

# **FREE TRADE AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE REPUBLIC OF PERU**

The Government of the People's Republic of CHINA ("China") on one side, and the Government of the Republic of PERU ("Peru") on the other side, collectively referred to as "the Parties" and individually referred to as "Party", resolved to:

ACKNOWLEDGE AND HONOR their strong and long standing cultural influence;

STRENGTHEN the special bonds of friendship and cooperation between the Parties;

RECOGNIZE that this Agreement should be implemented with a view toward raising the standard of living, creating new employment opportunities, reducing poverty and promoting sustainable development in a manner consistent with environmental protection and conservation;

ESTABLISH clear and mutually advantageous rules governing their trade;

ENSURE a predictable legal framework for trade and business and investment;

PROMOTE reciprocal trade through the establishment of clear and mutually advantageous trade rules and the avoidance of trade barriers, unjustified discrimination and distortions to their reciprocal trade;

PROMOTE AND PRESERVE their ability to safeguard public welfare;

SHARE the belief that a free trade agreement shall produce mutual benefits to each Party and contribute to the expansion and development of international trade; and

REAFFIRM their consent to strengthen and enhance the multilateral trading system as reflected by the World Trade Organization (WTO) and other multilateral, regional and bilateral instruments of cooperation regarding trade;

HAVE AGREED as follows:

## **Chapter 1. Initial Provisions**

### **Article 1. Objectives**

The Parties conclude this Agreement, among others, for purposes of:

- (a) Encouraging expansion and diversification of trade between the Parties;
- (b) Eliminating the barriers to trade in, and facilitate the cross-border movement of goods and services between the Parties;
- (c) Promoting fair competition in the Parties' markets;
- (d) Creating new employment opportunities;
- (e) Creating framework for furthering bilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement; and
- (f) Providing forum and approach for resolution of disputes amiably.

### **Article 2. Establishment of a Free Trade Area**

The Parties to this Agreement, consistent with Article XXIV of the General Agreement on Tariffs and Trade 1994 (GATT 1994)

and Article V of the General Agreement on Trade in Services (GATS), hereby establish a free trade area.

### **Article 3. Relation to other International Agreements**

1. The Parties affirm their existing rights and obligations with respect to each other under the WTO Agreement and any other agreements related to trade to which the Parties are party (1).

2. In the event of any inconsistency between this Agreement and any other agreement to which the Parties are party, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution in accordance with rules of interpretation of public international law.

3. If any provision of the WTO Agreement that the Parties have been incorporated to this Agreement is amended and accepted by the Parties at the WTO, such amendment shall be deemed incorporated automatically to this Agreement.

(1) The agreements mentioned in paragraph 1 shall include treaties, conventions, agreements, protocols, and memorandums of understanding entered into by the Parties or government agencies of the Parties.

### **Article 4. Extent of Obligations**

The Parties shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement in their respective territories, including ensuring that their respective regional and local governments and authorities, and non-governmental bodies in the exercise of governmental powers delegated to them by central, regional and local governments or authorities observe all obligations and commitments under this Agreement.

### **Article 5. Definitions of General Application**

For purposes of this Agreement, unless otherwise specified:

Agreement means the Free Trade Agreement between the Government of the People's Republic of China and the Government of the Republic of Peru;

Commission means the Free Trade Commission established under Article 170 (Free Trade Commission) of Chapter 14 (Administration of the Agreement);

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

Customs duty includes any duty or charge of any kind imposed in connection with the importation of goods, but does not include any:

(a) Charge equivalent to an internal tax imposed consistently with Article III.2 of the GATT 1994;

(b) Antidumping or countervailing duty that is applied pursuant to Article VI of the GATT 1994, the WTO Agreement on Implementation of Article VI of the GATT 1994, or the WTO Agreement on Subsidies and Countervailing Measures; or

(c) Fee or other charge in connection with importation commensurate with the cost of services rendered;

Customs Valuation Agreement means the Agreement on Implementation of Article VII of the GATT 1994 which is a part of the WTO Agreement;

Days means calendar days;

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

GATS means the WTO General Agreement on Trade in Services which is a part of the WTO Agreement;

GATT 1994 means the WTO General Agreement on Tariffs and Trade 1994 which is a part of the WTO Agreement;

