to their subsidiaries, their affiliates, or non-affiliated service suppliers regarding:

(a) the availability, provisioning, rates, or quality of like public telecommunications services; and

(b) the availability of technical interfaces necessary for interconnection.

### Competitive Safeguards

2. (a) Each Party shall maintain appropriate measures for the purpose of preventing suppliers that, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

(b) The anti-competitive practices referred to in subparagraph (a) include:

(i) engaging in anti-competitive cross-subsidization,

(ii) using information obtained from competitors with anticompetitive results, and

(iii) not making available to other service suppliers, on a timely basis, technical information about essential facilities and commercially relevant information, that is necessary for them to provide public telecommunications transport services.

### Resale

3. Each Party has the authority to identify the public telecommunications transport networks or services available for provision on a mandatory resale basis. For the public telecommunications transport network and services available on mandatory resale basis, each Party shall ensure that suppliers do not unjustly discriminate or give an undue preference concerning the conditions or limitations on the resale of such services.

### Interconnection

#### 4. (a) General Terms and Conditions

Subject to a Party's Reservations under Annexes I and II, each Party shall ensure that major suppliers in its territory provide interconnection:

(i) at any technically feasible point in the network,

(ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates,

(iii) of a quality no less favourable than that provided for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates,

(iv) 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 need not pay for network components or facilities that it does not require for the service to be provided, and

(v) 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.

#### (b) Options for Interconnecting with Major Suppliers

Options for suppliers of public telecommunications transport services of a Party to interconnect their facilities with those of major suppliers in the territory of the other Party may include:

(i) a reference interconnection offer or another standard interconnection offer containing terms, conditions, and where possible, rates that the major suppliers offer generally to suppliers of public telecommunications transport services,

(ii) the terms and conditions of an interconnection agreement in force, or

(iii) the negotiation of a new interconnection agreement.

(c) Public Availability of Interconnection

Offers Each Party shall require major suppliers in its territory to make publicly available its interconnection agreements, reference interconnection offers, or other standard interconnection offers containing the terms, conditions, and where specified, rates that the major suppliers offer generally to suppliers of public telecommunications transport services.

(d) Public Availability of Procedures for Interconnection

Negotiations Each Party shall make publicly available the applicable procedures for interconnection negotiations with major suppliers in its territory.

(e) Public Availability of Interconnection Agreements Concluded with Major Suppliers

Each Party shall ensure that interconnection agreements in force between major suppliers in its territory and other suppliers of public telecommunications services in its territory are made publicly available.

(2) This provision shall only apply to public telecommunications transport services that are subject to tariff regulation under domestic law.

## **Article 1004. Regulatory Body**

1. Each Party shall ensure that its regulatory body is separate from, and not accountable to, any supplier of public telecommunications transport networks or services and value-added services.

2. Each Party shall ensure that its regulatory body's decisions and procedures are impartial with respect to all market participants.

## **Article 1005. Universal Service**

Each Party has the right to define the kind of universal service obligations it wishes to maintain and shall administer those obligations in a transparent, nondiscriminatory, and competitively neutral manner and shall ensure that its universal service obligations are not more burdensome than necessary for the kind of universal service defined by the Party.

## **Article 1006. Procedures for Licenses and other Authorizations**

1. Where a Party requires a supplier of public telecommunications transport networks or services to have a license, concession, permit, registration, or other type of authorization, the Party shall make publicly available:

(a) all applicable licensing or authorization criteria and procedures;

(b) the time it normally requires to reach a decision concerning an application for a license, concession, permit, registration, or other type of authorization; and

(c) the terms and conditions of all licenses or authorizations it has issued.

2. Where a license, concession, permit, registration, or other type of authorization is required to supply public telecommunications transport networks or services, the decision on the application for a license, concession, permit, registration, or other type of authorization will be made within a reasonable period of time once the application has been considered complete, and in the event of a denial, the reasons will be made known to the applicant upon request.

## **Article 1007. Allocation and Use of Scarce Resources**

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, 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 frequencies shall not be considered inconsistent with Article 906 (Cross-Border Trade in Services - Market Access), as it applies to either Chapters Eight (Investment) or Nine (Cross-Border Trade in Services). Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies that may limit the number of suppliers of public telecommunications transport services. Each Party also retains the right to allocate frequency bands, taking into account present and future needs and spectrum availability.

4. When making a spectrum allocation for non-government telecommunications services, each Party shall endeavour to rely on an open and transparent public comment process that considers the overall public interest. Each Party shall endeavour to rely generally on market-based approaches in assigning spectrum for terrestrial non-government telecommunications services.

## **Article 1008. Enforcement**

Each Party shall maintain appropriate procedures and authority to enforce the Party's measures relating to the obligations set out in Articles 1002 and 1003. Such procedures and authority shall include the ability to impose appropriate sanctions, which may include financial penalties, injunctive relief (on an interim basis), corrective orders, or the modification, suspension or revocation of licenses or other authorizations.

## **Article 1009. Resolution of Domestic Telecommunication Disputes**

### Recourse to Regulatory Bodies

1. Further to Article 1903 (Transparency - Administrative Proceedings) and 1904 (Transparency - Review and Appeal), each Party shall ensure the following:

(a) suppliers of public telecommunications transport networks or services or value-added services of the other Party have timely recourse to its regulatory body or other relevant body to resolve disputes regarding the Party's measures that relate to matters covered in Articles 1002 and 1003 and that, under the domestic law of the Party, are within the competence of such bodies; and

(b) suppliers of public telecommunications transport networks or services of the other Party requesting interconnection with a major supplier in the Party's territory have recourse within a reasonable and publicly specified period after the supplier requests interconnection, to a regulatory body to resolve disputes regarding the appropriate terms, conditions, and rates for interconnection with such major supplier, to the extent that these have not been established previously.

### Reconsideration (3)

2. Each Party shall ensure that any supplier of public telecommunications transport networks or services that is aggrieved or whose interests are adversely affected by the determination or decision of a regulatory body may petition that body for reconsideration of that determination or decision. No Party may permit such a petition to constitute grounds for non-compliance with the determination or decision of the regulatory body unless an appropriate authority stays such determination or decision.

(3) With respect to Canada, reconsideration shall not apply to any determination or decision related to the establishment and application of spectrum and frequency management policies. With respect to Peru, suppliers of public telecommunication transport networks or services may not petition for reconsideration of administrative rulings of general application, as defined in Article 1906 (Definitions - Transparency), unless provided for under its laws and regulations.

## **Article 1010. Transparency**

Further to Articles 1901 (Transparency - Publication) and 1902 (Transparency - Notification and Provision of Information), and in addition to the other provisions in this Chapter relating to the publication of information, each Party shall ensure that:

(a) regulations, including the basis for such regulations, of its regulatory body and tariffs filed with its regulatory body are promptly published or otherwise made publicly available;



(b) interested persons are provided, to the extent possible, with adequate advance public notice of, and the opportunity to comment on, any regulation that its regulatory body proposes; and

(c) its measures relating to public telecommunications transport network or services and, where applicable, to value-added services, are made publicly available, including measures relating to:

(i) tariffs and other terms and conditions of service,

(ii) procedures relating to judicial and other adjudicatory proceedings,

(iii) specifications of technical interfaces,

(iv) conditions for attaching terminal or other equipment to the public telecommunications transport network,

(v) notification, permit, registration, or licensing requirements, if any, and

(d) information on bodies responsible for preparing, amending and adopting standards related measures is made publicly available.

## **Article 1011. Forbearance**

The Parties recognize the importance of relying on market forces to achieve wide choices in the supply of telecommunications services. To this end, each Party may refrain from applying a regulation to a telecommunications service when:

(a) enforcement of such regulation is not necessary to prevent unreasonable or discriminatory practices;

(b) enforcement of such regulation is not necessary for the protection of consumers; or

(c) it is consistent with the public interest, including promoting and enhancing competition between suppliers of public telecommunications transport networks and services.

## **Article 1012. Relation to other Chapters**

In the event of any inconsistency between this Chapter and another Chapter in this Agreement, this Chapter shall prevail to the extent of the inconsistency.

## **Article 1013. International Standards and Organizations**

The Parties recognize the importance of international standards for global compatibility and interoperability of telecommunication networks or services and undertake to promote those standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

## **Article 1014. Definitions**

For the purpose of this Chapter: cost-oriented means based on cost (including a reasonable profit), and may involve different cost methodologies for different facilities or services;

enterprise means an "enterprise" as defined in Article 105 (Initial Provisions and General Definitions - Definitions of General Application) and includes a branch of an enterprise;

enterprise of the other Party means both an enterprise constituted or organized under the law of the other Party and an enterprise owned or controlled by a person of the other Party;

essential facilities means facilities of a public telecommunications transport network or service that:

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

(b) cannot feasibly be economically or technically substituted in order to supply a service;

interconnection means linking suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

intra-corporate communications means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and, subject to a Party's domestic laws and regulations, affiliates. For these purposes, "subsidiaries", "branches" and, where applicable, "affiliates" are as defined by each Party. "Intra-corporate communications" excludes commercial or non-commercial services that are supplied to companies that are not related subsidiaries, branches or affiliates or that are offered to customers or potential customers;

major supplier (4) means a supplier of public telecommunications transport services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications transport networks or services as a result of:

(a) its control over essential facilities; or

(b) the use of its position in the market; network termination points means the final demarcation of the public telecommunications transport network at the user's premises;

non-discriminatory means treatment no less favourable than that accorded to any other user of like public telecommunications transport networks or services in like circumstances;

private network means a telecommunications network that is used exclusively for intra-enterprise communications;

public telecommunications transport network means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;

public telecommunications transport service means any telecommunications transport service required, explicitly or in effect, by a Party to be offered to the public generally, involving the real-time transmission of 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, telephone, and data transmission;

reference interconnection offer means an interconnection offer extended by a major supplier and filed with or approved by a regulatory body that is sufficiently detailed to enable a supplier of public telecommunications services that is willing to accept its rates, terms, and conditions to obtain interconnection without having to engage in negotiations with the major supplier;

regulatory body means the body or bodies responsible for the regulation of telecommunications;

service supplier means a person of a Party that seeks to supply or supplies a service, including a supplier of public telecommunications transport networks or services;

supply of a service means the provision of a service:

(a) from the territory of a Party into the territory of the other Party;

(b) in the territory of a Party by a person of that Party to a person of the other Party;

(c) by a service supplier of a Party, through an enterprise in the territory of the other Party; or

(d) by a national of a Party in the territory of the other Party;

telecommunications means the transmission and reception of signals by any electromagnetic means, including by photonic means; and user means a subscriber for public telecommunications transport services or a service supplier.

(4) With respect to Peru, rural telephone companies that have at least 80% of their total fixed subscriber lines in operation in rural areas shall not be considered as major suppliers. This reference is without prejudice to any rights or obligations that a Party may have under the GATS.

## **Chapter Eleven. Financial Services**

### **Article 1101. Scope and Coverage**

1. This Chapter applies to measures adopted or maintained by a Party relating to:

(a) financial institutions of the other Party;

(b) investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and

(c) cross-border trade in financial services.

2. Chapters Eight (Investment) and Nine (Cross-Border Trade in Services) apply to measures described in paragraph 1 only to the extent that such Chapters or Articles of such Chapters are incorporated into this Chapter.

(a) Articles 813 (Investment - Transfers), 812 (Investment - Expropriation and Compensation), 816 (Investment - Special Formalities and Information Requirements), 815 (Investment - Denial of Benefits), 809 (Investment - Health, Safety and Environmental Measures) and 912 (Cross-Border Trade in Services Denial of Benefits) are hereby incorporated into and made a part of this Chapter.

(b) Section B of Chapter Eight is hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Articles 813 (Investment - Transfers), 812 (Investment - Expropriation and Compensation), or 815 (Investment - Denial of Benefits) as incorporated into this Chapter, or claims pursuant to subparagraph 1(c) of Article 819 (Investment - Claim by an Investor of a Party on Its Own Behalf) or subparagraph 1(c) of Article 820 (Investment - Claim by an Investor of a Party on Behalf of an Enterprise) that a Party has breached a legal stability agreement.

(c) Article 911 (Cross-Border Trade in Services - Transfers and Payments) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 1105.

3. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory: (a) activities or services forming part of a public retirement plan or statutory system of social security; or (b) activities or services for the account or with the guarantee or using the financial resources of the Party, including its public entities.

4. Annex 1101.3(a) sets out the Parties' understanding with respect to certain activities or services described in subparagraph 3(a).

5. Annex 1101.5 sets out, for greater certainty, certain understandings between the Parties regarding financial services measures.

## **Article 1102. National Treatment**

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of financial institutions and investments in financial institutions in its territory.

2. Each Party shall accord to financial institutions of the other Party and to investments of investors of the other Party in financial institutions treatment no less favourable than that it accords to its own financial institutions and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.

3. For purposes of the national treatment obligations in paragraph 1 of Article 1105, a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

4. The treatment that a Party is required to accord under paragraphs 1, 2 and 3 means, with respect to measures adopted or maintained by a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to investors in financial institutions, financial institutions, investments of investors in financial institutions and financial service suppliers, of the Party of which it forms a part.

5. Differences in market share, profitability or size do not in themselves establish a breach of the obligations under this Article.

## **Article 1103. Most-favoured-nation Treatment**

1. Each Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors of the other Party in financial institutions and cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to the investors, financial institutions, investments of investors in financial institutions and cross-border financial service suppliers of a non-Party, in like circumstances.

2. A Party may recognize prudential measures of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

- (a) accorded unilaterally;
- (b) achieved through harmonization or other means; or
- (c) based upon an agreement or arrangement with the non-Party.

3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or will be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the Parties.

4. Where a Party accords recognition of prudential measures under subparagraph 2(c) and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement or to negotiate a comparable agreement or arrangement.

## **Article 1104. Right of Establishment**

1. A Party shall permit an investor of the other Party that does not own or control a financial institution in the Party's territory to establish a financial institution permitted to supply financial services that such an institution may supply under the domestic law of the Party at the time of establishment, without the imposition of numerical restrictions or requirements to take a specific juridical form. The obligation not to impose requirements to take a specific juridical form does not prevent a Party from imposing conditions or requirements in connection with the establishment of a particular type of entity chosen by an investor of the other Party.

2. A Party shall permit an investor of the other Party that owns or controls a financial institution in the Party's territory to establish such additional financial institutions as may be necessary for the supply of the full range of financial services allowed under the domestic law of the Party at the time of establishment of the additional financial institutions. Subject to Article 1102, a Party may impose terms and conditions on the establishment of additional financial institutions and determine the institutional and juridical form that shall be used for the supply of specified financial services or the carrying out of specified activities.

3. The right of establishment under paragraphs 1 and 2 shall include the acquisition of existing entities.

4. Subject to Article 1102, a Party may, in exceptional circumstances, prohibit a particular financial service or activity. Such a prohibition may not apply to all financial services or to a complete financial services sub-sector such as banking.

5. For the purpose of this Article, without prejudice to other forms of prudential regulation, a Party may require that an investor of the other Party be engaged in the business of providing financial services in the territory of that Party.

6. For the purpose of this Article, "numerical restrictions" means limitations imposed, either on the basis of a regional subdivision or on the basis of the entire territory of a Party, on the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test.

## **Article 1105. Cross-border Trade**

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the financial services specified in Annex 1105.

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define "doing business" and "solicitation" for purposes of this Article so long as such definitions are not inconsistent with the obligation of paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

## **Article 1106. New Financial Services**

1. Each Party shall permit a financial institution of the other Party, on request or notification to the relevant regulator, where required, to supply any new financial service that the first Party would permit its own financial institutions, in like circumstances, to supply under its domestic law, provided that the introduction of the financial service does not require the Party to adopt new statutes or modify existing statutes.

2. A Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party would permit the new financial service and authorization is required, the decision shall be made within a reasonable time and authorization may only be refused for prudential reasons.

3. Nothing in this Article prevents a financial institution of a Party from applying to the other Party to consider authorizing the supply of a financial service that is not supplied within either Party's territory. Such application shall be subject to the domestic law of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of this Article.

## **Article 1107. Treatment of Certain Information**

Nothing in this Chapter requires a Party to furnish or allow access to:

(a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or

(b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

## **Article 1108. Senior Management and Boards of Directors**

1. Neither Party may require financial institutions of the other Party to engage natural persons of any particular nationality as senior managerial or other essential personnel.

2. Neither Party may require that more than a simple majority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, natural persons residing in the territory of the Party, or a combination thereof.

## **Article 1109. Non-conforming Measures**

1. Articles 1102, 1103, 1104 and 1108 do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at the level of the:

(i) national government, as set out in Section I of its Schedule to Annex III, or

(ii) sub-national government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 1102, 1103, 1104 and 1108.

2. Article 1105 does not apply to:

(a) any existing non-conforming measure that is maintained by a Party at the level of the: (i) national government, as set out in Section I of its Schedule to Annex III, or (ii) sub-national government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed upon the entry into force of this Agreement, with Article 1105.

3. Articles 1102, 1103, 1104, 1105 and 1108 do not apply to any nonconforming measure that a Party adopts or maintains in accordance with Section II of its Schedule to Annex III.

4. Section III of each Party's Schedule to Annex III sets out certain specific commitments by that Party.

5. Where a Party has set out a reservation to Article 803 (Investment - National Treatment), 804 (Investment - Most-Favoured-Nation Treatment), 903 (Cross-Border Trade in Services - National Treatment) or 904 (Cross-Border Trade in Services - Most-Favoured-Nation Treatment) in its Schedule to Annex I or II, the reservation also constitutes a reservation to Article 1102 or 1103, as the case may be, to the extent that the measure, sector, sub-sector or activity set out in the reservation is covered by this Chapter.

## **Article 1110. Exceptions**

1. Nothing in this Chapter or Chapter Eight (Investment), Chapter Nine (Cross-Border Trade in Services), Chapter Ten (Telecommunications), Chapter Twelve (Temporary Entry of Business Persons), Chapter Thirteen (Competition Policy, Monopolies and State Enterprises), or Chapter Fifteen (Electronic Commerce) shall be construed to prevent a Party from adopting or maintaining measures for prudential reasons, (1) including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's obligations under such provisions.
2. Nothing in this Chapter or Chapter Eight (Investment), Chapter Nine (Cross-Border Trade in Services), Chapter Ten (Telecommunications), Chapter Twelve (Temporary Entry of Business Persons), Chapter Thirteen (Competition Policy, Monopolies and State Enterprises), or Chapter Fifteen (Electronic Commerce) applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 807 (Investment - Performance Requirements) with respect to measures covered by Chapter Eight (Investment), Article 813 (Investment - Transfers) or Article 912 (Cross Border Services - Transfers and Payments).
3. Notwithstanding Article 813 (Investment - Transfers) and Article 912 (Cross Border Services - Transfers and Payments), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.
4. For greater certainty, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services, as covered by this Chapter..

(1) The term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers.

## **Article 1111. Transparency**

1. The Parties recognize that transparent regulations and policies governing the activities of financial institutions and financial service suppliers are important in facilitating both access of financial institutions and financial service suppliers to, and their operations in, each other's markets. Each Party commits to promote regulatory transparency in financial services.
2. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective and impartial manner.
3. Each Party shall, to the extent practicable:
  - (a) publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt;
  - (b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed regulations; and
  - (c) allow reasonable time between publication of final regulations and their effective date, and these requirements shall replace those set out in Article 1901 (Transparency - Publication).
4. Each Party's regulatory authorities shall make available to interested persons their requirements, including any documentation required, for completing applications relating to the supply of financial services.
5. On the request of an applicant, a regulatory authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

6. A regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable time thereafter.

7. Each Party shall maintain or establish appropriate mechanisms that will, as soon as practicable, respond to inquiries from interested persons regarding measures of general application covered by this Chapter.

8. On the request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for denial of the application.

## **Article 1112. Self-regulatory Organizations**

Where a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in or have access to a self-regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of Articles 1102, 1103, 1104, 1111 and other relevant Articles of this Chapter by such self-regulatory organization.

## **Article 1113. Payment and Clearing Systems**

Under terms and conditions that accord national treatment, each Party shall grant to financial institutions of the other Party established in its territory access to payment and clearing systems operated by public entities as well as access to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.

## **Article 1114. Financial Services Committee**

1. The Parties hereby establish the Financial Services Committee (the "Committee"). The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 1114.

2. In accordance with Article 2001 (Administration of the Agreement - The Joint Commission), the Committee shall:

- (a) supervise the implementation of this Chapter and its further elaboration;
- (b) consider issues regarding financial services that are referred to it by a Party; and
- (c) participate in the dispute settlement procedures in accordance with Article 1117.

3. The Committee shall meet annually, or as it otherwise agrees, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each meeting.

## **Article 1115. Consultations**

1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Committee.

2. Officials from the authorities specified in Annex 1114 shall participate in the consultations under this Article.

3. A Party may request that regulatory authorities of the other Party participate in consultations under this Article regarding that other Party's measures of general application which may affect the operations of financial institutions or cross-border financial service suppliers in the requesting Party's territory.

4. Nothing in this Article shall be construed to require regulatory authorities participating in consultations pursuant to paragraph 3 to disclose information or take any action that would interfere with specific regulatory, supervisory, administrative or enforcement matters.

5. Where a Party requires information for supervisory purposes concerning a financial institution in the other Party's territory or a cross-border financial service supplier in the other Party's territory, the Party may approach the competent regulatory authority in the other Party's territory to seek the information.

6. Nothing in this Article shall be construed to require a Party to derogate from its domestic law regarding the sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties.

## **Article 1116. Dispute Settlement**

1. Chapter Twenty-One (Dispute Settlement), as modified by this Article, applies to the settlement of disputes arising under this Chapter.

2. Consultations held pursuant to Article 1115 with respect to a measure or matter constitute consultations under Article 2104 (Dispute Settlement - Consultations), unless the Parties otherwise agree. If the matter has not been resolved within 45 days after commencing consultations under Article 1115 or 90 days after the delivery of the request for consultations pursuant to Article 1115, whichever is earlier, the complaining Party may request in writing the establishment of a panel.

3. The following procedures shall replace Article 2108 (Dispute Settlement - Panel Selection):

(a) the panel shall be composed of three members;

(b) each Party shall, within 30 days of the delivery of the request for the establishment of the panel, appoint a panelist who may be a national of that Party and notify the other Party in writing of the appointment. If a Party fails to appoint a panelist within 30 days, the other Party may request the Appointing Authority to appoint, in its discretion, and subject to paragraph 4, the panelist not yet appointed;

(c) the Parties shall endeavour to agree on the appointment of the third panelist who shall chair the panel and, unless the Parties agree otherwise, shall not be a national of either Party. If the chair of the panel has not been appointed within 30 days of the most recent appointment under subparagraph (b), either Party may request the Appointing Authority to appoint, in its discretion, and subject to paragraph 4, the chair of the panel, who shall not be a national of either Party;

(d) subparagraphs (b) and (c) shall apply mutatis mutandis where a panelist or the chair of the panel withdraws, is removed or becomes unable to serve on the panel. In such a case, any time period applicable to the panel proceeding shall be suspended for a period beginning on the date a panelist ceases to serve and ending on the date the replacement is appointed.