Goods of a Party means the domestic products as these 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 adopted by the World Customs Organization including its General Rules of Interpretation, and its Section and Chapter Notes;

Heading means the first four digits in the tariff classification number under the HS;

Juridical person means an entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture or association;

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

National means:

(a) For China, a natural person who has the nationality of China according to the laws of China; and

(b) For Peru, a Peruvian by birth, naturalization or option in accordance with Articles 52 and 53 of the Constitución Política del Perú (Political Constitution of Peru) who has the nationality of Peru or is a permanent resident of Peru;

Originating means qualifying pursuant to the rules of origin established under Chapter 3 (Rules of Origin and Operational Procedures Related to Origin);

Person means a national or a juridical person;

Person of a Party means a national or a juridical person of a Party;

Safeguards Agreement means the Agreement on Safeguards which is a part of the WTO Agreement;

SPS Agreement means the Agreement on the Application of Sanitary and Phytosanitary Measures which is a part of the WTO Agreement;

Subheading means the first six digits in the tariff classification number under the HS;

Territory means:

(a) With respect to China, the entire customs territory of People's Republic of China, including land, maritime and air space, and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law; and

(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;

TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights which is a part of the WTO Agreement;

WTO means the World Trade Organization, created by the Marrakesh Agreement Establishing the World Trade Organization, done on April 15th, 1994; and

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

## **Chapter 8. Trade In Services**

### **Article 104. Definitions**

For purposes of this Chapter: trade in services means the supply 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 commercial presence in the territory of the other Party; or (d) by a service supplier through presence of natural persons of a Party in the territory of the other Party; juridical person means an entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture or association; juridical person is: (i) "owned" by persons of a Party if more than 50% of the equity in it is beneficially owned by persons of that Party; (ii) "controlled" by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions; service supplier of a Party means any person of that Party that supplies a service; (3) measure means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form; supply of a service includes the production, distribution, marketing, sale and delivery of a service; commercial presence means any type of business or professional establishment, including through: (i) the constitution, acquisition or maintenance of a juridical person; or (ii) the creation or maintenance of a branch or a representative office, within the territory of a Party for the purpose of supplying a service; and natural person of a Party means a natural person who resides

in the territory of a Party, and who under the law of that Party is a national of that Party.

## **Article 105. Scope and Coverage**

1. This Chapter applies to measures adopted or maintained by a Party affecting trade in services by service suppliers of the other Party. Such measures include measures affecting: (i) the purchase or use of, or payment for, a service; (ii) the access to and use of, in connection with the supply of a service, services which are required by the Parties to be offered to the public generally; or (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party. 2. For purposes of this Chapter, measures adopted or maintained by a Party means measures adopted or maintained by: (i) central, regional or local governments and authorities; and (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities. 3. This Chapter does not apply to: (a) government procurement; (b) air services (4) , including domestic and international air transportation services, whether scheduled or non-scheduled, 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; and (c) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance. 4. This Chapter does not impose any obligation on a Party with respect to a natural person 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 natural person with respect to that access or employment. 5. This Chapter does not apply to services supplied in the exercise of governmental authority in a Party's territory. A service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers. 6. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party 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 nullify or impair the benefits accruing to the other Party under the terms of this Chapter. (5) 7. This Chapter, except for the list of financial services specific commitments in the Schedules of Specific Commitments under this Agreement, does not apply to measures affecting the supply of financial services (6) as defined in subparagraph 5(a) of the GATS Annex on Financial Services. The obligations of each Party with respect to measures affecting the supply of financial services shall be in accordance with its obligations under GATS, the GATS Annex on Financial Services and the GATS Second Annex on Financial Services, and subject to any reservations thereto. The said obligations are hereby incorporated into this Agreement, and the schedule of financial services specific commitments of Annex 6 (Schedules of Specific Commitments) of this Agreement shall apply. 8. In addition to the provisions of this Chapter, the rights and obligations of the Parties in respect of telecommunication services shall also be governed by the provisions of: (a) the GATS Annex on Telecommunications; and (b) the GATS Reference Paper developed in the Negotiating Group on Basic Telecommunications attached to each Party's GATS schedules of commitments, which are hereby incorporated into this Chapter, mutatis mutandis, as if those provisions were fully set out herein.

## **Article 106. National Treatment**

In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers.