4. Each panelist on panels constituted for disputes arising under this Chapter shall have the qualifications required by Article 2107 (Dispute Settlement - Qualification of Panelists) with the exception of subparagraph 1(d) of that Article. In addition, they shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

5. In any dispute where a panel finds a measure to be inconsistent with the obligations of this Agreement and the measure affects:

(a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measures in the Party's financial services sector; or

(c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

## **Article 1117. Investment Disputes In Financial Services**

1. Where an investor of a Party submits a claim under Article 819 (Investment - Claim by an Investor of a Party on Its Own Behalf) or 820 (Investment - Claim by an Investor of a Party on Behalf of an Enterprise) to arbitration under Section II of Chapter Eight (Investment) and the respondent invokes an exception under Article 1110, on request of the respondent the Tribunal shall refer the matter in writing to the Committee for a decision in accordance with paragraph 2. The Tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Committee shall decide the issue of whether and to what extent Article 1110 is a valid defence to the claim of the investor. The Committee shall transmit a copy of its decision to the Tribunal and to the Commission. The decision shall be binding on the Tribunal.

3. Where the Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, either Party may, within 10 days thereafter, request the establishment of an panel under Article 2106 (Dispute Settlement -



Establishment of a Panel) to decide the issue. The panel shall be constituted in accordance with Article 1116. Further to Article 2110 (Dispute Settlement - Panel Reports), the panel shall transmit its final report to the Committee and to the Tribunal. The report shall be binding on the Tribunal.

4. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within 10 days after the 60-day period referred to in paragraph 3, the Tribunal may proceed to decide the matter.

## **Article 1118. Definitions**

For purposes of this Chapter:

Appointing Authority means the Secretary-General, Deputy Secretary-General or next senior member of the staff of the International Centre for Settlement of Investment Disputes, who is not a national of either Party;

cross-border financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such services;

cross-border trade in financial services or cross-border supply of financial services means the supply of a financial service:

- (a) from the territory of one Party into the territory of the other Party;
- (b) in the territory of a Party by a person of that Party to a person of the other Party; or
- (c) by a national of a Party in the territory of the other Party,

but does not include the supply of a service in the territory of a Party by an investment in that territory;

financial institution means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

financial institution of the other Party means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;

financial service means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities: Insurance and insurance-related services

- (a) Direct insurance (including co-insurance):
  - (i) Life,
  - (ii) Non-life;
- (b) Reinsurance and retrocession;
- (c) Insurance intermediation, such as brokerage and agency;
- (d) Service auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services.

Banking and other financial services (excluding insurance)

- (e) Acceptance of deposits and other repayable funds from the public;
- (f) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;
- (g) Financial leasing;
- (h) All payment and money transmission services, including credit, charge and debit cards, travelers checks, and bankers drafts;
- (i) Guarantees and commitments;
- (j) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:
  - (i) money market instruments (including checks, bills, certificates of deposits),

- (ii) foreign exchange,
- (iii) derivative products including, futures and options,
- (iv) exchange rate and interest rate instruments, including products such as swaps and forward rate agreements,
- (v) transferable securities,
- (vi) other negotiable instruments and financial assets, including bullion,
- (k) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
- (l) Money broking;
- (m) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (n) Settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;
- (o) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
- (p) Advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

investment means "investment" as defined in Article 847 (Investment - Definitions), except that, with respect to "loans" and "debt securities" referred to in that Article:

- (a) a loan to or debt security issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and
- (b) a loan granted by or debt security owned by a financial institution, other than a loan to or debt security of a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty:

- (c) a loan to, or debt security issued by, a Party or a state enterprise thereof is not an investment; and
- (d) a loan granted by or debt security owned by a cross-border financial service supplier, other than a loan to or debt security issued by a financial institution, is an investment if such loan or debt security meets the criteria for investments set out in Article 847 (Investment - Definitions);

investor of a Party means "investor of a Party" as defined in Article 847 (Investment - Definitions);

new financial service means a financial service not supplied in the Party's territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

person of a Party means "person of a Party" as defined in Article 105 (Initial Provisions and General Definitions - Definitions of General Application) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

public entity means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; for greater certainty, a public entity shall not be considered a designated monopoly or a state enterprise for the purposes of Chapter Thirteen (Competition Policy, Monopolies and State Enterprises); and

self-regulatory organization means any non-governmental body, including any securities or futures exchange or market, clearing agency, other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions; for greater certainty, a self-regulatory organization shall not be considered a designated monopoly for purposes of Chapter Thirteen (Competition Policy, Monopolies and State Enterprises).

# Chapter Twelve. Temporary Entry for Business Persons

## Article 1201. General Principles

Further to Article 1202, this Chapter reflects the preferential trading relationship between the Parties, the mutual objective to facilitate temporary entry for business persons on a reciprocal basis and in accordance with Annex 1203, the need to establish transparent criteria and procedures for temporary entry and the need to ensure border security and to protect the domestic labour force and permanent employment in their respective territories.

## Article 1202. General Obligations

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 1201 and, in particular, shall expeditiously apply those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.
2. Nothing in this Chapter shall be construed to prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, 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.

## Article 1203. Grant of Temporary Entry

1. Each Party shall grant temporary entry to business persons who comply with existing immigration measures applicable to temporary entry such as those relating to public health and safety and national security, in accordance with this Chapter, including the provisions of Annex 1203.
2. Subject to each Party's labour legislation, a Party may refuse to issue a work permit or authorization to a business person where the temporary entry of that person might adversely affect:
  - (a) the settlement of any labour dispute that is in progress at the place or intended place of employment; or
  - (b) the employment of any person who is involved in such dispute.
3. Each Party shall limit any fees for processing applications for temporary entry of business persons so as to not unduly impair or delay trade in goods or services or the conduct of investment activities under this Agreement.

## Article 1204. Provision of Information

1. Further to Article 1901 (Transparency - Publication), and recognizing the importance to the Parties of transparency of temporary entry information, each Party shall:
  - (a) provide to the other Party relevant materials that will enable it to become acquainted with its measures relating to this Chapter; and
  - (b) no later than six months after the date of entry into force of this Agreement, make available explanatory material regarding the requirements for temporary entry under this Chapter in such a manner that will enable business persons of the other Party to become acquainted with them.
2. Each Party shall collect and maintain, and, on request, make available to the other Party in accordance with its domestic law, data respecting the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documentation.

## Article 1205. Contact Points

1. The Parties hereby establish Contact Points:
  - (a) in the case of Canada, the Contact Point is:  
  
Director  
  
Temporary Resident Policy

Immigration Branch

Citizenship and Immigration Canada

(b) in the case of Peru, the Contact Point is:

Director

Directorate of Immigrations

General Directorate of Immigration and Naturalization

Ministry of Interior,

or the occupant of any successor position.

2. The Contact Points shall exchange information as described in Article 1204 and shall meet as required to consider matters pertaining to this Chapter, such as:

(a) the implementation and administration of the Chapter;

(b) the development and adoption of common criteria and interpretations for the implementation of the Chapter;

(c) the development of measures to further facilitate temporary entry of business persons on a reciprocal basis;

(d) proposed modifications to the Chapter; and

(e) measures that affect the temporary entry of business persons under this Chapter.

## **Article 1206. Dispute Settlement**

1. A Party may not initiate proceedings under the general dispute settlement provisions of this Agreement regarding a refusal to grant temporary entry under this Chapter unless:

(a) the matter involves a pattern of practice; and

(b) the business person has exhausted the available administrative remedies 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 within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

## **Article 1207. Relation to other Chapters**

1. No provision of this Agreement shall be interpreted to impose any obligation on a Party regarding its immigration measures, except as specifically identified in this Chapter and Chapters One and Nineteen to Twenty-Three (Initial Provisions and General Definitions, Transparency, Administration of the Agreement, Dispute Settlement, Exceptions and Final Provisions).

2. Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.

## **Article 1208. Transparency In Processing of Applications**

1. Further to Chapter Nineteen (Transparency), each Party shall establish or maintain appropriate mechanisms to respond to inquiries from interested persons regarding applications and procedures relating to the temporary entry of business persons.

2. Each Party shall endeavour to, within a reasonable period that should not exceed 45 days after an application requesting temporary entry 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 endeavour to provide, without undue delay, information concerning the status of the application.

## **Article 1209. Definitions**

For purposes of this Chapter:

business person means a national of a Party who is engaged in trade in goods, the supply of services or the conduct of investment activities;

contract service supplier means an employee who is a professional or technician of a foreign based company, partnership, or firm who enters the territory of the other Party temporarily in order to perform a service pursuant to a contract between his/her employer and a service consumer in the territory of the other Party, when the employer:

(a) has no commercial presence in the territory of the other Party;

(b) is a juridical person that has obtained a contract for the provision of a service in the territory of the other Party that does not consist exclusively in the supply of personnel; and

(c) provides the employee's remuneration;

executive means a business person within an organisation who primarily directs the management of the organisation, exercises wide latitude in decision-making, and receives only general supervision or direction from higher level executives, the board of directors, and/or stockholders of the business;

independent professional or technician means a professional or technician who enters the territory of the other Party temporarily in order to perform a service pursuant to a contract with a service consumer located in the territory of the other Party when:

(a) the professional or technician supplies the service as a self-employed person;

(b) the professional or technician has obtained a service contract in the territory of the Party where the service is to be supplied; and

(c) the remuneration for the contract is to be paid solely to the professional or technician in the territory of the Party where the service is to be supplied;

labour dispute means a strike between a union and employer relating to terms and conditions of employment;

management trainee on professional development means an employee with a post-secondary degree who is on a temporary work assignment intended to broaden that employee's knowledge of and experience in a company in preparation for a senior leadership position within the company;

manager means a business person within an organisation who primarily directs the organisation or a department or subdivision of the organisation, supervises and controls the work of other supervisory, professional or managerial employees, has the authority to hire and fire or take other personnel actions (such as promotion or leave authorisation), and exercises discretionary authority over day-to-day operations;

professional means a national of a Party who is engaged in a specialty occupation (1) requiring:

(a) theoretical and practical application of a body of specialized knowledge, and who is eligible to obtain the certification or license to practice, if required; and

(b) attainment of a post-secondary degree in the specialty requiring four, or more years of study as a minimum for entry into the occupation (2);

professional or technician in a subordinate relationship means a professional or technician who enters the territory of the other Party temporarily in order to perform a service under the direction of an employer in the other Party, who has the authority to regulate, direct and sanction the activities of the employee;

specialist means an employee who possesses specialized knowledge of the company's products or services and its application in international markets, or an advanced level of expertise or knowledge of the company's processes and procedures. A specialist may include, but is not limited to, professionals and technicians;

technician means a national of a Party who is engaged in a specialty occupation (3) requiring:

(a) theoretical and practical application of a body of specialized knowledge, and who is eligible to obtain the certification/license to practice, if required; and

(b) attainment of a post-secondary or technical degree requiring one, or more years of study, or the equivalent of such a degree, as a minimum for entry into the occupation; (4) and

temporary entry means entry into the territory of a Party by a business person of the other Party without the intent to establish permanent residence.

(1) With respect to Canada, a professional specialty occupation shall mean an occupation which falls within the National Occupation Classification (NOC) levels O and A.

(2) With respect to Canada, these requirements shall be those defined in the NOC. With respect to Peru, requirements for regulated professions shall be provided in accordance with Article 1204.

(3) With respect to Canada, a technical specialty occupation shall mean an occupation which falls within the NOC level B.

(4) With respect to Canada, these requirements shall be those defined in the NOC. With respect to Peru, requirements for regulated technician occupations shall be provided in accordance with Article 1204.

## **Chapter Thirteen. Competition Policy, Monopolies and State Enterprises**

### **Article 1301. Objectives**

Recognizing that conduct subject to this Chapter has the potential to restrict bilateral trade and investment, the Parties believe that proscribing such conduct, implementing economically sound competition policies and cooperating in matters covered by this Chapter will help secure the benefits of this Agreement.

### **Article 1302. Competition Law and Policy**

1. Each Party shall maintain its independence in developing and enforcing its competition law.
2. Each Party shall adopt or maintain measures to proscribe anti-competitive business conduct and take appropriate action with respect to such conduct.
3. The measures each Party adopts or maintains to proscribe anti-competitive business conduct and the enforcement actions it takes pursuant to those measures shall be consistent with principles of transparency, non-discrimination and procedural fairness. Exclusions from these measures shall be transparent. Each Party shall make available to the other Party public information concerning exclusions provided under its competition laws.
4. Each Party should periodically assess its own exclusions to determine whether they are necessary to achieve its overriding policy objectives.
5. Peru may implement its obligations under this Article through the Andean Community competition laws or an Andean Community enforcement authority.

### **Article 1303. Consultations**

Subject to the independence of each Party to develop, maintain and enforce its competition policy and legislation, the Parties, on request of a Party, shall enter into consultations to foster understanding between them, or to address a specific matter under this Chapter. The requesting Party shall indicate in its request how the matter affects trade or investment between the Parties. The other Party shall give full and sympathetic consideration to the concerns of the requesting Party.

### **Article 1304. Cooperation**

Each Party recognizes the importance of cooperation and coordination between their competition authorities to further effective competition law enforcement in the free trade area. In this regard, the Parties, through their respective competition authorities, shall negotiate a cooperation instrument that may address among other matters, notification, consultation, positive and negative comity, technical assistance and exchange of information.

## **Article 1305. Designated Monopolies**

1. Nothing in this Agreement shall be construed to prevent a Party from designating a monopoly.
2. Where a Party intends to designate a monopoly and the designation may affect the interests of the other Party, the designating Party shall, whenever possible, provide prior written notification to the other Party of the designation.
3. Each Party shall ensure that any privately-owned monopoly that it designates after the date of entry into force of this Agreement and any government monopoly that it designates, or has designated prior to the date of entry into force of this Agreement:
  - (a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions, or impose quotas, fees, or other charges;
  - (b) acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, except to comply with any terms of its designation that are not inconsistent with subparagraphs (c) or (d);
  - (c) provides non-discriminatory treatment to covered investments, to goods of the other Party and to service suppliers of the other Party in its purchase or sale of the monopoly good or service in the relevant market; and
  - (d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, its subsidiaries or other enterprises with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect covered investments.
4. Paragraph 3 does not apply to procurement by a government of goods or services or any combination thereof, for governmental purposes and not with a view to commercial sale or resale, or use in the production or supply of goods or services for commercial sale or resale.

## **Article 1306. State Enterprises**

1. Nothing in this Agreement shall be construed to prevent a Party from establishing or maintaining a state enterprise.
2. Each Party shall ensure, that any state enterprise that it establishes or maintains, acts in a manner that is not inconsistent with the Party's obligations under Chapters Eight (Investment) and Eleven (Financial Services) wherever such enterprise exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.
3. Each Party shall ensure that any state enterprise that it maintains or establishes accords non-discriminatory treatment in the sale of its goods or services to covered investments.

## **Article 1307. Dispute Settlement**

1. No Party may have recourse to dispute settlement under Chapter Twenty-One (Dispute Settlement) for any matter arising under this Chapter except for those matters referred to in Articles 1305 and 1306.
2. For the purposes of this Chapter, an investor may have recourse to investor-state dispute settlement pursuant to subparagraph 1(b) of Article 819 (Investment - Claim by an Investor of a Party on Its Own Behalf) or subparagraph 1(b) of Article 820 (Investment - Claim by an Investor of a Party on behalf of an Enterprise) only for matters arising under subparagraph 3(a) of Article 1305 or paragraph 2 of Article 1306.
3. Where an investor of a Party considers that a designated monopoly or state enterprise of the other Party has acted in a manner inconsistent with that other Party's obligations under Chapter Eleven (Financial Services), the investor may have recourse to investor-state dispute settlement only for a breach of an obligation listed in subparagraph 2(b) of Article 1101 (Financial Services - Scope of Application) of that Chapter.

## **Article 1308. Definitions**

For purposes of this Chapter:

covered investment means "covered investment" as defined in Article 847 (Investment - Definitions);

designate means to establish, authorize, or to expand the scope of a monopoly to cover an additional good or service after the date of entry into force of this Agreement;

designated monopoly means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant;

government monopoly means a monopoly that is owned, or controlled through ownership interests, by a national government or by another such monopoly;

in accordance with commercial considerations means consistent with normal business practices of privately-held enterprises in the relevant business sector or industry;

market means the geographic and commercial market for a good or service;

non-discriminatory treatment means the better of national treatment and most-favoured-nation treatment, as set out in the relevant provisions of this Agreement; and

state enterprise means, except as set out in Annex 1308, an enterprise owned, or controlled through ownership interests, by a Party.

## **Chapter Fourteen. Government Procurement**

### **Article 1401. Scope and Coverage**

#### Application of Chapter

1. This Chapter applies to any measure adopted or maintained by a Party relating to procurement by a procuring entity listed in Annex 1401.1:

(a) by any contractual means, including purchase and rental or lease, with or without an option to buy;

(b) for which the value, as estimated in accordance with paragraph 5, equals or exceeds the relevant threshold specified in Annex 1401.1; and

(c) subject to the terms of Annex 1401.1.

2. This Chapter does not apply to:

(a) non-contractual agreements or any form of assistance that a Party, including a state enterprise, provides, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, and cooperative agreements;

(b) government provision of goods or services to persons or to subnational governments;

(c) purchases for the direct purpose of providing foreign assistance;

(d) purchases funded by international grants, loans, or other assistance, where the provision of such assistance is subject to conditions inconsistent with this Chapter;

(e) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities. For greater certainty, this Chapter does not apply to procurement of banking, financial, or specialized services related to the following activities:

(i) the incurring of public indebtedness, or

(ii) public debt management;

(f) hiring of government employees and related employment measures; or

(g) procurements made by an entity or state enterprise from another entity or state enterprise of that Party.

3. Nothing in this Chapter shall prevent a Party from developing new procurement policies, procedures, or contractual means, provided they are not inconsistent with this Chapter.



4. Where a procuring entity awards a contract that is not covered by this Chapter, nothing in this Chapter shall be construed to cover any good or service component of that contract.

#### Valuation

5. In estimating the value of a procurement for the purpose of ascertaining whether it is a procurement covered by this Chapter, a procuring entity shall:

(a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter;

(b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:

(i) premiums, fees, commissions, and interest, and

(ii) where the procurement provides for the possibility of option clauses, the estimated maximum total value of the procurement, inclusive of optional purchases; and

(c) where the procurement is to be conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers, base its calculation of the total maximum value of the procurement over its entire duration.

### **Article 1402. Security and General 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. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent a Party from adopting 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 persons with disabilities, philanthropic institutions, or prison labour.

3. The Parties understand that subparagraph 2 (b) includes environmental measures necessary to protect human, animal or plant life or health.

### **Article 1403. General Principles National Treatment and Non-discrimination**

1. With respect to any measure relating to procurement covered by this Chapter, each Party shall accord immediately and unconditionally to the goods and services of the other Party, and to the suppliers of the other Party of such goods or services, treatment no less favourable than the most favourable treatment the Party accords to domestic goods, services and suppliers.

2. With respect to any measure relating to procurement covered by this Chapter, a Party shall not:

(a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or

(b) 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. Conduct of Procurement

3. A procuring entity shall conduct procurement covered by this Chapter in a transparent and impartial manner that:

(a) is consistent with this Chapter;

(b) avoids conflicts of interest; and

(c) prevents corrupt practices. Tendering Procedures

4. A procuring entity shall use open tendering except where subparagraphs 6 through 9 of Article 1406 or Article 1409 apply.

#### Rules of Origin

5. With regard to the procurement of goods covered by this Chapter, each Party shall apply the rules of origin that it applies in the normal course of trade to those goods. Offsets

6. A Party, including its procuring entities, shall not seek, take account of, impose, or enforce offsets at any stage of a procurement covered by this Chapter. Measures Not Specific to Procurement

7. Paragraphs 1 and 2 do 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 or formalities and measures affecting trade in services other than measures governing procurement covered by this Chapter.

### **Article 1404. Publication of Procurement Information**

Each Party shall:

(a) promptly publish any law, regulation, judicial decision, administrative ruling of general application, and procedure regarding procurement covered by this Chapter, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and

(b) provide an explanation thereof to the other Party, on request.

### **Article 1405. Publication of Notices**

#### Notice of Intended Procurement

1. For each procurement covered by this Chapter, a procuring entity shall publish a notice inviting suppliers to submit tenders ("notice of intended procurement"), or where appropriate, a notice inviting applications for participation in the procurement. Any such notice shall be published in an electronic or paper medium that is widely disseminated and readily accessible to the public for the entire period established for tendering. Each Party shall maintain a gateway electronic site that includes links to all notices of procuring entities for procurements covered by this Chapter.

2. Each notice of intended procurement shall include:

(a) a description of the procurement, including the nature, and where known, the quantity of the goods or services to be procured;

(b) the procurement method that will be used and whether it will involve negotiation or electronic auction;

(c) a list of conditions for participation of suppliers;

(d) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if applicable;

(e) the address and time limits for the submission of tenders or applications for participation;

(f) the time-frame for delivery of the goods or services to be procured or the duration of the contract;

(g) where, pursuant to Article 1406, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender; and

(h) an indication that the procurement is covered by this Chapter.

#### Notice of Planned Procurement

3. Each Party shall encourage its procuring entities to publish as early as possible in each fiscal year notices regarding their respective procurement plans. Such notices should include the subject matter of any planned procurement and the estimated date of the publication of the notice of intended procurement.

### **Article 1406. Conditions for Participation**

## General Requirements

1. Where a Party, including its procuring entities, requires suppliers to satisfy registration, qualification or any other requirements or conditions for participation in a separate process in order to participate in a procurement covered by this Chapter, the procuring entity shall publish a notice inviting suppliers to apply for participation. The procuring entity shall publish the notice sufficiently in advance to provide interested suppliers time to prepare and submit applications and for the procuring entity to evaluate and make its determination based on such applications.
2. A procuring entity shall limit any conditions for participation in a procurement covered by this Chapter to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.
3. In establishing the conditions for participation, a procuring entity:
  - (a) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a Party; and
  - (b) may require relevant prior experience where essential to meet the requirements of the procurement.
4. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:
  - (a) shall evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and
  - (b) shall base its evaluation on the conditions that the procuring entity has specified in advance in its notices or tender documentation.
5. In assessing whether a supplier satisfies the conditions for participation, a Party, including its procuring entities, shall recognize as qualified all domestic suppliers and suppliers of the other Party that satisfy the conditions for participation.

## Multi-use Lists

6. A procuring entity may establish or maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is:
  - (a) published annually; and
  - (b) where published by electronic means, made available continuously.
7. The notice provided for in paragraph 6 shall include:
  - (a) a description of the goods or services, or categories thereof, for which the list may be used;
  - (b) the conditions for participation to be satisfied by suppliers and the methods that the procuring entity will use to verify a supplier's satisfaction of the conditions;
  - (c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;
  - (d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the use of the list; and
  - (e) an indication that the list may be used for procurement covered by this Chapter.
8. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short time.

## Selective Tendering

9. Where a Party's law allows the use of selective tendering procedures, a procuring entity shall, for each intended procurement covered by this Chapter:
  - (a) publish a notice inviting suppliers to apply for participation in the procurement sufficiently in advance to provide interested suppliers time to prepare and submit applications and for the entity to evaluate, and make its determinations based on, such applications; and

(b) allow all domestic suppliers and suppliers of the other Party that the entity has determined satisfy the conditions for participation to submit a tender, unless the entity has stated in the notice of intended procurement or, where publicly available, in the tender documentation, a limitation on the number of suppliers that will be permitted to tender and the criteria for such a limitation.

#### Information on Procuring Entity Decisions

10. A procuring entity shall promptly inform any supplier that submits an application for participation in a procurement or for inclusion on a multi-use list of the procuring entity's decision with respect to the application.

11. Where a procuring entity rejects a supplier's application for participation in a procurement or an application for inclusion on a multi-use list, ceases to recognize a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

12. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:

(a) bankruptcy;

(b) false declarations; or

(c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts.

13. Procuring entities of each Party shall not adopt or maintain 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.

## **Article 1407. Technical Specifications and Tender Documentation**

#### Technical Specifications

1. A procuring entity shall not prepare, adopt, or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to international trade between the Parties.

2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

(a) specify the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specification on international standards, where such exist; otherwise, on national technical regulations, recognized national standards or building codes.

3. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer, or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the entity includes words such as "or equivalent" in the tender documentation.

4. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement covered by this Chapter from a person that may have a commercial interest in the procurement.

5. For greater certainty, a 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. Tender Documentation

6. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

(a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings, or instructional materials;

- (b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;
- (c) all evaluation criteria to be considered in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;
- (d) where there will be a public opening of tenders, the date, time, and place for the opening of tenders; and
- (e) any other terms or conditions relevant to the evaluation of tenders.

7. A procuring entity shall promptly reply to any reasonable request for relevant information by a supplier participating in a procurement covered by this Chapter, except that the entity shall not make available information with regard to a specific procurement in a manner that would give the requesting supplier an advantage over its competitors in the procurement.

#### Modifications

8. Where a procuring entity, prior to the award of a contract, modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications, amended or re-issued notice or tender documentation:

(a) to all suppliers that are participating in the procurement at the time of the modification, amendment or re-issuance, where such suppliers are known to the procuring entity, and in all other cases, in the same manner as the original information was made available; and

(b) in adequate time to allow such suppliers to modify and submit amended tenders, as appropriate.

### **Article 1408. Time Limits for the Submission of Tenders**

1. A procuring entity shall provide suppliers sufficient time to submit applications to participate in a procurement covered by this Chapter and prepare and submit responsive tenders, taking into account the nature and complexity of the procurement.

#### Deadlines

2. Except as provided for in paragraphs 3 and 4, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which: (a) in the case of open tendering, the notice of intended procurement is published; or (b) in the case of selective tendering, the entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

3. A procuring entity may reduce by five days the time limit established under paragraph 2 for the submission of tenders, for each one of the following circumstances:

(a) the notice of intended procurement is published by electronic means;

(b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and

(c) the procuring entity accepts tenders by electronic means.

4. A procuring entity may establish a time limit of less than 40 days for the submission of tenders provided that the time given to suppliers is sufficient to enable them to prepare and submit responsive tenders and is in no case less than 10 days before the final date for the submission of tenders, where:

(a) the procuring entity published a separate notice containing the information specified in paragraph 3 of Article 1405 at least 40 days and not more than 12 months in advance, and such separate notice contains a description of the procurement, the relevant time limits for the submission of tenders, or, where applicable, applications for participation, and the address from which documents relating to the procurement may be obtained;

(b) in the case of the second or subsequent publications of notices for procurement of a recurring nature;

(c) the procuring entity procures commercial goods or services; or (d) a state of urgency duly substantiated by the procuring entity renders impracticable the time limits specified in paragraph 2, or where applicable, paragraph 3.

### **Article 1409. Limited Tendering**

1. Provided that a procuring entity does not use this provision to avoid competition among suppliers, to protect domestic suppliers, or in a manner that discriminates against suppliers of the other Party, the procuring entity may contact a supplier or suppliers of its choice and may choose not to apply Articles 1405, 1406, 1407, 1408 and 1410 in any of the following circumstances:

(a) where the requirements of the tender documentation are not substantially modified and:

(i) no tenders were submitted or no suppliers applied to participate in a procurement covered by this Chapter,

(ii) no tenders that conform to the essential requirements of the tender documentation were submitted,

(iii) no suppliers satisfied the conditions for participation, or (iv) the tenders submitted have been collusive;

(b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:

(i) the requirement is for a work of art,

(ii) the protection of patents, copyrights or other exclusive rights, or

(iii) due to an absence of competition for technical reasons;

(c) 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 and 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, and

(ii) would cause significant inconvenience or substantial duplication of costs to the procuring entity;

(d) for goods purchased on a commodity market;

(e) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. 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, but does not include quantity production, or supply to establish commercial viability, or to recover research and development costs;

(f) insofar as it is strictly necessary for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services cannot be obtained in time using an open or selective tendering procedure;

(g) where a contract is awarded to a winner of a design contest provided that:

(i) the contest has been organized in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement, and

(ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner;

(h) where a procuring entity needs to procure consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences, cause economic disruption or similarly be contrary to the public interest; and

(i) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership, or bankruptcy, but not for routine purchases from regular suppliers.

2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1. The report shall include the name of the procuring entity, the value and kind of goods or services procured, and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

## **Article 1410. Treatment of Tenders and Awarding of Contracts**

### Treatment of Tenders

1. A procuring entity shall receive, open, and treat all tenders under procedures that guarantee the fairness and impartiality

of the procurement process and the confidentiality of tenders.

2. A procuring entity shall treat tenders in confidence until at least the opening of the tenders.

3. Where a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the entity shall provide the same opportunity to all participating suppliers. Awarding of Contracts

4. To be considered for award, a tender must be submitted in writing by a supplier that satisfies the conditions for participation and must, at the time of opening, comply with the essential requirements of the notices and tender documentation.

5. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the entity has determined to be fully capable of undertaking the contract and, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:

(a) the most advantageous tender; or

(b) where price is the sole criterion, the lowest price.

6. A procuring entity shall not use options, cancel a procurement, or modify awarded contracts in a manner that circumvents the obligations in this Chapter.

#### Information Provided to Suppliers

7. A procuring entity shall promptly inform suppliers participating in the procurement of the entity's contract award decisions and, on request, shall do so in writing. Subject to Article 1411, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender.

#### Publication of Award Information

8. Not later than 72 days after an award, a procuring entity shall publish in an officially designated publication, which may be in either an electronic or paper medium, a notice that includes, at a minimum, the following information about the contract:

(a) the name and address of the procuring entity;

(b) a description of the goods or services procured;

(c) the date of award;

(d) the name and address of the successful supplier;

(e) the contract value; and (f) the procurement method used and, in cases where a procedure has been used pursuant to paragraph 1 of Article 1409, a description of the circumstances justifying the use of such procedure.

#### Maintenance of Records

9. A procuring entity shall maintain reports and records of tendering procedures relating to procurements covered by this Chapter, including the reports provided for in paragraph 2 of Article 1409, and shall retain such reports and records for a period of at least three years after the award of a contract.

## **Article 1411. Disclosure of Information**

#### Provision of Information to a Party

1. On request of the other Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender. In cases where release of the information would prejudice competition in future tenders, the Party that receives that information shall not disclose it to any supplier, except after consultation with, and consent of, the Party that provided the information. Non-Disclosure of Information

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, may not provide information to a particular supplier that might prejudice fair competition between suppliers.

3. A Party, including its procuring entities, authorities and review bodies, are not required under this Chapter to release

confidential information where release:

- (a) would impede law enforcement;
- (b) might prejudice fair competition between suppliers;
- (c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or
- (d) would otherwise be contrary to the public interest.

## **Article 1412. Domestic Review Procedures**

1. Each Party shall ensure that its entities accord impartial and timely consideration to any complaints from suppliers regarding an alleged breach of measures implementing this Chapter arising in the context of a procurement covered by this Chapter in which they have, or have had, an interest. Each Party shall encourage suppliers to seek clarification from its entities through consultations with a view to facilitating the resolution of any such complaints.
2. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by suppliers ("challenge") arising in the context of a procurement covered by this Chapter in which the supplier has, or has had, an interest.
3. Each Party shall ensure that any authority it establishes or designates under paragraph 2 has written procedures that are generally available. Such procedures shall be timely, effective, transparent, non-discriminatory and provide that:
  - (a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;
  - (b) the participants in the challenge shall:
    - (i) have the right to be heard prior to a decision of the review body being made on the challenge,
    - (ii) have the right to be represented and accompanied,
    - (iii) have access to all challenge proceedings, and
    - (iv) have the right to request that the proceedings take place in public and that witnesses may be presented; and
  - (c) decisions or recommendations relating to challenges shall be provided, in a timely fashion, in writing, with an explanation of the basis for each decision or recommendation.
4. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known to the supplier or reasonably should have become known to the supplier.
5. Each Party shall provide that an authority it establishes or designates under paragraph 2 has authority to take interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures for taking interim measures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied.
6. Each Party shall ensure that a supplier's submission of a challenge will not prejudice the supplier's participation in ongoing or future procurements.
7. Where a body other than an authority referred to in paragraph 2 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

## **Article 1413. Modifications and Rectifications to Coverage**

1. Where a Party modifies its coverage of procurement under this Chapter, the Party shall:
  - (a) notify the other Party in writing; and
  - (b) include in the notification a proposal of appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification.



2. Notwithstanding subparagraph 1(b), a Party need not provide compensatory adjustments where:

(a) the modification in question is a minor amendment or rectification of a purely formal nature; or

(b) the proposed modification covers an entity over which the Party has effectively eliminated its control or influence.

3. If the other Party does not agree that: (a) an adjustment proposed under subparagraph 1(b) is adequate to maintain a comparable level of mutually agreed coverage;

(b) the proposed modification is a minor amendment or a rectification under subparagraph 2(a); or

(c) the proposed modification covers an entity over which the Party has effectively eliminated its control or influence under subparagraph 2(b), it must object in writing within 30 days of receipt of the notification referred to in paragraph 1 or be deemed to have agreed to the adjustment or proposed modification, including for the purposes of Chapter Twenty-One (Dispute Settlement).

4. Where the Parties are in agreement on the proposed modification, rectification, or minor amendment, including where a Party has not objected within 30 days under paragraph 3, they shall give effect to the agreement by modifying forthwith the relevant Annex.

## **Article 1414. Committee on Procurement**

The Parties hereby establish a Committee on Procurement to address matters related to the implementation of this chapter with a view to maximizing access to government procurement.

## **Article 1415. Further Negotiations**

1. If, after the entry into force of the provisions of this Chapter, either Party enters into another international agreement that contains different procurement procedures and practices, including the introduction of shorter bid periods, on the request of either Party, the Parties shall enter into negotiations with a view to harmonizing this Chapter with the new international agreement.

2. If, after the entry into force of the provisions of this Chapter, either Party enters into another international agreement that provides greater access to its procurement market than is provided under this Chapter, including with respect to sub-federal government procurement, on the request of either Party, the Parties may agree to enter into negotiations with a view to achieving an equivalent level of market access under this Chapter as is contained in the other international agreement.

## **Article 1416. Information Technology**

The Parties shall, to the extent possible, endeavour to use electronic means of communication to permit efficient dissemination of information on government procurement, particularly as regards tender opportunities offered by procuring entities, while respecting the principles of transparency and non-discrimination.

## **Article 1417. Definitions**

For purposes of this Chapter:

commercial goods and services means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes; conditions for participation means any registration, qualification or other prerequisites for participation in a procurement;

construction services means a contractual arrangement for the realization by any means of civil or building works, whether paid for directly by the Party or through, for a specified period of time, any grant to the supplier of temporary ownership or a right to control and operate, and demand payment for the use of such works, for the duration of the contract;

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;

limited tendering means a procurement method where the procuring entity contacts a supplier or suppliers of its choice;

multi-use list means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;

notice of intended procurement means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;

offsets means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar actions or requirements;

open tendering means a procurement method where all interested suppliers may submit a tender;

procurement means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale, or use in the production or supply of goods or services for commercial sale or resale;

procuring entity means an entity listed in Annex 1401.1-1 or 1401.1-2;

selective tendering means a procurement method where only suppliers satisfying the conditions for participation are invited by the procuring entity to submit a tender; services includes construction services, unless otherwise specified;

supplier means a person or group of persons that provides or could provide goods or services to a procuring entity;

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 labelling requirements as they apply to a good, service, process, or production method; and

technical specification means a tendering requirement that:

(i) lays down the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision, or

(ii) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

## **Chapter Fifteen. Electronic Commerce**

### **Article 1501. Scope and Coverage**

1. The Parties confirm that this Agreement, including Chapter Nine (Cross-Border Trade in Services), Chapter Two (National Treatment and Market Access for Goods), Chapter Eight (Investment), Chapter Fourteen (Government Procurement), Chapter Eleven (Financial Services), Chapter Ten (Telecommunications), and Chapter Twenty-Two (Exceptions) applies to trade conducted by electronic means. (1) In particular, the Parties recognize the importance of the access and use provisions of Chapter Ten (Telecommunications) in enabling trade conducted by electronic means.

2. Nothing in this Chapter imposes obligations on a Party to allow products to be delivered electronically, except in accordance with the obligations of that Party in other Chapters of this Agreement.

(1) For greater certainty, the application of this Agreement to trade conducted by electronic means includes the application of the reservations or exceptions taken by a Party as set out in its schedule to Annex I, II, or III.

### **Article 1502. General Provisions**

1. The Parties recognize the economic growth and opportunities provided by electronic commerce and the applicability of WTO rules to electronic commerce.

2. Considering the potential of electronic commerce as a social and economic development tool, the Parties recognize the importance of:

(a) clarity, transparency and predictability in their domestic regulatory frameworks in facilitating, to the maximum extent possible, the development of electronic commerce;

(b) interoperability, innovation and competition in facilitating electronic commerce;

(c) ensuring that global and domestic electronic commerce policy takes into account the interest of all stakeholders, including business, consumers, non-government organizations and relevant public institutions; and

(d) facilitating the use of electronic commerce of micro, small and medium sized enterprises.

3. Each Party shall endeavour to adopt measures to facilitate trade conducted by electronic means by addressing issues relevant to the electronic environment.

4. The Parties recognize the importance of avoiding unnecessary barriers to trade conducted by electronic means. Having regard to its national policy objectives, each Party shall endeavour to guard against measures that:

(a) unduly hinder trade conducted by electronic means; or,

(b) have the effect of treating trade conducted by electronic means more restrictively than trade conducted by other means.

### **Article 1503. Customs Duties**

1. Neither Party may apply customs duties, fees, or charges on or in connection with the importation or exportation of digital products by electronic means.

2. For greater clarity, this Article does not preclude either Party from imposing internal taxes or other internal charges on digital products delivered electronically, provided that such taxes or charges are imposed in a manner that is not inconsistent with this Agreement.

### **Article 1504. Transparency**

Pursuant to Article 1901 (Transparency - Publication), each Party shall promptly publish or otherwise make publicly available its laws, regulations, procedures and administrative rulings of general application, that pertain to electronic commerce.

### **Article 1505. Consumer Protection**

1. The Parties recognize the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent and deceptive commercial practices in electronic commerce.

2. To this end, the Parties should exchange information and experiences on national approaches for the protection of consumers engaging in electronic commerce.

### **Article 1506. Paperless Trade Administration**

1. Each Party shall endeavour to make trade administration documents available to the public in electronic form.

2. Each Party shall endeavour to accept trade administration documents submitted electronically as the legal equivalent of the paper version of such documents.

### **Article 1507. Protection of Personal Information**

1. The Parties recognize the importance of the protection of personal information in the on-line environment.

2. To this end, each Party should:

(a) adopt or maintain legal, regulatory and administrative measures for the protection of personal information of users engaged in electronic commerce; and

(b) exchange information and experiences regarding their domestic regimes on the protection of personal information.

### **Article 1508. Cooperation**

Recognizing the global nature of electronic commerce, the Parties affirm the importance of:

(a) working together to facilitate the use of electronic commerce of micro, small and medium sized enterprises;

(b) sharing information and experiences on laws, regulations, and programs in the sphere of electronic commerce, including those related to data privacy, consumer confidence, security in electronic communications, authentication, intellectual property rights, and electronic government;

(c) working to maintain cross-border flows of information as an essential element in fostering a vibrant environment for electronic commerce;

(d) fostering electronic commerce through the encouragement of the private sector to adopt codes of conduct, model contracts, guidelines, and enforcement mechanisms; and

(e) actively participating in regional and multilateral fora to promote the development of electronic commerce.

## **Article 1509. Relation to other Chapters**

In the event of an inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.

## **Article 1510. Definitions**

For purposes of this Chapter:

authentication means the process or act of establishing the identity of a party to an electronic communication or transaction or ensuring the integrity of an electronic communication;

delivered electronically means delivered through telecommunications, alone or in conjunction with other information and communication technologies;

digital products means computer programs, text, video, images, sound recordings and other products that are digitally encoded; personal information means any information relating to an identified or identifiable natural person;

telecommunications means "telecommunications" as defined in Article 1014 (Telecommunications - Definitions);

trade administration documents means forms that a Party issues or controls that must be completed by or for an importer or exporter in connection with the import or export of goods; and

trade conducted by electronic means means trade conducted through telecommunications, alone or in conjunction with other information and communication technologies.

## **Chapter Sixteen. Labour**

### **Article 1601. Affirmations**

The Parties affirm their obligations as members of the International Labour Organization (ILO) and their commitments to the ILO Declaration on Fundamental Principles and Rights at Work (1998) and its Follow-Up as well as their continuing respect for each other's Constitution and laws.

### **Article 1602. Objectives**

The Parties wish to build on their respective international commitments, strengthen their cooperation on labour and in particular:

(a) improve working conditions and living standards in each Party's territory;

(b) promote their commitment to the internationally recognized labour principles and rights;

(c) promote compliance with and effective enforcement by each Party of its labour laws;

(d) promote social dialogue on labour matters among workers and employers, their respective workers' and employers' organizations, and governments;

(e) pursue cooperative labour-related activities on the basis of mutual benefit;

(f) strengthen the capacity of the ministries responsible for labour affairs and other institutions responsible for administering and enforcing labour laws in their territories; and

(g) foster full and open exchange of information between such ministries and institutions in regard to labour laws and its application in each Party's territory.

## **Article 1603. Obligations**

In order to further the foregoing objectives, the Parties' mutual obligations are set out in the Labour Cooperation Agreement between Canada and the Republic of Peru (LCA) that addresses, inter alia:

- (a) general obligations concerning the internationally recognized labour principles and rights that are to be embodied in each Party's labour laws;
- (b) derogation from domestic labour laws in order to encourage trade or investment;
- (c) effective enforcement of labour laws through appropriate government action, private rights of action, procedural guarantees, public information and awareness;
- (d) institutional mechanisms to oversee the implementation of the LCA, such as a Ministerial Council and National Administration Offices to receive and review public communications on specified labour law matters and to enable cooperative activities to further the objectives of the LCA;
- (e) general and ministerial consultations regarding the implementation of the LCA and its obligations; and
- (f) independent review panels to hold hearings and make determinations regarding alleged non-compliance with the terms of the LCA and, if requested, monetary assessments.

## **Chapter Seventeen. Environment**

### **Article 1701. Affirmations**

1. The Parties recognize that each Party has sovereign rights and responsibilities to conserve and protect its environment, and affirm their environmental obligations under their domestic law, as well as their international obligations under multilateral environmental agreements.
2. The Parties recognize the mutual supportiveness between trade and environment policies and the need to implement this Agreement in a manner consistent with environmental protection and conservation and the sustainable use of their resources.

### **Article 1702. Agreement on the Environment**

In furtherance of Article 1701, the Parties have set out their mutual obligations in an Agreement on the Environment that addresses, inter alia:

- (a) conservation, protection and improvement of the environment in the territory of each Party for the well-being of present and future generations;
- (b) derogation from domestic environmental laws in order to encourage trade or investment;
- (c) conservation and sustainable use of biological diversity and protection and preservation of traditional knowledge;
- (d) development of, compliance with and enforcement of environmental laws;
- (e) transparency and public participation on environmental matters; and
- (f) cooperation between the Parties on the advancement of environmental issues of common interest.

### **Article 1703. Relationship between this Agreement and the Agreement on the Environment**

1. The Parties recognize the importance of balancing trade obligations and environmental obligations, affirm that the Agreement on the Environment complements this Agreement and that the two are mutually supportive.
2. The Commission shall consider, as appropriate, reports and recommendations from the Committee on the Environment established under the Agreement on Environment, in respect of any issues related to trade and the environment.

## **Chapter Eighteen. Trade-related Cooperation**

## **Article 1801. Objectives**

1. Recognizing that trade-related cooperation is a catalyst for the reforms and investments necessary to foster trade-driven economic growth and adjustment to liberalized trade, the Parties agree to promote trade-related cooperation pursuant to the following objectives:

(a) to strengthen the capacities of the Parties to maximize the opportunities and benefits deriving from this Agreement;

(b) to strengthen and develop cooperation at a bilateral, regional or multilateral level;

(c) to foster new opportunities for trade and investment, stimulating competitiveness and encouraging innovation, including dialogue and cooperation among their respective academies of science, governmental organizations, non-governmental organizations, universities, colleges, as well as their science, research and technological centers and institutes, and private sector enterprises and firms in areas of mutual interest relating to science and technology and innovation; and

(d) to promote sustainable economic development, with an emphasis on small and medium sized enterprises, in order to contribute to the reduction of poverty through trade.

## **Article 1802. Committee on Trade-related Cooperation**

1. Pursuant to Article 1801, the Parties hereby establish a Committee on Trade-Related Cooperation comprising representatives of each Party.

2. Each Party should provide, and periodically update, an Action Plan to the Committee describing proposed trade-related cooperation initiatives.

3. The Committee shall:

(a) seek the prioritization and promote the realization of trade-related cooperation initiatives outlined in the Action Plans of the Parties;

(b) invite appropriate international donor institutions, private sector entities and non-governmental organizations to assist in the development and implementation of trade-related cooperation initiatives in accordance with the priorities set out by the Committee pursuant to subparagraph 3(a);

(c) work with other committees or working groups established under this Agreement, including through joint meetings, to support the implementation of trade-related cooperation provisions outlined in the Agreement, in accordance with the priorities set out by the Committee pursuant to subparagraph 3(a);

(d) establish rules and procedures for the conduct of its work; all decisions of the Committee shall be taken by consensus, unless otherwise agreed;

(e) monitor and assess the progress in implementing trade related cooperation initiatives;

(f) provide an annual report to the Commission describing the activities of the Committee, unless otherwise agreed; and (g) meet annually, or as otherwise agreed by the Parties, in person or by any other technological means available.

4. The Committee may establish ad hoc working groups, which may comprise government and non-government representatives.

5. The implementation of trade-related cooperation initiatives is subject to the joint decision of the Parties.

## **Chapter Nineteen. Transparency**

### **Section A. Transparency**

#### **Article 1901. Publication**

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any such measure that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

## **Article 1902. Notification and Provision of Information**

1. To the maximum extent possible, each Party shall notify the other Party of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement.

2. On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not the other Party has been previously notified of that measure.

3. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

## **Article 1903. Administrative Proceedings**

With a view to administering in a consistent, impartial and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that in its administrative proceedings applying measures referred to in Article 1902 to particular persons, goods or services of the other Party in specific cases:

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when permitted by time, the nature of the proceeding, and the public interest; and

(c) its procedures are in accordance with domestic law.

## **Article 1904. Review and Appeal**

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority 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 domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, the offices or authorities with respect to the administrative action at issue.

## **Article 1905. Cooperation on Promoting Increased Transparency**

The Parties agree to cooperate in bilateral, regional and multilateral fora on means to promote transparency in respect of international trade and investment.