## **Article 107. Market Access**

1. With respect to market access through the modes of supply identified in the "trade in services" definition of Article 104 (Definitions), each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule (7). 2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as: (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test; (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (8) (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; or (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

## **Article 108. Additional Commitments**

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 106 (National Treatment) or Article 107 (Market Access), including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule.

## **Article 109. Schedule of Specific Commitments**

1. Each Party shall set out in a schedule the specific commitments it undertakes under Article 106 (National Treatment), Article 107 (Market Access) and Article 108 (Additional Commitments). With respect to sectors where such commitments are undertaken, each Schedule shall specify: (a) terms, limitations and conditions on market access; (b) conditions and qualifications on national treatment; (c) undertakings relating to additional commitments referred to in Article 108 (Additional Commitments); and (d) where appropriate, the time-frame for implementation of such commitments and the date of entry into force of such commitments. 2. Measures inconsistent with both Articles 106 (National Treatment) and 107 (Market Access) are inscribed in the column relating to Article 107 (Market Access). In this case, the inscription is considered to provide a condition or qualification to Article 106 (National Treatment) as well. 3. The Parties' Schedules of Specific Commitments are set out in Annex 6 (Schedules of Specific Commitments).

## **Article 110. Domestic Regulation**

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner. 2. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier of the other Party, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review. 3. Where a Party requires authorization for the supply of a service, the Party's competent authorities shall, within a reasonable period of time after the submission of an application 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. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall aim to ensure that such measures 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. 5. If the results of the negotiations related to Article VI:4 of GATS (or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate) enter into effect, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. The Parties agree to coordinate on such negotiations, as appropriate.

## **Article 111. Recognition**

1. For the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services suppliers, and subject to the requirements of paragraph 3, a Party may recognize the education or experience obtained, requirements met, or licences or certifications granted in the other Party or a non-Party. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the other Party or a non-Party 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 adequate opportunity for the other Party, if the other Party is interested, to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licences or certifications obtained or requirements met in that other Party's territory should be recognized. 3. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries 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. Each Party should encourage the relevant bodies in its respective territory to conduct future negotiations for developing mutually acceptable standards and criteria for licensing, temporary licensing and certification of professional services suppliers.

## **Article 112. Transfers and Payments**

1. Each Party shall permit transfers and payments for current transactions relating to its specific commitments 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 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. 4. Nothing in this Chapter shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of the Agreement of the International Monetary Fund, including the use of exchange actions which are in conformity with the Articles of the Agreement of the International Monetary Fund, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except at the request of the International Monetary Fund.

### **Article 113. Denial of Benefits**

1. A Party may deny the benefits of this Chapter to: (a) service suppliers of the other Party where the service is being supplied by a juridical person that is owned or controlled by persons of a non-Party and the juridical person has no substantive business activities in the territory of the other Party; or (b) service suppliers of the other Party where the service is being supplied by a juridical person that is owned or controlled by persons of the denying Party and the juridical person has no substantive business activities in the territory of the other Party. 2. Upon a written request of the other Party, the denying Party shall inform in writing and consult with the other Party on the specific case of denial as referred to in paragraph 1 of this Article.

### **Article 114. Transparency**

Further to Chapter 13 (Transparency): (a) each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its laws and regulations relating to the subject matter of this Chapter; (9) (b) at the time it adopts final laws and regulations relating to the subject matter of this Chapter, each Party shall, to the extent possible, including upon request, take into consideration of substantive comments received from interested persons with respect to the proposed laws and regulations; and (c) to the extent possible, each Party shall allow a reasonable period of time between publication of final laws and regulations and their effective date.

### **Article 115. Implementation and Review**

The Parties shall consult annually, or as otherwise agreed, to review the implementation of this Chapter and consider other matters of mutual interest affecting trade in services. (10)

10 Such consultations will be addressed under Article 170 (Free Trade Commission) of Chapter 14 (Administration of the Agreement).

## **Chapter 9. Temporary Entry for Business Persons**

### **Article 116. General Principles**

Further to Article 117 (General Obligations), 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 7 (Commitments for Temporary Entry for Business Persons), the need to establish transparent criteria and procedures for temporary entry and the need to ensure border security and to protect the domestic labor force and permanent employment in their respective territories.