## **Article 1906. Definitions**

For purposes of this Section:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

## **Section B. Anti-Corruption**

### **Article 1907. Statement of Principles**

The Parties affirm their resolve to prevent and combat bribery and corruption in international trade and investment.

### **Article 1908. Anti-corruption Measures**

1. Each Party shall adopt or maintain the necessary legislative or other measures to establish, in matters affecting international trade or investment, as criminal offences when committed intentionally:

(a) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage for the official himself or another person or entity, in order that the official act or refrain from acting in the exercise of his official duties;

(b) the promise, offering or giving to a public official, directly or indirectly, of an undue advantage for the official himself or another person or entity, in order that the official act or refrain from acting in the exercise of his official duties;

(c) the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage for the official himself or another person or entity, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business; and

(d) aiding, abetting or conspiring to commit any of the offences described in subparagraphs (a) through (c).

2. Each Party shall adopt such measures as may be necessary to establish its jurisdiction over offences committed in its territory.

3. Each Party shall make the commission of an offence covered by this Agreement liable to sanctions that take into account the gravity of that offence.

4. Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of enterprises for participation in the offences covered by this Agreement. In particular, each Party shall ensure that enterprises held liable in accordance with this Article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

5. Each Party shall consider incorporating in its domestic legal system at the national level appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Agreement.

### **Article 1909. Cooperation In International Fora**

The Parties recognize the importance of regional and multilateral initiatives to prevent and combat bribery and corruption in international trade and investment. The Parties agree to work together to advance efforts in regional and multilateral fora to prevent and combat bribery and corruption in international trade and investment, including encouraging and supporting appropriate initiatives.

### **Article 1910. Definitions**

For purposes of this Section:

foreign public official means any natural person holding a legislative, executive, administrative, or judicial office of a foreign country, whether appointed or elected, and any natural person exercising a public function for a foreign country, including for a public agency or public enterprise;

public function means any temporary or permanent, paid or honorary activity, performed by a natural person in the name of a Party or in the service of a Party or its institutions, at any level of its hierarchy; and



public official means any natural person holding a legislative, executive, administrative or judicial office of a Party, whether appointed or elected and whether permanent or temporary.

## **Chapter Twenty. Administration of the Agreement**

### **Article 2001. The Joint Commission**

1. The Parties hereby establish a Joint Commission, comprising cabinet-level representatives of the Parties, or their designees.

2. The Commission shall:

- (a) supervise the implementation of this Agreement;
- (b) review the general functioning of this Agreement;
- (c) assess the outcomes of the application of this Agreement;
- (d) oversee the further elaboration of this Agreement;
- (e) supervise the work of all bodies established under this Agreement referred to in Annex 2001.1;
- (f) approve the Model Rules of Procedure; and
- (g) consider any other matter that may affect the operation of this Agreement.

3. The Commission may:

- (a) adopt interpretive decisions concerning this Agreement binding on panels established under Article 2106 (Dispute Settlement - Establishment of a Panel) and Tribunals established under Section B of Chapter Eight (Investment);
- (b) seek the advice of non-governmental persons or groups;
- (c) take any other action in the exercise of its functions as the Parties may agree;
- (d) further the implementation of the objectives of this Agreement by approving any revisions of:
  - (i) the Schedules to Annex 203.2, with the purpose of adding one or more goods excluded in the schedule of a Party,
  - (ii) the phase-out periods established in the tariff elimination schedule, with the purpose of accelerating the tariff reduction,
  - (iii) the specific rules of origin established in Annex 301,
  - (iv) procuring entities listed in Annex 1401.1, and
  - (v) the Uniform Regulations on Origin Procedures that the Parties may develop;
- (e) consider any amendments or modifications to the rights and obligations under this Agreement; and
- (f) establish the amount of remuneration and expenses that will be paid to panelists.

4. On the request of the Committee on the Environment established under the Agreement on the Environment, the Commission may revise Annex 103 to include other MEAs, or to include amendments to any MEAs or remove any MEAs listed in that Annex.

5. The acceptance by a Party of any revision referred to in paragraphs 3(d) and 4 shall be subject to the completion of any necessary domestic legal procedures of that Party.

6. The Commission may establish and delegate responsibilities to committees or working groups. Except where specifically provided for in this Agreement, the committees and working groups shall work under a mandate recommended by the Agreement Coordinators referred to in Article 2002 and approved by the Commission.

7. The Commission shall establish its rules and procedures. All decisions of the Commission shall be taken by mutual agreement.

8. The Commission shall normally convene once a year, or upon request in writing of either Party. Unless otherwise agreed by the Parties, meetings of the Commission shall be held alternately in the territory of each Party, or by any technological

means available.

## **Article 2002. Agreement Coordinators**

1. Each Party shall appoint an Agreement Coordinator and notify the other Party within 60 days following the entry into force of this Agreement.
2. The Agreement Coordinators shall jointly:
  - (a) monitor the work of all bodies established under this Agreement, referred to in Annex 2001.1;
  - (b) recommend to the Commission the establishment of such bodies as they consider necessary to assist the Commission;
  - (c) coordinate preparations for Commission meetings;
  - (d) follow up on any decision taken by the Commission, as appropriate;
  - (e) receive all notifications and information provided pursuant to this Agreement and, as necessary, facilitate communications between the Parties on any matter covered by this Agreement; and
  - (f) consider any other matter that may affect the operation of this Agreement as mandated by the Commission.
3. The Coordinators shall meet as often as required.
4. Each Party may request in writing at any time that a special meeting of the Coordinators be held. Such a meeting shall take place within 30 days of receipt of the request.

## **Chapter Twenty-One. Dispute Settlement**

### **Article 2101. Cooperation**

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

### **Article 2102. Scope and Coverage**

1. Except for the matters covered in Chapters Sixteen (Labour) and Seventeen (Environment) and as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the settlement of all disputes between the Parties regarding the interpretation or application of this Agreement or wherever a Party considers that:
  - (a) an actual or proposed measure of the other Party is or would be inconsistent with the obligations of this Agreement;
  - (b) the other Party has otherwise failed to carry out its obligations under this Agreement; or
  - (c) any benefit that the Party could reasonably have expected to accrue to it under any provision of:
    - (i) Chapters Two (National Treatment and Market Access for Goods), Three (Rules of Origin), Four (Origin Procedures and Trade Facilitation) or Fourteen (Government Procurement), or
    - (ii) Chapter Nine (Cross-Border Trade in Services),

is being nullified or impaired as a result of the application of any measure of the other Party that is not inconsistent with this Agreement.

2. In any dispute in respect of subparagraph 1(c), a panel established under this Chapter shall take into consideration the jurisprudence interpreting Article XXIII:1(b) of the GATT 1994 and Article XXIII(3) of GATS. A Party may not invoke subparagraph 1(c)(i) with respect to any measure subject to an exception under Article 2201 (Exceptions - General Exceptions) nor invoke subparagraph 1(c) with respect to any measure subject to the exception under Article 2205 (Exceptions - Cultural Industries).

### **Article 2103. Choice of Forum**

1. Subject to paragraph 2, disputes regarding any matter arising under both this Agreement and the WTO Agreement or any

other free trade agreement to which both Parties are party, or any successor agreement thereto, may be settled in either forum at the discretion of the complaining Party.

2. In any dispute referred to in paragraph 1 where the Party complained against claims that its measures are subject to Article 103 (Initial Provisions and General Definitions - Relation to Environmental and Conservation Agreements) and requests in writing that the matter be considered under this Agreement, the complaining Party, in respect of that matter, may have recourse to dispute settlement procedures only under this Agreement.

3. Where the complaining Party requests the establishment of a dispute settlement panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the other, unless the Party complained against makes a request pursuant to paragraph 2.

## **Article 2104. Consultations**

1. A Party may request in writing consultations with the other Party regarding any matter referred to in Article 2102.

2. The requesting Party shall deliver the request to the other Party, and shall set out the reasons for the request, including the identification of the measure or other matter at issue under Article 2102 and an indication of the legal basis for the complaint.

3. The other Party shall respond in writing and, subject to paragraph 4, the Parties shall, unless they otherwise agree, enter into consultations within 30 days of the date of receipt of the request by the other Party.

4. In cases of urgency, including those concerning perishable goods or otherwise involving goods or services that rapidly lose their trade value, such as certain seasonal goods or services, consultations shall commence within 15 days of the date of receipt of the request by the other Party.

5. The requesting Party may request the other Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.

6. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article. To this end, each Party shall:

(a) provide sufficient information to enable a full examination of the measure or other matter at issue; and

(b) treat any confidential or proprietary information received in the course of consultations on the same basis as the Party providing the information.

7. Consultations are confidential and without prejudice to the rights of the Parties in proceedings under this Chapter.

8. Consultations may be held in person or by any other means agreed to by the Parties.

## **Article 2105. Good Offices, Conciliation and Mediation**

1. The Parties may at any time agree to undertake an alternative method of dispute resolution, such as good offices, conciliation or mediation.

2. Such alternative methods of dispute resolution shall be conducted according to procedures agreed to by the Parties.

3. Proceedings established under this Article may begin at any time and be suspended or terminated at any time by either Party.

4. Proceedings involving good offices, conciliation and mediation are confidential and without prejudice to the rights of the Parties in any other proceedings.

## **Article 2106. Establishment of a Panel**

1. Unless the Parties agree otherwise, and subject to paragraph 3, if a matter referred to in Article 2104 has not been resolved within:

(a) 45 days after the date of receipt of the request for consultations; or

(b) 25 days after the date of receipt of the request for consultations for matters referred to in paragraph 4 of Article 2104; the complaining Party may refer the matter to a dispute settlement panel.

2. The complaining Party shall deliver the written request for panel establishment to the other Party, indicating the reason for the request, identifying the specific measures or other matters at issue and providing a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

3. A dispute settlement panel may not be established to review a proposed measure.

## **Article 2107. Qualifications of Panelists**

1. Each panelist shall:

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

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

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

(d) not be a national of either Party, nor have his or her usual place of residence in the territory of either of the Parties, nor be employed by either of them; and

(e) comply with a Code of Conduct that the Commission shall establish at its first session following the entry into force of this Agreement.

2. Individuals who have been involved in any of the possible alternative dispute settlement proceedings referred to in Article 2105 may not serve as panelists in the same dispute.

## **Article 2108. Panel Selection**

1. The panel shall comprise three panelists.

2. Each Party shall, within 30 days after the date of receipt of the request for panel establishment, appoint a panelist, propose up to four candidates to serve as the chair of the panel and notify the other Party in writing of the appointment and its proposed candidates to serve as the chair. If a Party fails to appoint a panelist within this time, the panelist shall be selected by the other Party from the candidates proposed for the chair.

3. The Parties shall, within 30 days after the date of receipt of the request for panel establishment, endeavour to agree on and appoint the chair from among the candidates proposed. If the Parties fail to agree on the chair within this time period, within a further seven days the chair shall be selected by lot from the candidates proposed.

4. If a panelist appointed by a Party withdraws, is removed, or becomes unable to serve, a replacement shall be appointed by that Party within 30 days, failing which the replacement shall be appointed in accordance with the second sentence of paragraph 2. If the chair of the panel withdraws, is removed, or becomes unable to serve, the Parties shall agree on the appointment of a replacement within 30 days, failing which the replacement shall be appointed in accordance with the second sentence of paragraph 3. If there are no remaining candidates, each Party shall propose up to three additional candidates within a further 30 days and the panelist or chair shall be selected by lot within seven days thereafter from among the candidates proposed. In any case, any time period applicable to the proceeding shall be suspended beginning on the date the panelist or chair withdraws, is removed, or becomes unable to serve and ending on the date the replacement is selected.

## **Article 2109. Rules of Procedure**

1. Within six months following the date of entry into force of this Agreement, the Commission shall approve Model Rules of Procedure.

2. Any panel established under this Chapter shall follow the Model Rules of Procedure. A panel may establish, in consultation with the Parties, supplementary rules of procedure that do not conflict with the provisions of this Chapter.

3. Unless the Parties agree otherwise, the rules of procedure shall ensure:

(a) the opportunity for each Party to provide initial and rebuttal written submissions;

(b) the right to at least one hearing before the panel, and that subject to subparagraph (g), hearings shall be open to the public;

- (c) that the Parties have the right to present and receive written submissions and present and hear oral arguments in any of the Parties' official languages;
- (d) subject to subparagraph (g), that each Party's written submissions, written versions of its oral statements and written responses to requests or questions from the panel may be made public;
- (e) that the panel allow non-governmental entities in the Parties' territories to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the Parties;
- (f) all submissions and comments made to the panel shall be available to the other Party; and
- (g) the protection of information designated by either Party for confidential treatment.

4. Unless the Parties otherwise agree within 15 days after the date of the establishment of the panel, the terms of reference shall be: "To examine, objectively and in the light of the relevant provisions of the Agreement, the matter referred to in the request for the establishment of the panel and to make findings, determinations and recommendations as provided in Article 2110."

5. If the complaining Party wishes to argue that a matter has nullified or impaired benefits, in the sense of subparagraph 1(c) of Article 2102, the terms of reference shall so indicate.

6. If a Party wishes the panel to make findings as to the degree of adverse trade effects on a Party of any measure determined:

(a) to be inconsistent with the obligations of the Agreement; or

(b) to have caused nullification or impairment in the sense of subparagraph 1(c) of Article 2102, the terms of reference shall so indicate.

7. On the request of a Party, or on its own initiative, the panel may seek information and technical advice from any person or body it deems appropriate in accordance with the Model Rules of Procedure.

8. The panel may rule on its own jurisdiction.

9. The panel may delegate to the chair authority to make administrative and procedural decisions.

10. The panel may, in consultation with the Parties, modify any time-period applicable in the panel proceedings and make other procedural or administrative adjustments as may be required for the fairness or efficiency of the proceeding.

11. Findings, determinations and recommendations of the panel in the sense of Article 2110 shall be made by a majority of its members.

12. Panelists may furnish separate opinions on matters not unanimously agreed. No panel may disclose which panelists are associated with majority or minority opinions.

13. The Parties shall bear the expenses of a panel, including the remuneration of the panelists, in accordance with the Model Rules of Procedure.

## **Article 2110. Panel Reports**

1. Unless the Parties otherwise agree, the panel shall issue reports in accordance with the provisions of this Chapter.

2. The panel shall base its reports on the provisions of this Agreement applied and interpreted in accordance with the rules of interpretation of public international law, the submissions and arguments of the Parties and on any information and technical advice put before it pursuant to the provisions of this Chapter.

3. The panel shall present to the Parties an initial report within 90 days after the last panelist is selected. The report shall contain:

(a) findings of fact;

(b) determinations as to whether or not a Party has conformed with its obligations under this Agreement and any other finding or determination requested in the terms of reference; and

(c) recommendations for resolution of the dispute, if requested by a Party.

4. Notwithstanding the provisions of Article 2109, the initial report of the panel shall be confidential.
5. A Party may submit written comments to the panel on its initial report, subject to time limits that may be set by the panel. After considering any such comments, the panel, on its own initiative or on the request of a Party, may:
  - (a) request the views of a Party;
  - (b) reconsider its report; or
  - (c) make any further examination that it considers appropriate.
6. The panel shall present to the Parties a final report within 30 days of presentation of the initial report.
7. Unless the Parties decide otherwise, the final report of the panel may be published by either Party 15 days after it is transmitted to the Parties, subject to subparagraph 3(g) of Article 2109.

### **Article 2111. Request for Clarification of the Report**

1. Within 10 days after the presentation of the final report, a Party may submit a written request to the panel for clarification of any determinations or recommendations in the report that the Party considers ambiguous. The panel shall respond to the request within 10 days after the presentation of such request.
2. The submission of a request pursuant to paragraph 1 shall affect the time periods referred to in paragraph 3 of Article 2113 and paragraph 1 of Article 2114, unless the panel decides otherwise.

### **Article 2112. Suspension and Termination of Proceedings**

1. The Parties may agree to suspend the work of the panel at any time for a period not exceeding 12 months following the date of such agreement. If the work of the panel has been suspended for more than 12 months, the authority of the panel shall lapse, unless the Parties agree otherwise. If the authority of the panel lapses and the Parties have not reached an agreement on the settlement of the dispute, nothing in this provision shall prevent a Party from requesting a new proceeding regarding the same matter.
2. The Parties may agree to terminate the proceeding before a panel at any time by jointly notifying the chair of the panel.

### **Article 2113. Implementation of the Final Report**

1. On receipt of the final report of a panel, the Parties shall agree on the resolution of the dispute, which shall be in conformity with the determinations and the recommendations, if any, of the panel, unless otherwise agreed by the Parties.
2. Wherever possible, the resolution shall be removal of any measure not conforming to this Agreement or removal of the nullification or impairment in the sense of subparagraph 1(c) of Article 2102.
3. If the Parties are unable to agree on a resolution within 30 days of presentation of the final report, or such other period as the Parties may agree, the Party complained against shall, if so requested by the complaining Party, enter into negotiations with a view to agreeing to compensation.

### **Article 2114. Non-implementation – Suspension of Benefits**

1. If no agreement on compensation has been reached pursuant to paragraph 3 of Article 2113 within 20 days after the date of the complaining Party's request, or if 30 days have passed following the presentation of the final report where compensation is not requested pursuant to paragraph 3 of Article 2113, or the Parties have agreed on the resolution of the dispute or on a compensation, and the complaining Party considers that the other Party has failed to observe the terms of the agreement, the complaining Party may suspend the application to the other Party of benefits of equivalent effect, following notice to the other Party, until such time as they have reached agreement on a resolution of the dispute. The notice shall specify the level of benefits that the complaining Party proposes to suspend.
2. In considering which benefits to suspend pursuant to paragraph 1:
  - (a) the complaining Party should first seek to suspend benefits or other obligations in the same sector or sectors as that affected by the measure or other matter that the panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment in the sense of subparagraph 1(c) of Article 2102; and

(b) a complaining Party that considers it is not practicable or effective to suspend benefits or other obligations in the same sector or sectors may suspend benefits in other sectors.

3. The suspension of benefits shall be temporary and be applied by the complaining Party only until the measure found to be inconsistent with the obligations of this Agreement or otherwise nullifying or impairing benefits in the sense of subparagraph 1(c) of Article 2102 has been brought into conformity with this Agreement, including as a result of the panel process described in Article 2115, or until such time as the Parties have otherwise reached agreement on a resolution of the dispute.

## **Article 2115. Review of Compliance and Suspension of Benefits**

1. A Party may, by written notice to the other Party, request that a panel established pursuant to Article 2106 be reconvened to make a determination with respect to:

(a) whether the level of benefits suspended by a Party pursuant to paragraph 1 of Article 2114 is manifestly excessive; or

(b) any disagreement as to the existence or consistency with this Agreement of measures taken to comply with the determinations or recommendations of the previously established panel. (1)

2. In the written notice of the request, the Party shall identify the specific measures or matters at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

3. The panel shall be reconvened upon receipt by the other Party of the written notice of the request. In the event that any original panelist is unable to serve on the panel the provisions of Article 2108 shall apply *mutatis mutandis*.

4. The provisions of Articles 2109 and 2110 apply *mutatis mutandis* to procedures adopted and reports issued by a panel reconvened under this Article, with the exception that, subject to paragraph 10 of Article 2109, the panel shall present an initial report within 60 days of being reconvened where the request concerns paragraph 1(a) only, and otherwise within 90 days.

5. A panel reconvened under this Article may include in its reports a recommendation, where appropriate, that any suspension of benefits be terminated or that the amount of benefits suspended be modified.

(1) In interpreting the terms "the existence or consistency with" and "measures taken to comply", a compliance panel established under this paragraph shall take into account relevant jurisprudence under the Dispute Settlement Understanding.

## **Article 2116. Referrals of Matters from Judicial or Administrative Proceedings**

1. If an issue of interpretation or application of this Agreement arises in any domestic judicial or administrative proceeding of a Party that either Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Party. The Commission shall endeavour to agree on an appropriate response as expeditiously as possible.

2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum. 3. If the Commission is unable to agree, each Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

## **Article 2117. Private Rights**

No Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

## **Article 2118. Alternative Dispute Resolution**

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of awards in such disputes.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958.

## **Chapter Twenty-Two. Exceptions**

### **Article 2201. General Exceptions**

1. For the purposes of Chapters Two to Seven and Fifteen (National Treatment and Market Access for Goods, Rules of Origin, Origin Procedures and Trade Facilitation, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Emergency Action and Trade Remedies and Electronic Commerce), except to the extent that a provision of these chapters applies to services or investment, Article XX of GATT 1994 is incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XX (b) of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health. The Parties further understand that Article XX (g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For the purposes of Chapters Nine, Ten, Twelve and Fifteen (Cross-Border Trade in Services, Telecommunications, Temporary Entry for Business Persons and Electronic Commerce), and of Chapters Two to Seven (National Treatment and Market Access for Goods, Rules of Origin, Origin Procedures and Trade Facilitation, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, and Emergency Action and Trade Remedies) to the extent that a provision of these chapters applies to services, Article XIV (a), (b) and (c) of GATS is incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XIV (b) of GATS include environmental measures necessary to protect human, animal or plant life or health.

3. For the purposes of Chapter Eight (Investment), subject to the requirement that such measures are not applied in a manner that constitute arbitrary or unjustifiable discrimination between investments or between investors, or a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing measures necessary:

(a) to protect human, animal or plant life or health, which the Parties understand to include environmental measures necessary to protect human, animal or plant life or health;

(b) to ensure compliance with laws and regulations that are not inconsistent with this Agreement; or

(c) for the conservation of living or non-living exhaustible natural resources.

### **Article 2202. National Security**

Nothing in this Agreement shall be construed:

(a) to require either Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;

(b) to prevent either Party from taking any actions that it considers necessary for the protection of its essential security interests:

(i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,

(ii) taken in time of war or other emergency in international relations, or

(iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

(c) to prevent either Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

### **Article 2203. Taxation**

1. Except where express reference is made thereto, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of



any inconsistency between this Agreement and any such convention, the convention shall prevail to the extent of the inconsistency.

3. Where similar provisions with respect to a taxation measure exist under this Agreement and under a tax convention, the procedural provisions of the tax convention alone shall be used, by the competent authorities identified in the tax convention, to resolve any issue related to such provisions arising under this Agreement.

4. Notwithstanding paragraphs 2 and 3:

(a) Article 202 (National Treatment and Market Access for Goods - National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article applies to taxation measures to the same extent as does Article III of the GATT 1994; and

(b) Article 210 (National Treatment and Market Access for Goods - Export Taxes) applies to taxation measures.

5. Subject to paragraphs 2, 3, and 6:

(a) Articles 903 (Cross-Border Trade in Services - National Treatment) and Article 1102 (Financial Services - National Treatment) apply to taxation measures on income, capital gains or on the taxable capital of corporations that relate to the purchase or consumption of particular services; and

(b) Articles 803 and 804 (Investment - National Treatment and Most-Favoured Nation Treatment), 903 and 904 (Cross-Border Trade in Services - National Treatment and Most-Favoured Nation Treatment) and 1102 and 1103 (Financial Services - National Treatment and Most-Favoured Nation Treatment) apply to all taxation measures, other than those on income, capital gains or on the taxable capital of corporations.

6. Paragraph 5 shall not:

(a) impose any most-favoured-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;

(b) impose on a Party any national treatment obligation with respect to the conditioning of a receipt, or continued receipt, of an advantage relating to the contributions to, or income of, pension trusts or pension plans on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan;

(c) impose on a Party any national treatment obligation with respect to the conditioning of a receipt, or continued receipt, of an advantage relating to the purchase or consumption of a particular service on a requirement that the service be provided in its territory;

(d) apply to a non-conforming provision of any existing taxation measure;

(e) apply to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;

(f) apply to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of the Articles referred to in paragraph 5; or

(g) apply to any new taxation measure that is aimed at ensuring the equitable and effective imposition or collection of taxes (including, for greater certainty, any measure that is taken by a Party in order to ensure compliance with the Party's taxation system or to prevent the avoidance or evasion of taxes) and that does not arbitrarily discriminate between persons, goods or services of the Parties.

7. Subject to paragraphs 2 and 3, and without prejudice to the rights and obligations of the Parties under paragraph 4, Article 807 (Investment - Performance Requirements) shall apply to taxation measures.

8. Notwithstanding paragraphs 2 and 3, Article 812 (Investment - Expropriation) shall apply to taxation measures except that no investor may invoke that Article as the basis for a claim under Article 819 (Investment - Claim by an Investor of a Party on Its Own Behalf) or 820 (Investment - Claim by an Investor of a Party on Behalf of an Enterprise), where it has been determined pursuant to this paragraph that a taxation measure is not an expropriation. The investor shall refer the issue of whether a measure is not an expropriation for a determination to the designated authorities of the Parties at the time that it gives notice under subparagraph 1(c) of Article 823 (Investment - Conditions Precedent to Submission of a Claim to Arbitration). If, within a period of six months from the date of such referral, the designated authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation, the investor may submit its claim to arbitration under Article 824 (Investment - Submission of a Claim to Arbitration).

9. In order to give effect to paragraphs 1 to 3:

(a) Where in a dispute between Parties, an issue arises as to whether a measure of a Party is a taxation measure, either Party may refer the issue to the designated authorities of the Parties. The designated authorities shall decide the issue of whether the measure is a taxation measure, and their decision shall bind any Tribunal constituted pursuant to Section B of Chapter Eight (Investment) for the dispute. Where the designated authorities have not decided the issue within six months of the referral, the Tribunal shall decide the issue in place of the designated authorities.

(b) Where in connection with a claim by an investor of a Party, an issue arises as to whether a measure is a taxation measure, the Party that has received notice of intention to submit a claim or against which an investor of a Party has submitted a claim may refer the issue to the designated authorities of the Parties. The designated authorities shall decide the issue of whether the measure is a taxation measure, and their decision shall bind any Tribunal formed pursuant to Section B of Chapter Eight (Investment) with jurisdiction over the claim. A Tribunal seized of a claim in which the issue arises may not proceed pending receipt of the decision of the designated authorities. Where the designated authorities have not decided the issue within six months of the referral, the Tribunal shall decide the issue in place of the designated authorities.

(c) Where in a dispute between Parties, an issue arises as to whether a tax convention prevails over this Agreement, a Party to the dispute may refer the issue to the designated authorities of the Parties. The designated authorities shall consider the issue and decide whether the tax convention prevails. If within six months of the referral of the issue to the designated authorities, they decide with respect to the measure that gives rise to the issue that the tax convention prevails, no procedures concerning that measure may be initiated under Article 2106 (Dispute Settlement - Establishment of a Panel). No procedures concerning the measure may be initiated during the period that the issue is under consideration by the designated authorities.

(d) Where prior to the submission of a claim by an investor of a Party, an issue arises as to whether a tax convention prevails over this Agreement, the Party that has received notice of intention to submit a claim may refer the issue to the designated authorities of the Parties. The designated authorities shall consider the issue and decide whether the tax convention prevails. If within six months of the referral of the issue to the designated authorities, they decide with respect to the measure that gives rise to the issue that the tax convention prevails, no claim concerning that measure may be submitted under Article 824 (Investment - Submission of a Claim to Arbitration). No claim concerning the measure may be submitted during the period that the issue is under consideration by the designated authorities. An investor of a Party that fails to identify a taxation measure in its notice of intention to submit a claim may not submit a claim concerning that measure under Article 824 (Investment - Submission of a Claim to Arbitration).

10. Where an investor invokes Article 812 (Investment - Expropriation) as the basis for a claim under Article 819 (Investment - Claim by an Investor of a Party on Its Own Behalf) or 820 (Investment - Claim by an Investor of a Party on Behalf of an Enterprise), any determination under paragraph 8 of whether a measure is an expropriation shall be made concurrently with any decision by the designated authorities under subparagraph 9(b) of the issue whether the measure is a taxation measure.

11. The designated authorities seized of an issue under paragraphs 8 or 9 may agree to modify the time period allowed for their consideration of the issue.

12. Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would be contrary to the Party's law protecting information concerning the taxation affairs of a taxpayer.

## **Article 2204. Disclosure of Information**

1. Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's law protecting the deliberative and policy-making processes of the executive branch of government at the cabinet level, personal privacy or the financial affairs and accounts of individual customers of financial institutions.

2. Nothing in this Agreement shall be construed to require, during the course of any dispute settlement procedure under this Agreement, a Party to furnish or allow access to information protected under its competition laws, or a competition authority of a Party to furnish or allow access to any other information that is privileged or otherwise protected from disclosure.

## **Article 2205. Cultural Industries**

Nothing in this Agreement shall be construed to apply to measures adopted or maintained by either Party with respect to

cultural industries except as specifically provided in Article 203 (National Treatment and Market Access for Goods - Tariff Elimination).

## **Article 2206. World Trade Organization Waivers**

To the extent that there are overlapping rights and obligations in this Agreement and the WTO Agreement, the Parties agree that any measures adopted by a Party in conformity with a waiver decision adopted by the WTO pursuant to Article IX:3 of the WTO Agreement shall be deemed to be also in conformity with the present Agreement, except as otherwise agreed by the Parties. Such conforming measures of either Party may not give rise to legal actions by an investor of one Party against the other under Chapter Eight (Investment).

## **Article 2207. Definitions**

For purposes of this Chapter:

competition authority means:

(a) with respect to Canada, the Commissioner of Competition or any successor; and

(b) with respect to Peru, the Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI) and the Organismo Supervisor de Inversión Privada en Telecomunicaciones (OSIPTEL) for the telecommunications sector, or any successor agency;

cultural industries means persons engaged in any of the following activities:

(a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing;

(b) the production, distribution, sale or exhibition of film or video recordings;

(c) the production, distribution, sale or exhibition of audio or video music recordings;

(d) the publication, distribution or sale of music in print or machine readable form; or

(e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services;

designated authority means:

(a) with respect to Canada, the Assistant Deputy Minister for Tax Policy, Department of Finance, or any successor;

(b) with respect to Peru, the Superintendencia Nacional de Administracion Tributaria (SUNAT), or any successor;

information protected under its competition laws means:

(a) with respect to Canada, information within the scope of Section 29 of the Competition Act, R.S. 1985, c.34, or any successor provision, and

(b) with respect to Peru, information protected under Article 6 of Decreto Legislativo 807 or any successor provision;

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

taxes and taxation measures do not include:

(a) a "customs duty" as defined in Article 221 (National Treatment and Market Access for Goods – Definitions); or

(b) the measures listed in exceptions (b) and (c) of that definition.

## **Chapter Twenty-Three. Final Provisions**

### **Article 2301. Annexes, Appendices and Footnotes**

The Annexes, Appendices and footnotes to this Agreement constitute integral parts of this Agreement.

## **Article 2302. Amendments**

1. The Parties shall agree in writing on any amendment of this Agreement.
2. When so agreed, such an amendment shall enter into force and constitute an integral part of this Agreement following an exchange of written notifications by the Parties certifying the completion of their respective necessary legal procedures and on such date or dates to be agreed upon between the Parties.

## **Article 2303. Reservations**

This Agreement shall not be subject to unilateral reservations.

## **Article 2304. Entry Into Force**

Each Party shall notify the other Party in writing of the completion of its domestic procedures required for the entry into force of this Agreement. This Agreement shall enter into force on January 1, 2009, or on the date of the second of these notifications, whichever is later.

## **Article 2305. Termination**

This Agreement shall remain in force unless terminated by either Party on six months' written notice to the other Party.

## **Article 2306. Accession**

Any country or group of countries may accede to this Agreement subject to such terms and conditions as may be agreed between such country or countries and the Parties, and following approval in accordance with the legal requirements of each Party and acceding country.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate at , this day of 2008 in the English, Spanish and French languages, each version being equally authentic.

FOR CANADA

FOR THE REPUBLIC OF PERU

## **Annex I. Reservations for Existing Measures and Liberalization Commitments**

1. The Schedule of a Party sets out, pursuant to Articles 808 (Investment – Reservations and Exceptions) and 908 (Cross-Border Trade in Services – Non- Conforming Measures) the reservations taken by that Party with respect to existing measures by a Party that do not conform with obligations imposed by:
  - a. Articles 803 (Investment – National Treatment), 903 (Cross-Border Trade in Services – National Treatment) or 1102 (Financial Services - National Treatment);
  - b. Articles 804 (Investment - Most-Favoured-Nation Treatment), 904 (Cross-Border Trade in Services - Most-Favoured-Nation Treatment) or 1103 (Financial Services - Most-Favoured-Nation Treatment);
  - c. Article 907 (Cross-Border Trade in Services - Local Presence);
  - d. Article 807 (Investment - Performance Requirements);
  - e. Article 806 (Investment - Senior Management and Boards of Directors); or
  - f. Article 906 (Cross-Border Trade in Services - Market Access).
2. Each reservation sets out the following elements:

- a. Sector refers to the general sector in which the reservation is taken;
- b. Sub-Sector refers to the specific sector in which the reservation is taken;
- c. Industry Classification refers, where applicable, to the activity covered by the reservation according to industry classification codes;
- d. Type of Reservation specifies the obligation referred to in paragraph 1 for which a reservation is taken;
- e. Measures identifies the laws, regulations or other measures, as qualified, where indicated, by the Description element, for which the reservation is taken. A measure cited in the Measures element:
  - i. means the measure as amended, continued or renewed as of the date of entry into force of this Agreement, and
  - ii. includes any subordinate measure adopted or maintained under the authority of and consistent with the measure;
- f. Description sets out the non-conforming aspects of the existing measures for which the reservation is taken. It may also set out commitments for liberalization.

3. In the interpretation of a reservation, all elements of the reservation, with the exception of Industry Classification, shall be considered. A reservation shall be interpreted in the light of the relevant provisions of the Articles against which the reservation is taken. To the extent that:

- a. the Measures element is qualified by a liberalization commitment from the Description element, the Measures element as so qualified shall prevail over all other elements; and
- b. the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of that discrepancy.

4. Where a Party maintains a measure that requires a service provider be a citizen, permanent resident or resident of its territory as a condition to the provision of a service in its territory, a reservation for that measure taken with respect to Article 903, 904 or 907 (Cross-Border Trade in Services – National Treatment, Most-Favoured-Nation or Local Presence) shall operate as a reservation with respect to Article 803, 804 or 807 (Investment - National Treatment, Most-Favoured-Nation or Performance Requirements) to the extent of that measure.

5. The listing of a measure in this Annex is without prejudice to a future claim that Annex II may apply to the measure or some application of the measure.

6. For purposes of this Annex:

CPC means Central Product Classification (CPC) numbers as set out in Statistical Office of the United Nations, Statistical Papers, Series M, No. 77, Provisional Central Product Classification, 1991; and

SIC means Standard Industrial Classification (SIC) numbers as set out in Statistics Canada, Standard Industrial Classification, fourth edition, 1980.

## **Annex I. Schedule of Canada**

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article 803)

Performance Requirements (Article 807)

Senior Management and Boards of Directors (Article 806)

Measures:

Investment Canada Act, R.S.C. 1985, c. 28 (1st Supp.) Investment Canada Regulations, SOR/85-611, as qualified by paragraphs 8 through 12 of the Description element

Description:

Investment

1. Under the Investment Canada Act, the following acquisitions of Canadian businesses by "non Canadians" are subject to review by the Director of Investments:
  - a. all direct acquisitions of Canadian businesses with assets of C\$5 million or more;
  - b. all indirect acquisitions of Canadian businesses with assets of C\$50 million or more; and
  - c. indirect acquisitions of Canadian businesses with assets between C\$5 million and C\$50 million that represent more than 50 percent of the value of the assets of all the entities the control of which is being acquired, directly or indirectly, in the transaction in question.
2. A "non-Canadian" is an individual, government or agency thereof or an entity that is not "Canadian". "Canadian" means a Canadian citizen or permanent resident, government in Canada or agency thereof or Canadian-controlled entity as provided for in the Investment Canada Act.
3. In addition, specific acquisitions or establishment of new businesses in designated types of business activities relating to Canada's cultural heritage or national identity, which are normally notifiable, may be reviewed if the Governor-in-Council authorizes a review in the public interest.
4. An investment subject to review under the Investment Canada Act may not be implemented unless the Minister responsible for the Investment Canada Act advises the applicant that the investment is likely to be of net benefit to Canada. Such a determination is made in accordance with six factors described in the Act, summarized as follows:
  - a. the effect of the investment on the level and nature of economic activity in Canada, including the effect on employment, on the utilization of parts, components and services produced in Canada, and on exports from Canada;
  - b. the degree and significance of participation by Canadians in the investment;
  - c. the effect of the investment on productivity, industrial efficiency, technological development and product innovation in Canada;
  - d. the effect of the investment on competition within any industry or industries in Canada;
  - e. the compatibility of the investment with national industrial, economic and cultural policies, taking into consideration industrial, economic and cultural policy objectives enunciated by the government or legislature of any province likely to be significantly affected by the investment; and
  - f. the contribution of the investment to Canada's ability to compete in world markets.
5. In making a net benefit determination, the Minister, through the Director of Investments, may review plans under which the applicant demonstrates the net benefit to Canada of the proposed acquisition. An applicant may also submit undertakings to the Minister in connection with any proposed acquisition which is the subject of review. In the event of noncompliance with an undertaking by an applicant, the Minister may seek a court order directing compliance or any other remedy authorized under the Act.
6. Non-Canadians who establish or acquire Canadian businesses, other than those that are subject to review, as described above, must notify the Director of Investments.
7. The Director of Investments will review an "acquisition of control", as defined in the Investment Canada Act, of a Canadian business by an investor of Peru if the value of the gross assets of the Canadian business is not less than the applicable threshold.
8. The higher review threshold, calculated as set out in paragraph 13, does not apply to acquisitions in the following sectors: uranium production and ownership of uranium producing properties; financial services; transportation services; and cultural businesses.
9. Notwithstanding the definition of "investor of a party" in Article 847, only investors who are nationals, or entities

controlled by nationals as provided for in the Investment Canada Act, of Peru may benefit from the higher review threshold.

10. An indirect "acquisition of control" of a Canadian business in any sector other than those sectors identified in paragraph 8 by an investor of Peru is not reviewable.

11. Notwithstanding Article 807, Canada may impose requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, conduct or operation of an investment of an investor of Peru or of a non-Party for the transfer of technology, production process or other proprietary knowledge to a national or enterprise, affiliated to the transferor, in Canada, in connection with the review of an acquisition of an investment under the Investment Canada Act.

12. Except for requirements, commitments or undertakings relating to technology transfer as set out in paragraph 11, Article 807 shall apply to requirements, commitments or undertakings imposed or enforced under the Investment Canada Act. Article 807 shall not be construed to apply to any requirement, commitment or undertaking imposed or enforced in connection with a review under the Investment Canada Act, to locate production, carry out research and development, employ or train workers, or to construct or expand particular facilities, in Canada.

13. For direct acquisitions of control by investors of Peru or for investors of a non-Party where the Canadian business is controlled by an investor of Peru, the applicable threshold for review is C\$295 million for the year 2008 and for each year thereafter the amount determined by the Minister in January of that year arrived at by using the following formula:

Annual Adjustment =

Current Nominal GDP at Market Prices Previous Year Nominal GDP at amount determined for X previous year

"Current Nominal GDP at Market Prices" means the average of the Nominal Gross Domestic Products at Market Prices for the most recent four consecutive quarters.

"Previous Year Nominal GDP at Market Prices" means the average of the Nominal Gross Domestic Product for the four consecutive quarters for the comparable period in the year preceding the year used in calculating the "Current Nominal GDP at Market Prices."

The amounts determined in this manner will be rounded to the nearest million dollars.

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article 803)

Senior Management and Boards of Directors (Article 806)

Measures:

As set out in the Description element

Description:

Investment

Canada or any province, when selling or disposing of its equity interests in, or the assets of, an existing state enterprise or an existing governmental entity, may prohibit or impose limitations on the ownership of such interests or assets, and on the ability of owners of such interests or assets to control any resulting enterprise, by investors of Peru or of a non-Party or their investments. With respect to such a sale or other disposition, Canada or any province may adopt or maintain any measure relating to the nationality of senior management or members of the board of directors.

For purposes of this reservation:

a. any measure maintained or adopted after the date of entry into force of this Agreement that, at the time of sale or other disposition, prohibits or imposes limitations on the ownership of equity interests or assets or imposes nationality

requirements described in this reservation shall be deemed to be an existing measure; and

b. "state enterprise" means an enterprise owned or controlled through ownership interests by Canada or any province and includes an enterprise established after the date of entry into force of this Agreement solely for the purposes of selling or disposing of equity interests in, or the assets of, an existing state enterprise or governmental entity.

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article 803)

Measures:

Canada Business Corporations Act, R.S.C. 1985, c. C-44

Canada Corporations Act, R.S.C. 1970, c. C-32

Canada Business Corporations Act Regulations, SOR/79- 316

Description:

Investment

"Constraints" may be placed on the issue, transfer and ownership of shares in federally incorporated corporations. The object is to permit corporations to meet Canadian ownership requirements, under certain laws set out in the Canada Business Corporations Act Regulations, in sectors where ownership is required as a condition to operate or to receive licenses, permits, grants, payments or other benefits. In order to maintain certain "Canadian" ownership levels, a corporation is permitted to sell shareholders' shares without the consent of those shareholders, and to purchase its own shares on the open market. "Canadian" is defined in the Canada Business Corporations Act Regulations.

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

Senior Management and Boards of Directors (Article 806)

Measures:

Canada Business Corporations Act, R.S.C. 1985, c. C-44

Canada Business Corporations Act Regulations, SOR/79-316

Canada Corporations Act, R.S.C. 1970, c. C-32

Special Acts of Parliament incorporating specific companies

Description:

Investment

The Canada Business Corporations Act requires, for most federally-incorporated corporations, that 25 percent of directors be resident Canadians. A simple majority of resident Canadian directors is required for corporations in prescribed sectors. These sectors are: uranium mining; book publishing or distribution; book sales, where the sale of books is the primary part of the corporation's business; and film or video distribution. Similarly, corporations that, by an Act of Parliament or Regulation, are individually subject to minimum Canadian ownership requirements are required to have a majority of



resident Canadians directors.

For purposes of the Act, "resident Canadian" means an individual who is a Canadian citizen ordinarily resident in Canada, a citizen who is a member of a class set out in the Canada Business Corporations Act Regulations, or a permanent resident as defined in the Immigration and Refugee Protection Act other than one who has been ordinarily resident in Canada for more than one year after he or she became eligible to apply for Canadian citizenship.

In the case of a holding corporation, not more than one third of the directors need be resident Canadians if the earnings in Canada of the holding corporation and its subsidiaries are less than five percent of the gross earnings of the holding corporation and its subsidiaries.

Under Part IV of the Canada Corporations Act, a simple majority of the elected directors of a Special Act corporation must be resident in Canada and citizens of a Commonwealth country. This requirement applies to every joint stock company incorporated subsequent to

22 June 1869 by any Special Act of Parliament.

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article 803)

Measures:

Citizenship Act, R.S.C. 1985, c. C-29

Foreign Ownership of Land Regulations, SOR/79-416

Description:

Investment

The Foreign Ownership of Land Regulations are made pursuant to the Citizenship Act and the Alberta Agricultural and Recreational Land Ownership Act. In Alberta, an ineligible person or foreign-owned or controlled corporation may only hold an interest in controlled land consisting of not more than two parcels containing, in the aggregate, not more than 20 acres. An "ineligible person" is:

- a. an individual who is not a Canadian citizen or permanent resident;
- b. a foreign government or agency thereof; or
- c. a corporation incorporated elsewhere than in Canada.

"Controlled land" means land in Alberta but does not include:

- a. land of the Crown in right of Alberta;
- b. land within a city, town, new town, village or summer village; and
- c. mines or minerals.

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

## National Treatment (Article 803)

### Measures:

Air Canada Public Participation Act, R.S.C. 1985, c. 35 (4th Supp.)

Canadian Arsenal Limited Divestiture Authorization Act, S.C. 1986, c. 20

Eldorado Nuclear Limited Reorganization and Divestiture Act, S.C. 1988, c. 41

Nordion and Theratronics Divestiture Authorization Act, S.C. 1990, c. 4

### Description:

#### Investment

A "non-resident" or "non-residents" may not own more than a specified percentage of the voting shares of the corporation to which each Act applies. For some companies the restrictions apply to individual shareholders, while for others the restrictions may apply in the aggregate. Where there are limits on the percentage that an individual Canadian investor can own, these limits also apply to non-residents. The restrictions are as follows:

Air Canada: 25 percent in the aggregate;

Cameco Limited (formerly Eldorado Nuclear Limited): 15 percent per individual non-resident, 25 percent in the aggregate;

Nordion International Inc.: 25 percent in the aggregate;

Theratronics International Limited: 49 percent in the aggregate;

Canadian Arsenal Limited: 25 percent in the aggregate.

"Non-resident" generally means:

- a. an individual, other than a Canadian citizen, who is not ordinarily resident in Canada;
- b. a corporation incorporated, formed or otherwise organized outside Canada;
- c. a corporation that is controlled directly or indirectly by non-residents as defined in any of subparagraphs (a) through (c);
- d. a trust:
  - i. established by a non-resident as defined in any of subparagraphs (b) through (d), other than a trust for the administration of a pension fund for the benefit of individuals a majority of whom are residents, or
  - ii. in which non-residents as defined in any of subparagraphs (a) through (d) have more than 50 percent of the beneficial interest;
- e. a corporation that is controlled directly or indirectly by a trust referred to in subparagraph (e).

### Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

Local Presence (Article 907)

### Measures:

Export and Import Permits Act, R.S.C. 1985, c. E-19

### Description:

Cross-Border Trade in Services

Only individuals ordinarily resident in Canada, enterprises having their head offices in Canada or branch offices in Canada of foreign enterprises may apply for and be issued import or export permits or transit authorization certificates for goods and related services subject to controls under the Export and Import Permits Act.

Sector:

Business Service Industries

Sub-Sector:

Customs Brokers

Industry Classification:

SIC 7794 Customs Brokers

CPC 749 Other supporting and auxiliary transport services

Type of Reservation:

National Treatment (Article 903)

Local Presence (Article 907)

Senior Management and Boards of Directors (Article 806)

Measures:

Customs Act, R.S.C. 1985, c. 1 (2nd Supp.)

Customs Brokers Licensing Regulations, SOR/86-1067

Description:

Cross-Border Trade in Services and Investment

To be a licensed customs broker in Canada:

- a. an individual must be a Canadian citizen or permanent resident;
- b. a corporation must be incorporated in Canada with a majority of its directors being Canadian citizens or permanent residents; and
- c. a partnership must be composed of persons who are Canadian citizens or permanent residents, or corporations incorporated in Canada with a majority of their directors being Canadian citizens or permanent residents.

Sector:

Business Service Industries

Sub-Sector:

Duty Free Shops

Industry Classification:

SIC 6599 Other Retail Stores, Not Elsewhere Classified (limited to duty free shops)

CPC 631, 632 (limited to duty free shops)

Type of Reservation:

National Treatment (Articles 803, 903)

Local Presence (Article 907)

Measures:

Customs Act, R.S.C. 1985, c. 1 (2nd Supp.)

## Duty Free Shop Regulations, SOR/86-1072

### Description:

#### Cross-Border Trade in Services and Investment

1. To be a licensed duty free shop operator at a land border crossing in Canada, an individual must:

- a. be a Canadian citizen or permanent resident;
- b. be of good character;
- c. be principally resident in Canada; and
- d. have resided in Canada for at least 183 days of the year preceding the year of application for the license.

2. To be a licensed duty free shop operator at a land border crossing in Canada, a corporation must:

- a. be incorporated in Canada; and
- b. have all of its shares beneficially owned by Canadian citizens or permanent residents who meet the requirements of paragraph 1.

### Sector:

Business Service Industries

### Sub-Sector:

Examination Services relating to the Export and Import of Cultural Property

### Industry Classification:

SIC 999 Other Services, Not Elsewhere Classified (limited to cultural property examination services)

CPC 96321 Museum services except for historical sites and buildings (limited to cultural property examination services)

CPC 87909 Other business services n.e.c. (limited to cultural property examination services)

### Type of Reservation:

Local Presence (Article 907)

### Measures:

Cultural Property Export and Import Act, R.S.C. 1985, c. C-51

### Description:

#### Cross-Border Trade in Services

Only a "resident of Canada" or an "institution" in Canada may be designated as an "expert examiner" of cultural property for purposes of the Cultural Property Export and Import Act. A "resident of Canada" is an individual who is ordinarily resident in Canada, or a corporation that has its head office in Canada or maintains one or more establishments in Canada to which employees employed in connection with the business of the corporation ordinarily report for work. An "institution" is an institution that is publicly owned and operated solely for the benefit of the public, that is established for educational or cultural purposes and that conserves objects and exhibits them.

### Sector:

Business Service Industries

### Sub-Sector:

Patent Agents and Agencies

### Industry Classification:

SIC 999 Other Services, Not Elsewhere Classified (limited to patent agency)

CPC 86120 Legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards, etc. (limited to patent agency)

Type of Reservation:

National Treatment (Article 903)

Local Presence (Article 907)

Measures:

Patent Act, R.S.C. 1985, c. P-4

Patent Rules, C.R.C. 1978, c. 1250

Patent Cooperation Treaty Regulations, SOR/89-453

Description:

Cross-Border Trade in Services

To represent persons in the presentation and prosecution of applications for patents or in other business before the Patent Office, a patent agent must be resident in Canada and registered by the Patent Office.

A registered patent agent who is not resident in Canada must appoint a registered patent agent who is resident in Canada as an associate to prosecute an application for a patent.

An enterprise may be added to the patent register provided that it has at least one member who is also on the register.

Sector:

Business Service Industries

Sub-Sector:

Trade-Mark Agents

Industry Classification:

SIC 999 Other Services, Not Elsewhere Classified (limited to trade-mark agency)

CPC 86120 Legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards, etc. (limited to copyright/trademark agency)

Type of Reservation:

National Treatment (Article 903)

Local Presence (Article 907)

Measures:

Trade-Marks Act, R.S.C. 1985, c. T-13

Trade-mark Regulations (1996), SOR/96-195

Description:

Cross-Border Trade in Services

To represent persons in the presentation and prosecution of applications for trade-marks or in other business before the Trade-Mark Office, a trade-mark agent must be resident in Canada and registered by the Trade-Mark Office.

A registered trade-mark agent who is not resident in Canada must appoint a registered trade-mark agent who is resident in Canada as an associate to prosecute an application for a trade-mark.

A firm may be added to the list of trade-marks agents provided that it has at least one member who is also on the register.

Sector:

Energy

Sub-Sector:

Oil and Gas

Industry Classification:

SIC 071 Crude Petroleum and Natural Gas Industries

CPC 883 Services incidental to mining

Type of Reservation:

National Treatment (Article 803)

Measures:

Canada Petroleum Resources Act, R.S.C. 1985, c. 36 (2nd Supp.)

Territorial Lands Act, R.S.C. 1985, c. T-7

Federal Real Property and Federal Immovables Act, S.C. 1991, c. 50

Canada-Newfoundland Atlantic Accord Implementation Act, S.C. 1987, c. 3

Canada-Nova Scotia Offshore Petroleum Resources

Accord Implementation Act, S.C. 1988, c. 28

Canada Oil and Gas Land Regulations, C.R.C. 1978, c. 1518

Description:

Investment

This reservation applies to production licenses issued with respect to "frontier lands" and "offshore areas" (areas not under provincial jurisdiction) as defined in the applicable measures.

Persons who hold oil and gas production licenses or shares therein for discoveries made after March 5, 1982 must be corporations incorporated in Canada.

The Canadian ownership requirements for oil and gas production licenses for discoveries made prior to March 5, 1982, are set out in the Canada Oil and Gas Land Regulations.

Sector:

Energy

Sub-Sector:

Oil and Gas

Industry Classification:

SIC 071 Crude Petroleum and Natural Gas Industries

CPC 883 Services incidental to mining

Type of Reservation:

Performance Requirements (Article 807)

Local Presence (Article 907)

Measures:

Canada Oil and Gas Production and Conservation Act, R.S.C. 1985, c. 0-7, as amended by Canada Oil and Gas Operations Act,

S.C. 1992, c. 35

Canada - Nova Scotia Offshore Petroleum Resources

Accord Implementation Act, S.C. 1988, c. 28

Canada- Newfoundland Atlantic Accord

Implementation Act, S.C. 1987, c. 3

Measures implementing Yukon Oil and Gas Accord

Measures implementing Northwest Territories Oil and Gas Accord

Description:

Cross-Border Trade in Services and Investment

1. Under the Canada Oil and Gas Operations Act, the approval of the Minister of Energy, Mines and Resources of a "benefits plan" is required to receive authorization to proceed with any oil and gas development project.

2. A "benefits plan" is a plan for the employment of Canadians and for providing Canadian manufacturers, consultants, contractors and service companies with a full and fair opportunity to participate on a competitive basis in the supply of goods and services used in any proposed work or activity referred to in the benefits plan.

The Act permits the Minister to impose an additional requirement on the applicant, as part of the benefits plan, to ensure that disadvantaged individuals or groups have access to training and employment opportunities

or can participate in the supply of goods and services used in any proposed work referred to in the benefits plan.

3. The Canada - Nova Scotia Offshore Petroleum Resources Accord Implementation Act and the Canada -Newfoundland Atlantic Accord Implementation Act have the same requirement for a benefits plan but also require that the benefits plan ensure that:

a. prior to carrying out any work or activity in the offshore area, the corporation or other body submitting the plan establish in the applicable province an office where appropriate levels of decision-making are to take place;

b. expenditures be made for research and development to be carried out in the province, and for education and training to be provided in the province; and

c. first consideration be given to goods produced or services provided from within the province, where those goods or services are competitive in terms of fair market price, quality and delivery.

4. The Boards administering the benefits plan under these Acts may also require that the plan include provisions to ensure that disadvantaged individuals or groups, or corporations owned or cooperatives operated by them, participate in the supply of goods and services used in any proposed work or activity referred to in the plan.

5. In addition, Canada may impose any requirement or enforce any commitment or undertaking for the transfer of technology, a production process or other proprietary knowledge to a person of Canada in connection with the approval of development projects under the applicable Acts.

6. Provisions similar to those set out above will be included in laws or regulations to implement the Yukon Oil and Gas Accord and Northwest Territories Oil and Gas Accord which for purposes of this reservation shall be deemed, once concluded, to be existing measures.

Sector:

Energy

Sub-Sector:

Oil and Gas

Industry Classification:

SIC 071 Crude Petroleum and Natural Gas Industries

CPC 883 Services incidental to mining

Type of Reservation:

Performance Requirements (Article 807)

Measures:

Canada- Newfoundland Atlantic Accord Implementation Act, S.C. 1987, c. 3

Hibernia Development Project Act, S.C. 1990, c. 41

Description:

Investment

Pursuant to the Hibernia Development Project Act, Canada and the "Hibernia Project Owners" may enter into agreements whereby the Project Owners undertake to perform certain work in Canada and Newfoundland and to use their "best efforts" to achieve specific Canadian and Newfoundland "target levels" in relation to the provisions of any "benefit plan" required under the Canada-Newfoundland Atlantic Accord Implementation Act. "Benefits plans" are further described in the Schedule of Canada, Annex I at pages I-C-29-30.

In addition, Canada may impose in connection with the Hibernia project any requirement or enforce any commitment or undertaking for the transfer of technology, a production process or other proprietary knowledge to a national or enterprise in Canada.

Sector:

Energy

Sub-Sector:

Uranium

Industry Classification:

SIC 0616 Uranium Mines

CPC 883 Services incidental to mining

Type of Reservation:

National Treatment (Article 803)

Most-Favoured-Nation Treatment (Article 804)

Measures:

Investment Canada Act, R.S.C. 1985, c. 28 (1s1Supp.) Investment Canada Regulations, SOR/85-611

Policy on Non Resident Ownership in the Uranium Mining Sector, 1987

Description:

Investment

Ownership by "non-Canadians", as defined in the Investment Canada Act, of a uranium mining property is limited to 49 percent at the stage of first production. Exceptions to this limit may be permitted if it can be established that the property is in fact "Canadian controlled" as defined in the Investment Canada Act.

Exemptions from the policy are permitted, subject to approval of the Governor in Council, only in cases where Canadian participants in the ownership of the property are not available. Investments in properties by non Canadians, made prior to December 23, 1987 and that are beyond the permitted ownership level, may remain in place. No increase in non Canadian ownership is permitted.

Sector:

Fisheries



Sub-Sector:

Fish Harvesting and Processing

Industry Classification:

SIC 031 Fishing Industry

CPC 882 Services Incidental to Fishing

Type of Reservation:

National Treatment (Article 803)

Measures:

Policy on Foreign Investment in the Canadian Fisheries Sector, 1985

Commercial Fisheries Licensing Policy

Fisheries Act, R.S.C. 1985, c. F-14

Description:

Investment

Fish processing enterprises that have a foreign ownership level of more than 49 percent are prohibited from holding Canadian commercial fishing licenses.

Sector:

Professional, Technical and Specialized Services

Sub-Sector:

Professional Services

Industry Classification:

CPC 862 Auditing Services

Type of Reservation:

National Treatment (Article 903)

Most-Favoured-Nation Treatment (Article 904)

Local Presence (Article 907)

Measures:

Bank Act, S.C. 1991, c. 46

Insurance Companies Act, S.C. 1991, c. 47

Cooperative Credit Associations Act, S.C. 1991, c. 48

Trust and Loan Companies Act, S.C. 1991, c. 45

Description:

Cross-Border Trade in Services

Banks are required to have a firm of accountants to be auditors of the bank. A firm of accountants must be qualified as set out in the Bank Act. Among the qualifications requires that two or more members of the firm must be ordinarily resident in Canada and that the member of the firm jointly designated by the firm and the bank to conduct the audit must be ordinarily resident in Canada.

An insurance company, a cooperative credit association, and a trust or loan company require an auditor who can either be a

natural person or a firm of accountants. An auditor of such an institution must be qualified as set out in the Insurance Companies Act, the Cooperative Credit Associations Act or the Trust and Loan Companies Act, as the case may be. In the case where a natural person is appointed to be the auditor of such a financial institution, among the qualifications required is that the person must be ordinarily resident in Canada. In the case where a firm of accountants is appointed to be the auditor of such a financial institution, the member of the firm jointly designated

by the firm and the financial institution to conduct the audit must be ordinarily resident in Canada.

Sector:

Transportation

Sub-Sector:

Air Transportation

Industry Classification:

SIC 451 Air Transport Industries

CPC 731 Passenger transportation by air

CPC 732 Freight transportation by air

Specialty air services, as set out in the Description section below.

Type of Reservation:

National Treatment (Article 803)

Measures:

Canada Transportation Act, S.C. 1996, c.10

Aeronautics Act, R.S.C. 1985, c. A-2

Canadian Aviation Regulations, SOR/96-433

Part II "Aircraft Markings & Registration";

Part IV "Personnel Licensing & Training"; and

Part VII "Commercial Air Services".

Description:

Investment

The Canada Transportation Act, in Section 55, defines "Canadian" in the following manner:

"... 'Canadian' means a Canadian citizen or a permanent resident within the meaning of the Immigration and Refugee Protection Act, a government in Canada or an agent of such a government or a corporation or other entity that is incorporated or formed under the laws of Canada or a province, that is controlled in fact by Canadians and of which at least seventy-five per cent, or such lesser percentage as the Governor in Council may by regulation specify, of the voting interests are owned and controlled by

Canadians ... "

Regulations made under the Aeronautics Act incorporate by reference the definition of "Canadian" found in the Canada Transportation Act. These Regulations require that a Canadian operator of commercial air services operate Canadian-registered aircraft. These regulations require an operator to be Canadian in order to obtain a Canadian Air Operator Certificate and to qualify to register aircraft as "Canadian".

Only "Canadians" may provide the following commercial air transportation services:

a. "domestic services" (air services between points, or from and to the same point, in the territory of Canada, or between a point in the territory of Canada and a point not in the territory of another country);

b. "scheduled international services" (scheduled air services between a point in the territory of Canada and a point in the territory of another country) where those services have been reserved to Canadian carriers under existing or future air services agreements;

c. "non-scheduled international services" (non-scheduled air services between a point in the territory of Canada and a point in the territory of another country) where those services have been reserved to Canadian carriers under the Canada Transportation Act

d. "specialty air services" (include, but are not limited to: aerial mapping, aerial surveying, aerial photography, forest fire management, fire-fighting, aerial advertising, glider towing, parachute jumping, aerial construction, heli-logging, aerial inspection, aerial surveillance, flight training, aerial sightseeing and aerial crop spraying).

No foreign individual may own a Canadian-registered aircraft for private use.

A corporation incorporated in Canada but that does not meet the Canadian ownership and control requirements may only register an aircraft for private use when the corporation is the sole owner of the aircraft. The Canadian Aviation Regulations also have the effect of limiting "non-Canadian" corporations operating foreign-registered private aircraft within Canada to the carriage of their own employees.

Sector:

Transportation

Sub-Sector

Air Transportation

Industry Classification:

SIC 4523 Aircraft Servicing Industry

SIC 3211 Aircraft and Aircraft Parts Industry

Not CPC defined: Aircraft repair and maintenance services, as defined in the Cross Border Trade in Services chapter.

Type of Reservation:

Local Presence (Article 907)

Measures:

Aeronautics Act, R.S.C. 1985, c. A-2

Canadian Aviation Regulations, SOR/96-433:

Part IV "Personnel Licensing & Training";

Part V "Airworthiness";

Part VI "General Operating & Flight Rules"; and

Part VII "Commercial Air Services"

Description:

Cross-Border Trade in Services

Aircraft and other aeronautical product repair, overhaul or maintenance activities required to maintain the airworthiness of Canadian-registered aircraft and other aeronautical products must be performed by Canadian certified persons (i.e., approved maintenance organizations and aircraft maintenance engineers). Certifications are not provided for persons located outside Canada, except sub-organizations of approved maintenance organizations that are themselves located in Canada.

Sector:

Transportation

Sub-Sector:

Land Transportation

Industry Classification:

SIC 456 Truck Transport Industries

SIC 4572 Interurban and Rural Transit Systems Industry

SIC 4573 School Bus Operations Industry

SIC 2574 Charter and Sightseeing Bus Services Industry

CPC 7121 Other scheduled passenger transportation by land other than by railway

CPC 7122 Other non-scheduled passenger transportation by land other than by railway

CPC 7123 Freight transportation by land other than by railway

Type of Reservation:

National Treatment (Article 903)

Local Presence (Article 907)

Measures:

Motor Vehicle Transport Act, R.S.C. 1985, c. 28 (3rd Supp.), as amended by S.C. 2001, c. 13

Canada Transportation Act, S.C. 1996, c. 10

Customs Tariff, 1997, c. 36

Description:

Cross-Border Trade in Services

Only persons of Canada using Canadian-registered and either Canadian built or duty-paid trucks or buses, may provide truck or bus services between points in the territory of Canada.

Sector:

Transportation

Sub-Sector:

Water Transportation

Industry Classification:

SIC 4541 Freight and Passenger Water Transport Industry

SIC 4542 Ferry Industry

SIC 4543 Marine Towing Industry

SIC 4549 Other Water Transport Industries

SIC 4559 Other Service Industries Incidental to Water Transport

CPC 721 Transport services by sea-going vessels

CPC 722 Transport services by non-sea-going vessels

CPC 74540 Vessel salvage and refloating services

CPC 74590 Other supporting services for water transport

Type of Reservation:

National Treatment (Articles 803, 903)

Local Presence (Article 907)

Measures:

Canada Shipping Act, R.S.C. 1985, c. S-9, Part I

Description:

Cross-Border Trade in Services and Investment

1. To register a ship in Canada, the owner of that ship or the person who has exclusive possession of that ship must be:

a. a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act;

b. a corporation incorporated under the laws of Canada or a province; or

c. when the ship is not already registered in another country, a corporation incorporated under the laws of a country other than Canada if one of the following is acting with respect to all matters relating to the ship, namely:

i. a subsidiary of the corporation that is incorporated under the laws of Canada or a province,

ii. an employee or director in Canada of any branch office of the corporation that is carrying on business in Canada, or

iii. a ship management company incorporated under the laws of Canada or a province.

2. A ship registered in a foreign country which has been bareboat chartered may be listed in Canada for the duration of the charter while the ship's registration is suspended in its country of registry, if the charterer is:

a. a Canadian citizen or permanent resident as defined in subsection 2(1) of the Immigration and Refugee Protection Act; or

b. a corporation incorporated under the laws of Canada or a province.

Sector:

Transportation

Sub-Sector:

Water Transportation

Industry Classification:

SIC 4541 Freight and Passenger Water Transport Industry

SIC 4542 Ferry Industry

SIC 4543 Marine Towing Industry

SIC 4549 Other Water Transport Industries

SIC 4559 Other Service Industries Incidental to Water Transport

CPC 721 Transport services by sea-going vessels

CPC 722 Transport services by non-sea-going vessels

CPC 74540 Vessel salvage and refloating services

CPC 74590 Other supporting services for water transport

Type of Reservation:

National Treatment (Article 903)

Local Presence (Article 907)

Measures:

Canada Shipping Act, R.S.C. 1985, c. S-9, Part II

Marine Certification Regulations, SOR 97-391

Description:

Cross-Border Trade in Services

Masters, mates, engineers and certain other seafarers must hold certificates granted by the Minister of Transport as a requirement of service on Canadian registered ships. Such certificates may be granted only to Canadian citizens or permanent residents.

Sector:

Transportation

Sub-Sector:

Water Transportation

Industry Classification:

SIC 4554 Piloting Service, Water Transport Industry

CPC 74520 Pilotage and berthing services

Type of Reservation:

National Treatment (Article 903)

Local Presence (Article 907)

Measures:

Pilotage Act, R.S.C., 1985, c. P-14

General Pilotage Regulations, SOR/2000-132

Atlantic Pilotage Authority Regulations, C.R.C. 1978, c. 1264

Laurentian Pilotage Authority Regulations, C.R.C. 1978, c. 1268

Great Lakes Pilotage Regulations, C.R.C. 1978, c. 1266

Pacific Pilotage Regulations, C.R.C. 1978, c. 1270

Description:

Cross-Border Trade in Services

Subject to the Schedule of Canada, Annex II, at pages II-C-18-19 a licence or a pilotage certificate issued by the relevant regional Pilotage Authority is required to provide pilotage services in the compulsory pilotage waters of the territory of Canada. Only Canadian citizens or permanent residents may obtain such a licence or pilotage certificate. A permanent resident of Canada who has been issued a pilot's licence or pilotage certificate must become a Canadian citizen within five years of receipt of such licence or pilotage certificate in order to retain it.

Sector:

Transportation

Sub-Sector:

Water Transportation

Industry Classification:

SIC 454 Water Transport Industry

CPC 721 Transportation services by sea-going vessels

CPC 722 Transportation services by non-sea-going vessels

Type of Reservation:

Local Presence (Article 907)

Measures:

Shipping Conferences Exemption Act, 1987, R.S.C. 1985, C. 17 (3rd Supp.)

Description:

Cross-Border Trade in Services

Members of a shipping conference must maintain jointly an office or agency in the region of Canada where they operate. A shipping conference is an association of ocean carriers that has the purpose or effect of regulating rates and conditions for the transportation by those carriers of goods by water.

Sector:

Transportation

Sub-Sector:

Water Transportation

Industry Classification:

SIC 4541 Freight and Passenger Water Transport Industry

SIC 4542 Ferry Industry

SIC 4543 Marine Towing Industry

CPC 721 Transportation services by seagoing vessels

CPC 722 Transportation services by non-seagoing vessels

Type of Reservation:

Most-Favoured-Nation Treatment (Article 904)

Measures:

Coasting Trade Act, S.C. 1992, c. 31

Description:

Cross-Border Trade in Services

The prohibitions under the Coasting Trade Act, set out in Schedule of Canada, Annex II, at pages II-C-16-17, do not apply to any vessel that is owned by the U.S. Government when used solely for the purpose of transporting goods owned by the U.S. Government from the territory of Canada to supply Distant Early Warning sites.

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Articles 803, 903)

Most-Favoured-Nation Treatment (Articles 804, 904)

Local Presence (Article 907)

Performance Requirements (Article 807)

Senior Management and Boards of Directors (Article 806)

Measures:

All existing non-conforming measures of all provinces and territories

Description:

Cross-Border Services and Investment

## **Annex I. Schedule of Peru**

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article 803)

Measures:

Constitución Política del Perú (1993), artículo 71

Decreto Legislativo N° 757, Diario Oficial "El Peruano" del 3 de noviembre de 1991, Ley Marco para el Crecimiento de la Inversión Privada, artículo 13

Description:

Investment

No foreign national, enterprise constituted under foreign law or enterprise constituted under Peruvian law, and owned in whole or part, directly or indirectly, by foreign nationals may acquire or own, directly or indirectly, by any title, land or water (including mines, forest or energy sources) located within 50 kilometers of the Peruvian border. Exceptions may be authorized by Supreme Decree approved by the Council of Ministers in conformity with law in cases of expressly declared public necessity.

For each case of acquisition or possession within the referred area, the investor shall hand in the correspondent request to the relevant Ministry, pursuant to laws in force. For example, authorizations of this kind have been given in the mining sector.

Sector:

Fishing and Services related to Fishing

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article 903)

Measures:

Decreto Supremo N° 012-2001-PE, Diario Oficial "El Peruano" del 14 de marzo de 2001, Reglamento de la Ley General de Pesca, artículos 67, 68, 69 y 70

Description:

Cross-Border Trade in Services

Before commencing operations, shipowners of foreign flagged fishing vessels must present an unconditional, irrevocable, letter of guarantee with automatic execution and joint liability, which will be valid for no more than 30 calendar days after



the expiry of the fishing permit, issued for the benefit and to the satisfaction of the Ministry of Production by a financial, banking or insurance institution recognized by the "Superintendencia de Banca y Seguros". Such letter shall be issued in an amount equal to 25 per cent of the amount that must be paid for fishing rights.

A shipowner of a foreign-flagged fishing vessel that is not of large scale (according to the regulation mentioned above) and that operates in Peruvian jurisdictional waters must rely on the Satellite Tracking System in its vessel, except for shipowners operating in highly migratory fisheries who are excepted from this obligation by a Ministerial Resolution.

Foreign-flagged fishing vessels with a fishing permit must have on board a scientific technical observer appointed by the Sea Institute of Peru (Instituto del Mar del Peru - IMARPE). The shipowner must provide accommodation on board for that representative and a daily stipend, which must be deposited in a special account to be administered by IMARPE.

Shipowners of foreign-flagged fishing vessels that operate in Peruvian jurisdictional waters must hire a minimum of 30 per cent of Peruvian crew, subject to applicable domestic legislation.

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article 903)

Senior Management and Boards of Directors (Article 806)

Measures:

Decreto Legislativo N° 689, Diario Oficial "El Peruano" del 05 de noviembre de 1991, Ley para la Contratación de Trabajadores Extranjeros, artículos 1, 3, 4, 5 (modificado por Ley N° 26196) y 6

Description:

Investment and Cross-Border Trade in Services

All employers in Peru, independently of their activity or nationality, shall give preferential treatment to nationals when hiring its employees.

Foreign natural persons who are service providers and who are employed by a service-providing enterprise may provide services in Peru under a written and time limited employment contract, which may not exceed 3 years. The contract may be subsequently extended for like periods of time. Service-providing enterprises must show proof of the company's commitment to train national personnel in the same occupation.

Foreign natural persons may not represent more than 20 per cent of the total number of employees of an enterprise, and their pay may not exceed 30 per cent of the total payroll for wages and salaries. These percentages will not apply in the following cases:

- a. when the foreign national providing the service is the spouse, parent, child or sibling of a Peruvian national;
- b. when the personnel is working for a foreign enterprise providing international land, air and water transport services under a foreign flag and registration;
- c. when the foreign personnel works in a multinational bank or an enterprise that provides multinational services, subject to the laws governing specific cases;
- d. for a foreign investor, provided that its investment permanently maintains in Peru at least five units "Unidad Impositiva Tributaria" ("UITs") (1) during the life of its contract;
- e. for artists, athletes or other service-providers engaged in public performances in Peruvian territory, for a maximum of three months a year;
- f. when a foreign national has an immigrant visa;
- g. for a foreign national whose country of origin has a labour reciprocity or dual nationality agreement with Peru; and

h. when foreign personnel provides services in Peru under a bilateral or multilateral agreement concluded by the Peruvian Government.

Employers may request waivers for the percentages related to the number of foreign employees and their share of the company's payroll in those cases involving:

- a. specialized professional or technical personnel;
- b. directors or management personnel for new a business activity or reconverted business activity;
- c. teachers hired for post secondary education, or for foreign private elementary and high schools; or for language teaching in local private schools; or for specialized language centers;
- d. personnel working for public or private enterprises with contractual agreements with public organizations, institutions or enterprises; and
- e. in any other case determined by Supreme Decree pursuant to specialization, qualification or experience criteria.

(1) The "Unidad Impositiva Tributaria (UIT)" is an amount used as a reference in taxation rules in order to maintain in constant values the tax basis, deductions, affectation limits and other aspects of the tax that the legislator considers convenient.

Sector:

Professional Services

Sub-Sector:

Legal services

Industry Classification:

CPC 8613

CPC 8619

Type of Reservation:

National Treatment (Articles 803, 903)

Measures:

Decreto Ley N° 26002, Diario Oficial El Peruano del 27 de diciembre de 1992, Ley del Notariado. Artículo 5 (modificado por Ley N° 26741) y artículo 10 (modificado por Ley N° 27094)

Description:

Investment and Cross-Border Trade in Services

Only a Peruvian national by birth may supply notary services.

Sector:

Professional Services

Sub-Sector:

Architectural Services

Industry Classification:

CPC 8671

CPC 8674

Type of Reservation:

National Treatment (Articles 803, 903)

Measures:

Ley N° 14085, Diario Oficial "El Peruano" de 30 de junio de 1962, Ley de Creación del Colegio de Arquitectos del Peru

Ley N° 16053, Diario Oficial "El Peruano" del 14 de febrero de 1966, Ley del Ejercicio Profesional, Autoriza a los Colegios de Arquitectos e Ingenieros del Peru para supervisar a los profesionales de Ingenieria y Arquitectura de la Republica, articulo 1

Acuerdo del Consejo de Arquitectos, del 6 de octubre de 1987

Description:

Investment and Cross-Border Trade in Services

To practice as an architect in Peru, an individual must join the "Colegio de Arquitectos" and pay a fee in accordance with the following schedule:

- a. US\$250 for a Peruvian national with a degree from a Peruvian university;
- b. US\$400 for a Peruvian national with a degree from a foreign university; or
- c. US\$3,000 for a foreign national with a degree from a foreign university.

Also, to obtain temporary registration, non-resident foreign architects must have a contract of association with a Peruvian architect residing in Peru.

Sector:

Professional Services

Sub-Sector:

Auditing Services

Industry Classification:

CPC 862

Type of Reservation:

National Treatment (Articles 803, 903)

Local Presence (Article 907)

Measures:

Reglamento Interno del Colegio de Contadores Publicos de Lima, articulos 145 y 146

Description:

Investment and Cross-Border Trade in Services

Auditing societies shall be constituted only and exclusively by public accountants licensed and resident in the country and duly qualified

by the "Colegio de Contadores Publicos de Lima". No partner may be a member of another auditory society in Peru.

Sector:

Security Services

Sub-Sector:

Industry Classification:

CPC 873

Type of Reservation:

National Treatment (Article 903)

## Senior Management and Boards of Directors (Article 806)

### Measures:

Decreto Supremo N° 005-94-IN, Diario Oficial "El Peruano" del 12 de mayo de 1994, Reglamento de Servicios de Seguridad Privada, artículos 81 y 83

### Description:

Investment and Cross-Border Trade in Services

Persons hired as security guards must be Peruvian by birth.

Senior managers of enterprises that supply security services must be Peruvian by birth and residents of Peru.

### Sector:

Recreational, cultural and sporting services

### Sub-Sector:

National artistic production services

### Industry Classification:

CPC 96

### Type of Reservation:

National Treatment (Article 903)

### Measures:

Ley N° 28131, Diario Oficial "El Peruano" del 18 de diciembre de 2003, Ley del Artista, Interprete y Ejecutante, artículos 23 y 25

### Description:

Cross-Border Trade in Services

Any domestic artistic live performances must be comprised at least of 80 per cent of national artists.

National artists shall receive no less than 60 per cent of the total payroll for wages and salaries paid to artists.

The same percentages established in the preceding paragraphs shall govern the work of technical personnel involved in artistic activities.

### Sector:

Recreational, cultural and sporting services

### Sub-Sector:

Circus services

### Industry Classification:

CPC 96194

### Type of Reservation:

National Treatment (Article 903)

### Measures:

Ley No. 28131, Diario Oficial "El Peruano" del 18 de diciembre de 2003, Ley del Artista, Interprete y Ejecutante, artículo 26

### Description:

Cross-Border Trade in Services

A foreign circus may stay in Peru with its original cast for a maximum of 90 days. This period may be extended for the same period of time. If it is extended, the foreign circus will include a minimum of 30 per cent Peruvian nationals as artists and 15 per cent Peruvian nationals as technicians. The same percentages shall apply to the payroll of salaries and wages.

Sector:

Commercial Advertising Services

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article 903)

Measures:

Ley No. 28131, Diario Oficial "El Peruano" del 18 de diciembre de 2003, Ley del Artista, Interprete y Ejecutante, articulos 25 y 27.2

Description:

Cross-Border Trade in Services

Commercial advertising produced in Peru, must have at least 80 per cent of national artists.

National artists shall receive no less than 60 per cent of the total payroll for wages and salaries paid to artists.

The same percentages established in the preceding paragraphs shall govern the work of technical personnel involved in commercial advertising.

Sector:

Recreational, cultural and sporting services

Sub-Sector:

Bullfighting

Industry Classification:

Type of Reservation:

National Treatment (Article 903)

Measures:

Ley N° 28131, Diario Oficial "El Peruano" del 18 de diciembre de 2003, Ley del Artista, Interprete y Ejecutante, articulo 28

Description:

Cross-Border Trade in Services

At least one bullfighter of Peruvian nationality must participate in any bullfighting event. At least one apprentice bullfighter of Peruvian nationality must participate in fights involving young bulls.

Sector:

Customs Warehouses Services

Sub-Sector:

Industry Classification:

Type of Reservation:

Local Presence (Article 907)

Measures:

Decreto Supremo N° 08-95-EF, Diario Oficial "El Peruano" del 5 de febrero de 1995, Aprueban el Reglamento de Almacenes Aduaneros, artículo 7

Description:

Cross-Border Trade in Services

Only natural or juridical persons domiciled in Peru may apply for an authorization to operate a customs warehouse.

Sector:

Telecommunications

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article 903)

Measures:

Decreto Supremo N° 027-2004-MTC, Diario Oficial "El Peruano" de 15 de julio de 2004, Texto Unico Ordenado del Reglamento General de la Ley de Telecomunicaciones, artículo 269

Description:

Cross-Border Trade in Services

Call-back, understood as being the offer of telephone services for the realization of attempts to make calls originating in the country with the objective of obtaining a return call with an invitation to dial, coming from a basic telecommunications network located outside the national territory, is prohibited.

Sector:

Transport

Sub-Sector:

Air Transport

Industry Classification:

Type of Reservation:

National Treatment (Article 803)

Senior Management and Boards of Directors (Article 806)

Measures:

Ley N° 27261, Diario Oficial "El Peruano" del 10 de mayo de 2000, Ley de Aeromiotica Civil, artículos 75 y 79

Decreto Supremo N° 050-2001-MTC, Diario Oficial "El Peruano" del 26 de diciembre de 2001, Reglamento de la Ley de Aeromiotica Civil, artículos 147, 159, 160 y VI Disposición Complementaria

Description:

Investment

National Commercial Aviation is reserved to a Peruvian natural or juridical person.

For purposes of this entry, a Peruvian juridical person is an enterprise that fulfils the following requirements:

a. is constituted under Peruvian law, specifies commercial aviation as its corporate purpose, is domiciled in Peru, and has its principal activities and administration located in Peru;

b. at least half plus one of the directors, managers and persons who control and manage the enterprise are Peruvian nationals or have permanent domicile or are normally resident in Peru; and

c. at least 51 per cent of the capital stock must be owned by Peruvian nationals and be under the real and effective control of Peruvian shareholders or partners permanently domiciled in Peru. (This limitation shall not apply to the enterprises constituted under Law N° 24882, which may maintain the ownership percentages set in such law). Six months after the date of authorization of the enterprise to provide commercial air transportation services, foreign nationals may own up to 70 per cent of the capital stock of the enterprise.

In those operations conducted by Peruvian service providers ("explotadores nacionales"), personnel performing aeronautical functions on board must be Peruvian nationals. The Directorate General of Civil Aviation may, for technical reasons, authorize foreign personnel to perform these functions for a period not to exceed six months from the date on which the authorization was granted. This time period may be extended if there is proof of a shortage of trained personnel.

The General Directorate of Civil Aviation, upon providing proof of a shortage of Peruvian aviation personnel, may authorize non-resident foreign personnel to pilot airplanes and to train Peruvian aviation personnel for a period of up to six months, which may be extended if there is proof of a shortage of Peruvian personnel.

Sector:

Transport

Sub-Sector:

Aquatic Transport

Industry Classification:

CPC 72

Type of Reservation:

National Treatment (Articles 803, 903)

Local Presence (Article 907)

Senior Management and Boards of Directors (Article 806)

Measures:

Ley N° 28583, Ley de Reactivación y Promoción de la Marina Mercante Nacional, Diario Oficial "EL Peruano" del 22 de julio de 2005, artículos 4.1, 6.1, 7.1, 7.2, 7.4, 13.6

Decreto Supremo N° 028 DE/MGP, Diario Oficial "El Peruano" del 25 de mayo de 2001, Reglamento de la Ley N° 26620, artículo 1-010106, literal a)

Description:

Investment and Cross-Border Trade in Services

1. A "National shipowner" or "National Ship Enterprise" is understood as a natural person of Peruvian nationality or juridical person constituted in Peru, with its principal domicile and real and effective headquarters in Peru, whose business is to provide water transportation services in national traffic or cabotage (2) and/or international traffic and who is the owner or lessee under a financial lease or a bareboat charter, with an obligatory purchase option, of at least one Peruvian flag merchant vessel and that has obtained the relevant Operation Permit from the General Aquatic Transport Directorate.

2. At least 51 per cent of the subscribed and paid-in capital stock must be owned by Peruvian citizens.

3. The chairman of the board of directors, the majority of the directors, and the General Manager must be Peruvian nationals and residents in Peru.

4. Peruvian-flagged vessels must have a Peruvian captain and the crew must have at least 80 per cent of Peruvian nationals authorized by the "Dirección General de Capitanías y Guardacostas". In exceptional cases and after ascertaining that there is no Peruvian qualified captain with experience in that type of vessel available, a foreign national may be authorized to serve as captain.

5. Only a Peruvian national may be a licensed harbor pilot.

6. Cabotage is exclusively reserved to Peruvian flagged merchant vessels owned by a National Shipowner or National Ship Enterprise or leased under a financial lease or a bareboat charter, with an obligatory purchase option, except that:

a. up to 25 per cent of the transport of hydrocarbons in national waters is reserved for the ships of the Peruvian Navy; and

b. foreign-flagged vessels may be operated exclusively by National Shipowners or National Ship Enterprises for a period of no more than six months for water transportation exclusively between Peruvian ports or cabotage when such an entity does not own its own vessels or lease vessels under the modalities previously mentioned.

(2) For greater certainty, water transportation includes transport by lakes and rivers.

Sector:

Transport

Sub-Sector:

Aquatic Transport

Industry Classification:

CPC 72

Type of Reservation:

National Treatment (Articles 803, 903) Local Presence (Article 907)

Measures:

Decreto Supremo N° 056-2000-MTC, Diario Oficial "El Peruano" del 31 de diciembre de 2000. Disponen que servicios de transporte marítima y conexos realizados en bahías y áreas portuarias deberán ser prestados por personas naturales y jurídicas autorizadas, con embarcaciones y artefactos de bandera nacional,

artículo 1

Resolución Ministerial N° 259-2003-MTC/02, Diario Oficial "El Peruano" del 4 de abril de 2003. Aprueban Reglamento de los servicios de Transporte Acuático y Conexos Prestados en Tráfico de Bahía y Áreas Portuarias, artículos 5 y 7

Description:

Investment and Cross-Border Trade in Services

The following water transport and related services supplied in bay and port areas must be supplied by natural persons domiciled in Peru, and juridical persons constituted and domiciled in Peru, properly authorized with Peruvian flag vessels and equipment:

Fuel replenishment services;

Mooring and unmooring services;

Diving services;

Victualing services;

Dredging services;

Harbor pilotage services;

Waste collection services;

Tug boat services; and

Transport of persons.

Sector:



Transport

Sub-Sector:

Aquatic Transport

Industry Classification:

CPC 72

Type of Reservation:

Local Presence (Article 907)

Measures:

Resolución Suprema N° 011-78-TC-DS, del 6 de febrero de 1978, Reglamento de Empresas de Transporte Turístico

Description:

Cross-Border Trade in Services

Only natural persons domiciled in Peru or juridical persons constituted and domiciled in Peru may provide tourist water transportation services.

Sector:

Transport

Sub-Sector:

Aquatic Transport

Industry Classification:

CPC 72

Type of Reservation:

National Treatment (Article 903)

Measures:

Ley N° 27866, Diario Oficial "El Peruano" del 16 de noviembre de 2002, Ley del Trabajo Portuario, artículos 3y7

Description:

Cross-Border Trade in Services

Only Peruvian citizens may register in the Registry of Port Workers.

Sector:

Transport

Sub-Sector:

Land Transport of Passengers

Industry Classification:

C PC 71

Type of Reservation:

Local Presence (Article 907)

Measures:

Decreta Supremo N° 009-2004-MTC, Diario Oficial "El Peruano" del 27 de febrero de 2004, Reglamento Nacional de

Administración de Transportes, artículos 47 y 48

Description:

Cross-Border Trade in Services

A supplier of land transport services in Peru must certify in writing that it maintains ground terminals, route stations, stops, and administrative offices in the territory of Peru, according to the corresponding transport services.

The transport enterprise must have its own installations, or those of third parties, properly maintained for the management of the enterprise, which will constitute its legal domicile, where the competent authority can conduct the inspections and verifications it deems necessary.

Sector:

Transport

Sub-Sector:

Land transport

Industry Classification:

CPC 71

Type of Reservation:

National Treatment (Article 903)

Measures:

The "Acuerdo sobre Transporte Internacional Terrestre", signed between the Governments of the Republic of Chile, the Republic of Argentina, la Republica de Bolivia, la Republica Federativa de Brasil, la Republica del Paraguay, la Republica del Peru y la Republica Oriental del Uruguay- ATIT, signed in Montevideo January 1, 1990

Description:

Cross-Border Trade in Services

Foreign vehicles allowed by Peru, in conformity with the ATIT, which carry out international transportation by road, will not be able to provide local transport (cabotage) in the Peruvian territory.

Sector:

Research and Development Services

Sub-Sector:

Archaeological Services

Industry Classification:

CPC 852

CPC 853

Type of Reservation:

National Treatment (Article 903)

Measures:

Resolución Suprema No. 004-2000-ED, Diario Oficial "El Peruano" del 25 de Enero de 2000, Reglamento de Investigaciones Arqueológicas, artículo 30

Description:

Cross-Border Trade in Services

Archaeological research projects headed by foreign archaeologists must count on a Peruvian archaeologist registered in the National Registry of Archaeologists for the scientific co-direction or sub-direction of the project. The co-director and sub-director shall participate in the integral execution of the project (field and office work).

Sector:

Services Related to Energy Services

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article 903)

Local Presence (Article 907)

Measures:

Ley N° 26221, Diario Oficial "El Peruano" del 19 de agosto de 1993, Ley General de Hidrocarburos, artículo 15

Description:

Cross-Border Trade in Services

In order to enter into an exploration contract in Peru, foreign natural persons must register in the Public Registry and provide a power of attorney to a Peruvian national resident in the capital of the Republic of Peru.

Foreign enterprises must establish a branch or constitute a society under the Ley General de Sociedades, be domiciled in the capital of the Republic of Peru, and appoint a Peruvian national as an executive agent.

## **Annex II. Reservations for Future Measures**

1. The Schedule of a Party sets out, pursuant to Articles 808 (Investment – Reservations and Exceptions) and 908 (Cross-Border Trade in Services – Non-Conforming Measures), the reservations taken by that Party with respect to specific sectors, sub-sectors or activities for which it may maintain existing, or adopt new or more restrictive measures that do not conform with obligations imposed by:

- a. Article 803 (Investment – National Treatment), 903 (Cross-Border Trade in Services - National Treatment);
- b. Article 804 (Investment - Most-Favoured-Nation Treatment), 904 (Cross-Border Trade in Services - Most-Favoured-Nation Treatment);
- c. Article 907 (Cross-Border Trade in Services - Local Presence);
- d. Article 807 (Investment - Performance Requirements);
- e. Article 806 (Investment - Senior Management and Boards of Directors); or
- f. Article 906 (Cross-Border Trade in Services - Market Access).

2. Each reservation sets out the following elements:

- a. Sector refers to the general sector in which the reservation is taken;
- b. Sub-Sector refers to the specific sector in which the reservation is taken;
- c. Industry Classification refers, where applicable, to the activity covered by the reservation according to domestic industry classification codes;
- d. Type of Reservation specifies the obligation referred to in paragraph 1 for which a reservation is taken;
- e. Description sets out the scope of the sector, sub-sector or activities covered by the reservation;
- f. Existing Measures identifies, for transparency purposes, existing measures that apply to the sector, sub-sector or activities covered by the reservation.

3. In the interpretation of a reservation, all elements of the reservation, with the exception of Industry Classification, shall be considered. The Description element shall prevail over all other elements.

4. For purposes of this Annex:

CPC means Central Product Classification (CPC) numbers as set out in Statistical Office of the United Nations, Statistical Papers, Series M, No. 77, Provisional Central Product Classification, 1991; and

SIC means Standard Industrial Classification (SIC) numbers as set out in Statistics Canada, Standard Industrial Classification, fourth edition, 1980.

## **Annex II. Schedule of Canada**

Sector:

Aboriginal Affairs

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Articles 803, 903)

Most-Favoured-Nation Treatment (Articles 804, 904) Local Presence (Article 907)

Performance Requirements (Article 807)

Senior Management and Boards of Directors (Article 806)

Description:

Cross-Border Trade in Services and Investment

Canada reserves the right to adopt or maintain any measure denying investors of Peru and their investments, or service providers of Peru, any rights or preferences provided to aboriginal peoples.

Existing Measures:

Constitution Act, 1982, being Schedule B of the

Canada Act 1982 (U.K.), 1982, c. 11

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Sector:

All sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article 803)

Description:

Investment

Canada reserves the right to adopt or maintain any measure relating to residency requirements for the ownership by investors of Peru, or their investments, of oceanfront land.

Existing Measures:

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Sector:

Communications

Sub-Sector:

Telecommunications Transport Networks and Services

Radiocommunications

Industry Classification:

CPC 752 Telecommunication services

Type of Reservation:

National Treatment (Article 803)

Senior Management and Boards of Directors (Article 806)

Description:

Investment

1. Canada reserves the right to adopt or maintain any measure:

that limits foreign investment in facilities based telecommunications service suppliers, provided that the measures adopted or maintained by Canada do not limit foreign investment to less than a cumulative total of

46.7 percent of voting shares, based on 20 percent direct investment and 33.3 percent indirect investment;

requiring that facilities-based telecommunications service suppliers be controlled in fact by Canadians;

requiring that at least 80 percent of the members of the board of directors of facilities-based telecommunications service suppliers be Canadian; and

subjecting facilities-based telecommunications service suppliers that exceeded the permissible cumulative foreign investment level on 22 July 1987 and continue to exceed this level, to restrictions.

Exceptions to this reservation are:

foreign investment is allowed up to 100 percent for suppliers conducting operations under an international submarine cable licence;

mobile satellite systems owned and controlled up to a level of 100 percent by a foreign service provider may be used by a Canadian service provider to provide services in Canada; and

fixed satellite systems owned and controlled up to a level of 100 percent by foreign service providers may be used to provide services between points in Canada and all points outside of Canada.

Existing Measures:

Telecommunications Act, S.C. 1993, c. 38.

Canadian Telecommunications Common Carrier

Ownership and Control Regulations SOR/94-667

Radiocommunications Act, R.S.C. 1985, c. R-2

Radiocommunication Regulations SOR/96-484

Sector:

Communications

Sub-Sector:

Telecommunications Transport Networks and Services

Radiocommunications

Telecommunication Services

Industry Classification:

CPC 7529 Other telecommunications services

CPC 7549 Other telecommunications services not elsewhere classified

Type of Reservation:

Local Presence (Article 907) National Treatment (Article 803)

Senior Management and Boards of Directors (Article 806)

Description:

Cross-Border Trade in Services and Investment

Canada reserves the right to adopt or maintain any measure relating to the provision of or investment in telecommunications services classified in CPC 7529, excluding mobile services, and CPC 7549.

Existing Measures:

Radiocommunication Act, R.S.C. 1985, c. R-2

Radiocommunication Regulations SOR/96-484

Telecommunications Act, S.C. 1993, c. 38

Canadian Telecommunications Common Carrier

Ownership and Control Regulations SOR/94-667

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Sector:

Communications

Sub-Sector:

Telecommunications Transport Networks and Services

Industry Classification:

CPC 752 Telecommunications services

CPC 7543 Connection services

CPC 7549 Other telecommunications services not elsewhere classified (limited to telecommunications transport networks and services)

Type of Reservation:

National Treatment (Article 803)

Description:

Investment

Canada reserves the right to adopt or maintain any measure that may limit competition in the provision of local wireline telephone services in the serving areas of Northwestel Inc.

Existing Measures:

Telecommunications Act, S.C. 1993, c. 38

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Sector:

Fisheries

Sub-Sector:

Fishing and Fishing Related Services and Investment

Industry Classification:

SIC 031 Fishing Industry

SIC 032 Services Incidental to Fishing

CPC 882 Services incidental to fishing

Type of Reservation:

National Treatment (Articles 803, 903)

Most-Favoured-Nation Treatment (Articles 804, 904)

Description:

Cross-Border Trade in Services and Investment

Canada retains the right to adopt or maintain any measure with respect to the issuance of licenses to foreign fishing vessels and with respect to access for foreign fishing vessels to Canada's ports, territorial waters or Exclusive Economic Zone.

Under the Coastal Fisheries Protection Act, Fisheries and Oceans Canada is responsible for controlling the activities of foreign fishing vessels in Canada's Exclusive Economic Zone, as well as access to Canadian ports (including port privileges).

Under the Coastal Fisheries Protection Act, foreign fishing vessels are prohibited from entering Canada's territorial waters or Exclusive Economic Zone except under authority of a license or under treaty. "Foreign" vessels are those which are not "Canadian" as defined in the Coastal Fisheries Protection Act. Under the Coastal Fisheries Protection Act, the Minister of Fisheries and Oceans has discretionary authority with respect to the issuance of licenses to foreign fishing vessels.

Canada issues a port entry and port privileges license, including for the purchase of fuel and supplies, ship repair, crew exchanges and transhipment of fish catches, only to fishing vessels from a country with which it has favourable fisheries relations, based primarily on adherence by that country to international conservation practices and policies. Exceptions to this general rule are permitted in cases of emergency ("force majeure") and where the specific provisions of

bilateral fisheries treaties apply.

Existing Measures:

Coastal Fisheries Protection Act, R.S.C. 1985, c. C-33

Fisheries Act, R.S.C 1985, c. F14

Coastal Fisheries Protection Regulations, C.R.C. 1978, c. 413

Commercial Fisheries Licensing Policy

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Sector:

Government Finance

Sub-Sector:

Securities

Industry Classification:

SIC 8152 Finance and Economic Administration

Type of Reservation:

## National Treatment (Article 803)

### Description:

#### Investment

Canada reserves the right to adopt or maintain any measure relating to the acquisition, sale or other disposition by nationals of Peru of bonds, treasury bills or other kinds of debt securities issued by the Government of Canada, a province or local government.

### Existing Measures:

Financial Administration Act, R.S.C. 1985, c. F-II

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### Sector:

Minority Affairs

### Sub-Sector:

### Industry Classification:

### Type Reservation:

National Treatment (Articles 803, 903)

Local Presence (Article 907)

Performance Requirements (Article 807)

Senior Management and Boards of Directors (Article 806)

### Description:

#### Cross-Border Trade in Services and Investment

Canada reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities.

### Existing Measures:

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### Sector:

Social Services

### Sub-sector:

### Industry Classification:

### Type of Reservation:

National Treatment (Articles 803, 903)

Most-Favoured-Nation Treatment (Article 904)

Local Presence (Article 907)

Senior Management and Boards of Directors (Article 806)

### Description:

#### Cross-Border Trade in Services and Investment

Canada reserves the right to adopt or maintain any measure with respect to the provision of public law enforcement and correctional services, and the following services to the extent that they are social services established or maintained for a



public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

Existing Measures:

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Sector:

Transportation

Sub-Sector:

Air Transportation

Industry Classification:

SIC 4523 Aircraft Servicing Industry

SIC 3211 Aircraft and Aircraft Parts Industry

Not CPC-defined: Aircraft repair and maintenance services, as defined in the Cross Border Trade in Services chapter

Type of Reservation:

Most-Favoured-Nation Treatment (Article 904)

Description:

Cross-Border Trade in Services

Canada reserves the right to selectively negotiate agreements or arrangements with other aeronautical authorities or service providers to recognize their accreditation of repair, overhaul and maintenance facilities and certification by such facilities of work performed on Canadian-registered aircraft and other related aeronautical products.

Existing Measures:

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Sector:

Transportation

Sub-Sector:

Air Transport

Industry Classification:

SIC 451 Air Transport Industries

Not CPC-defined: Selling and marketing of air transport services, as defined in the Cross Border Trade in Services chapter

Type of Reservation:

National Treatment (Article 903)

Most-Favoured-Nation Treatment (Article 904)

Local Presence (Article 907)

Description:

Cross-Border Trade in Services

Canada reserves the right to adopt or maintain any measure relating to the selling and marketing of air transportation services.

Existing Measures:

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Sector:

Transportation

Sub-Sector:

Water Transportation

Industry Classification:

SIC 4129 Other Heavy Construction

SIC 4541 Freight and Passenger Water Transport Industry

SIC 4542 Ferry Industry

SIC 4543 Marine Towing Industry

SIC 4549 Other Water Transport Industries

SIC 4552 Harbour and Port Operation Industries (limited to berthing, bunkering and other vessel operations in a port)

SIC 4553 Marine Salvage Industry

SIC 4554 Piloting Services, Water Transport Industry

SIC 4559 Other Service Industries Incidental to Water Transport (not including landside aspects of port activities)

CPC 52232 Constructions of Harbours, rivers, canals, and related facilities

CPC 721 Transportation services by seagoing vessels

CPC 722 Transportation services by nonsea-going vessels

CPC 74510 Port and waterway operation services (excl. cargo handling)

CPC 74520 Pilotage and berthing services

CPC 74590 Other supporting services for water transport

Other marine activities of a commercial nature, as set out in the Description section below.

Type of Reservation:

National Treatment (Articles 803, 903)

Most-Favoured-Nation Treatment (Articles 804, 904)

Local Presence (Article 907)

Performance Requirements (Article 807)

Senior Management and Boards of Directors (Article 806)

Description:

Cross-Border Trade in Services and Investment

Canada reserves the right to adopt or maintain any measure relating to the investment in or provision of marine cabotage services, including:

the transportation of either goods or passengers by ship between points in the territory of Canada or above the continental shelf of Canada, either directly or by way of a place outside Canada; but with respect to waters above the continental shelf of

Canada, the transportation of either goods or passengers only in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources of the continental shelf of Canada; and

the engaging by ship in any other marine activity of a commercial nature in the territory of Canada and, with respect to waters above the continental shelf, in such other marine activities of a commercial nature that are in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources of the continental shelf of Canada.

This reservation relates to, among other things, local presence requirements for services providers entitled to participate in these activities, criteria for the issuance of a temporary cabotage license to foreign ships and limits on the number of cabotage licenses issued to foreign ships.

Existing Measures:

Coasting Trade Act, S.C. 1992, c. 31

Canada Shipping Act, R.S.C. 1985, c. S-9

Customs Act, R.S.C. 1985, c. 1 (2nd Supp.)

Customs and Excise Offshore Application Act, R.S.C. 1985, c. C-53

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Sector:

Transportation

Sub-Sector:

Water Transportation

Industry Classification:

SIC 4541 Freight and Passenger Water Transport Industry

SIC 4542 Ferry Industry

SIC 4543 Marine Towing Industry

SIC 4549 Other Water Transport Industries

SIC 4551 Marine Cargo Handling Industry

SIC 4552 Harbour and Port Operation Industries

SIC 4553 Marine Salvage Industry

SIC 4554 Piloting Service, Water Transport Industry

SIC 4559 Other Service Industries Incidental to Water Transport

CPC 721 Transport services by sea-going vessels

CPC 722 Transport services by non-sea-going vessels

CPC 74510 Port and waterway operation services (excl. cargo handling)

CPC 74520 Piloting and berthing services

CPC 74590 Other supporting services for water transport

Type of Reservation:

Most-Favoured-Nation Treatment (Article 904)

Description:

Cross-border Trade in Services

Canada reserves the right to adopt or maintain any measure relating to the implementation of agreements, arrangements and other formal or informal undertakings with other countries with respect to maritime activities in waters of mutual interest in such areas as pollution control (including double hull requirements for oil tankers), safe navigation, barge

inspection standards, water quality, pilotage, salvage,

drug abuse control and maritime communications.

Existing Measures:

United States Wreckers Act, R.S.C. 1985, c. U-3

Various agreements and arrangements, including:

Memorandum of Arrangements on GreatLakes Pilotage;

Canada- United States Joint Marine Pollution Contingency Plan;

Agreement with the United States on Loran "C" Service on the East and West Coasts; and

Denmark- Canada Joint Marine Pollution Circumpolar Agreement.

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Sector:

Transportation Services

Sub-Sector:

Industry Classification:

Type of Reservation:

Most-Favoured-Nation Treatment (Article 904)

Description:

Cross-Border Trade in Services

Canada reserves the right to adopt or maintain any measure in respect of transportation services that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

Existing Measures:

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Sector:

All Sector

Sub-Sector:

Industry Classification:

Type of Reservation:

Most-Favoured-Nation Treatment (Article 804)

Description:

Investment

Canada reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreements in force or signed prior to the date of entry into force of this Agreement.

Canada reserves the right to adopt or maintain any measure that accords differential treatment to a country pursuant to any existing or future bilateral or multilateral agreement relating to:

aviation;

fisheries;

maritime matters, including salvage

Existing Measures:

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Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

Market Access (Article 906)

Description:

Cross-Border Trade in Services

Canada reserves the right to adopt or maintain any measure that is not inconsistent with Canada's obligations under Article XVI of the GATS.

Existing Measures:

## **Annex II. Schedule of Peru**

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

Most-Favoured-Nation Treatment (Articles 804, 904)

Description:

Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

Peru reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreements in force or signed after the date of entry into force of this Agreement involving:

- a. aviation;
- b. fisheries; or
- c. maritime matters, (1) including salvage.

(1) For greater certainty, maritime matters include transport by lakes and rivers.

Sector:

Indigenous Communities, Peasant, Native and Minority Affairs

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Articles 803, 903)

Most-Favoured-Nation Treatment (Articles 804, 904)

Local Presence (Article 907)

Performance Requirements (Article 807)

Senior Management and Board of Directors (Article 806)

Description:

Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities and ethnic groups. For purposes of this entry, "ethnic groups"

means indigenous, native and peasant communities.

Sector:

Fishing and services related to fishing

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Articles 803, 903)

Most-Favoured-Nation Treatment (Articles 804, 904)

Performance Requirements (Article 807)

Description:

Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure relating to artisanal fishing.

Sector:

Cultural Related Activities

Sub-Sector:

Industry Classification:

Type of Reservation:

Most-Favoured-Nation Treatment (Articles 804, 904)

Description:

Investment and Cross-Border Trade in Services

For purposes of this entry, the term "cultural related activities" means:

- a. Production and presentation of theater arts; (2)
- b. Production and exhibition of visual arts; or
- c. Design, production, distribution and sale of handicrafts.

Peru reserves the right to adopt or maintain any measure giving preferential treatment to persons of other countries pursuant to any existing or future bilateral or multilateral international agreement regarding cultural related activities.

For greater certainty, Articles 803 and 804 and Chapter Nine do not apply to government support programs for the promotion of cultural industries.

(2) Theatre arts mean live performances or presentations such as drama, dance or music.

Sector:

Handicraft Industries

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Articles 803, 903)

Performance Requirements (Article 807)

Description:

Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure relating to the design, distribution, retailing, or exhibition of handicrafts that are identified as Peruvian handicrafts.

Performance requirements shall in all cases be consistent with the WTO Agreement on Trade-Related Investment Measures.

Sector:

Jewelry Design Theater arts Visual arts Music

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article 903)

Performance Requirements (Article 807)

Description:

Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure conditioning the receipt or continued receipt of government support for the development and production of jewelry design, theater arts, visual arts, and music on the recipient achieving a given level or percentage of domestic creative content.

For greater certainty, this reservation is without prejudice to the scope and application of Article 2206 (Exceptions - Cultural Industries).

Sector:

Theatre (3) and Visual Arts Music

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Articles 803, 903)

Most-Favoured-Nation Treatment (Articles 804, 904)

Description:

## Investment and Cross-Border Trade in Services

Peru may adopt or maintain any measure that affords a person of the other Party the treatment that is afforded by that Party to Peruvian persons in the theatre and visual arts, and music sectors.

For greater certainty, this reservation is without prejudice to the scope and application of Article 2206 (Exceptions - Cultural Industries).

(3) Theatre arts mean live performances or presentations such as drama, dance or music.

Sector:

Social Services

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Articles 803, 903)

Most-Favoured-Nation Treatment (Articles 804, 904)

Local Presence (Article 907)

Performance Requirements (Article 807)

Senior Management and Board of Directors (Article 806)

Description:

Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent that they are social services established or maintained for a public purpose: income security and insurance, social security, social welfare, public education, public training, health, and childcare.

Sector:

Public Supply of Potable Water

Sub-Sector:

Industry Classification:

Type of Reservation:

Local Presence (Article 907)

Description:

Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure in relation to the public supply of potable water.

Sector:

Public Sewage Services

Sub-Sector:

Industry Classification:

Type of Reservation:

Local Presence (Article 907)



Description:

Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure in relation to public sewage services.

Sector:

Telecommunications

Sub-Sector:

Industry

Classification:

CPC 752

CPC 754

Type of Reservation:

Most-Favoured-Nation Treatment (Article 904) Local Presence (Article 907)

Description:

Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure in relation to the granting of a concession for the installation, operation and exploitation of public telecommunication services.

Sector:

Education

Sub-Sector:

Industry Classification:

CPC 92

Type of Reservation:

National Treatment (Article 903)

Most-Favoured-Nation Treatment (Article 904)

Local Presence (Article 907)

Description:

Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure relating to natural persons who render educational services, including teachers and auxiliary personnel rendering educational services in basic and superior education including "educación técnico productiva" (technical and productive training) as well as other people who render services related to education included sponsors of educational institutions of any level or stage of the educational system.

Sector:

Transport

Sub-Sector:

Road Transport Services

Industry Classification:

CPC 712

Type of Reservation:

National Treatment (Article 903)

Description:

Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure that authorizes only Peruvian natural or juridical persons to supply land transportation of persons or merchandise inside the territory of Peru ("cabotage"). For this, the enterprises shall use vehicles registered in Peru.

Sector:

Transport

Sub-Sector:

International Road Transport Services

Industry Classification:

CPC 712

Type of Reservation:

National Treatment (Articles 803, 903)

Most-Favoured-Nation Treatment (Articles 804, 904)

Local Presence (Article 907)

Description:

Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure relating to the international land transportation of cargo or passengers in border areas.

Additionally, Peru reserves the right to adopt or maintain the following limitations for the supply of international land transportation from Peru:

1. the service supplier must be a Peruvian natural or juridical person;
2. the service supplier must have a real and effective domicile in Peru; and
3. in the case of juridical persons, the service supplier must be legally constituted in Peru and more than 50 percent of its capital stock must be owned by Peruvian nationals and its effective control must be by

Peruvian nationals.

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

Market Access (Article 906)

Description:

Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure relating to Article 906, except for the following sectors and sub-

sectors subject to the limitations and conditions listed below:

Legal services:

For (a) and (c): None, except that the number of notary positions is limited as follows:

- a. 200 for the capital;
- b. 40 for each department capital; and
- c. 20 for each provincial capital (including the Constitutional Province of Callao).

For (b): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Accounting, auditing and book-keeping services:

For (a), (b), (c) and (d): Peru reserves the right to adopt or maintain any measure that is not inconsistent with Peru's obligations under Article XVI of GATS.

Architectural services and urban planning and landscape architectural services:

For (a), (b) and (c): None, except that for temporary registration, non-resident foreign architects must have a contract of association with a Peruvian architect residing in Peru. For (d): No commitments, except as indicated

in the "Ley para la Contratación de Trabajadores Extranjeros".

Engineering services and Integrated engineering services:

For (a), (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros"

Veterinary Services:

For (a), (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros"

Services provided by midwives, nurses, physiotherapists, and paramedical personnel:

For (a), (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Computer and Related Services:

For (a), (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Real Estate Services: Involving owned or leased property or on a fee or contract basis:

For (a), (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Rental/leasing services without crew/operators, related to vessels, aircraft, any other transport equipment, and other machinery and equipment:

For (a), (b) and (c): None, except that:

A "National Shipowner" or "National Ship Enterprise"

is understood as a natural person of Peruvian nationality or juridical person constituted in Peru, with its principal domicile and real and effective headquarters in Peru, whose business is to provide water transportation services in national traffic or cabotage (4) and/or international traffic and who is the owner or lessee under a financial lease or a bareboat charter, with an obligatory purchase option, of at least one Peruvian flag merchant vessel and that has obtained the relevant Operation Permit from the General Aquatic Transport Directorate.

Cabotage is exclusively reserved to Peruvian flagged merchant vessels owned by a National Shipowner or National Ship Enterprise or leased under a financial lease or a bareboat charter, with an obligatory purchase option, except that:

- i. up to 25 per cent of the transport of hydrocarbons in national waters is reserved for the ships of the Peruvian Navy, and

ii. foreign-flagged vessels may be operated exclusively by National Shipowners or National Ship Enterprise for a period of no more than six months for water transportation exclusively between Peruvian ports or cabotage when such an entity does not own its own vessels or lease vessels under the modalities previously mentioned.

(4) For greater certainty, water transportation includes transport by lakes and rivers.

For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Advertising services:

For (a), (b) and (c): None, except that: Commercial advertising produced in Peru, must use at least 80 per cent national artists. National artists shall receive no less than 60 percent of the total payroll for wages and salaries paid to artists. The same percentages established in the preceding paragraphs shall govern the work of technical personnel involved in commercial advertising.

For (d): No commitments, except as indicated in the "Ley de Artista, Intérprete y Ejecutante" and "Ley para la Contratación de Trabajadores Extranjeros".

Market research and public opinion polling services, management consulting services, services related to management consulting, and technical testing and analysis services:

For (a), (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Services related to agriculture, hunting, and forestry:

For (a), (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Services related to mining, placement and supply services of personnel, and investigation and security services:

For (a), (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Services incidental to manufacturing:

For (a), (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Related scientific and technical consulting services:

For (a), (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Maintenance and repair of equipment (not including vessels, aircraft, or other transport equipment), building-cleaning services, photographic services, packing services and convention services:

For (a), (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Printing and publishing services:

For (a), (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

National or international long-distance telecommunications services:

For (a), (b), (c) and (d): Peru reserves the right to adopt or maintain any measure that is not inconsistent with Peru's obligations under Article XVI of GATS.

Carrier telecommunications services, private telecommunications services and value added services (5) :

For (a), (b), (c):

None, except for the obligation of obtaining a concession, authorization, registry or any other title which Peru considers

convenient to grant in order to habilitate the suppliers to provide these services. The juridical persons constituted under Peruvian law can be eligible for a concession.

Call-back, understood as being the offer of telephone services for the realization of attempts to make calls originating in the country with the objective of obtaining a return call with an invitation to dial, coming from a basic telecommunications network located outside the national territory, is prohibited.

International traffic shall be routed through the installations of a company holding a concession or other permission for operation granted by the "Ministerio de Transporte y Comunicaciones".

Interconnection among private services is prohibited.

(5) Value added services shall be defined in accordance with Peruvian legislation.

For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Commission agents services (except hydrocarbons):

For (a), (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Retailing services, except alcohol and tobacco:

For (a), (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Wholesale trade services (except hydrocarbons):

For (a), (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Franchising:

For (a), (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Repairment services of domestic and personal belongings:

For (a), (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Hotels and restaurants (including catering), travel agencies and tour operators services, and tourist guide services:

For (a), (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Entertainment services (including theater, live bands, and circus services), news agencies services, libraries, archives, museums, and other cultural and sporting services:

For (a), (b) and (c): None, except that:

i. Any domestic theater<sup>6</sup> and visual arts production and any domestic artistic live performance must be comprised of at least 80 percent national artists. National artists shall receive no less than 60 percent of the total payroll for wages and salaries paid to artists. The same percentages established in the preceding paragraphs shall govern the work of technical personnel involved in artistic activities.

ii. A foreign circus may stay in Peru with the original cast for a maximum of 90 days. This period may be extended for the same period of time. If it is extended, the foreign circus will include a minimum of 30 percent Peruvian nationals as artists and 15 percent Peruvian nationals as technicians. The same percentages shall apply to the payroll of salaries and wages.

For (d): No commitments, except as indicated in the "Ley de Artista, Intérprete y Ejecutante" and "Ley para la Contratación de Trabajadores Extranjeros".

Exploitation of facilities for competitive and recreational sports:

For (a), (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Recreational parks services:

For (a), (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Maritime and internal waterways transport services:

For (a), (b), (c) and (d): Peru reserves the right to adopt or maintain any measure that is not inconsistent with Peru's obligations under Article XVI of GATS.

Road Transport: rental of commercial vehicles with operator, maintenance and repair of road transport equipment, and exploitation of roads, bridges and tunnels services:

For (a), (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Services auxiliary to all transport: cargo handling services; storage and warehouse services; freight transport agency services:

For (a), (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Aircraft repair and maintenance services:

For (a): No commitments. For (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Selling and marketing of air transport services, and computer reservation system services:

For (a), (b) and (c): None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Pipeline transport services: For (a), (b) and (c):

None. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Research and Development services on natural sciences:

For (a), (b) and (c): None, except that a permission of operation may be required and the competent authority may state the incorporation to the expedition of one or more representatives of the Peruvian pertinent activities, in order to participate and know the studies and its

scope. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Research and Development services on social sciences and humanities:

For (a), (b) y (c): None, subject to the respective authorizations of the competent authority. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

Interdisciplinary Research and Development services:

For (a), (b) and (c): None, except that a permission of operation may be required. For (d): No commitments, except as indicated in the "Ley para la Contratación de Trabajadores Extranjeros".

For greater certainty, nothing in this reservation shall be inconsistent with Peru's commitments under Article XVI of the GATS.

For purpose of this non-conforming measure:

(a) refers to the supply of a service from the territory of one Party into the territory of the other Party;

(b) refers to the supply of a service in the territory of a Party by one person of that Party to a person of the other Party;

(c) refers to the supply of a service in the territory of a Party by an investor of the other Party or by a covered investment;

and

(d) refers to the supply of a service by a national of a Party in the territory of the other Party.

Sector:

All Sectors

Sub-Sector:

Industry Classification:

Type of Reservation:

National Treatment (Article 903)

Most-Favoured-Nation Treatment (Article 904)

Local Presence (Article 907)

Market Access (Article 906)

Description:

Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure affecting the supply of a service 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.