### **Article 117. General Obligations**

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 116 (General Principles) 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 118. 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 and the terms and conditions of Annex 7 (Commitments for Temporary Entry for Business Persons). 2. 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 119. Provision of Information**

1. Further to Article 167 (Transparency) of the Chapter 13 (Transparency), 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 6 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 120. Working Group**

1. The Parties hereby establish a Working Group on Temporary Entry for Business Persons, which shall meet at least once every 3 years or on request of the Free Trade Commission to consider any matter arising under this Chapter. 2. The Working Group's functions shall include: (a) to review the implementation and operation of this Chapter; (b) to consider the development of measures to further facilitate temporary entry of business persons on a reciprocal basis; (c) the identification of measures that affect the temporary entry of business persons under this Chapter; and (d) the observance of the issues established under Article 121 (Cooperation).

## **Article 121. Cooperation**

Taking into account the principles set out in Article 116 (General Principles), the Parties shall: (a) share information and experiences on regulations and implementation of programs and technology in the framework of migratory issues, including those related to the use of biometric technology, advanced passenger information systems, frequent passenger programs and security in travel documents; and (b) endeavor to coordinate actively in multilateral forums, in order to promote the facilitation of temporary entry of business persons.

## **Article 122. 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 123. 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 1 (Initial Provisions), Chapter 8 (Trade in Services), Chapter 13 (Transparency), Chapter 14 (Administration of the Agreement), Chapter 15 (Dispute Settlement), Chapter 16 (Exceptions) and Chapter 17 (Final Provisions). 2. Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.

## **Article 124. Transparency**

1. Further to Chapter 13 (Transparency), each Party shall establish or maintain appropriate mechanisms to respond to

inquiries from interested persons regarding laws and regulations relating to the temporary entry of business persons. 2. Each Party shall endeavor to, within a reasonable period that should not exceed 30 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.

## **Article 125. Definitions**

For purposes of this Chapter: business person means a national of a Party who is engaged in trade in goods, trade in services or investment activities; 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; business visitor means a natural person of a Party who is: (i) a service seller who is a sales representative of a service supplier of that Party and is seeking temporary entry to the other Party for the purpose of negotiating the sale of services for that service supplier, where such representative will not be engaged in making direct sales to the general public or in supplying services directly; (ii) an investor of a Party or a duly authorized representative of an investor of a Party, who is seeking temporary entry into the territory of the other Party to establish, develop, administer, expand, monitor, or dispose an investment of that investor; or (iii) a goods seller who is seeking temporary entry to the territory of the other Party to negotiate the sale of goods where such negotiations do not involve direct sales to the general public; intra-corporate transferee means a manager, an executive, or a specialist, who is a senior employee of a service supplier of a Party with a commercial presence, as defined in Chapter 8 (Trade in Services), in the territory of the other Party; executive means a natural person within an organization who primarily directs the management of the organization, 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. An executive would not directly perform tasks related to the actual provision of the service nor the operation of an investment; immigration measure means any law, regulation or procedure affecting the entry and sojourn of foreign nationals; manager means a natural person within an organization who primarily directs the organization or a department or sub-division of the organization, 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 authorization), and exercises discretionary authority over day-to-day operations; and specialist means an employee within an organization who possesses knowledge at an advanced level of technical expertise, and who possesses proprietary knowledge of the organization's service, research equipment, techniques or management.

## **Chapter 10. Investment**

### **Article 126. Definitions**

For purposes of this Chapter: investment means every kind of asset invested by investors of one Party in accordance with the laws and regulations of the other Party in the territory of the latter, and in particular, though not exclusively, includes: (a) movable, immovable property and other property rights such as mortgages and pledges, and similar rights; (b) shares, debentures, stock and any other kind of participation in companies; (c) claims to money or to any other performance having an economic value associated with an investment (11); (d) intellectual property rights, in particularly copyrights, patents, trade-marks, trade-names, know-how and technological process, as well as good-will; (e) concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources. investors means: (a) for China: (i) natural persons who have nationality of the People's Republic of China in accordance with its law; (ii) economic entities established in accordance with the laws of the People's Republic of China and domiciled in the territory of the People's Republic of China; or (iii) legal entities not established under the law of the People's Republic of China but effectively controlled, by natural persons, as defined in subparagraph (a)(i) or by economic entities as defined in subparagraph (a)(ii), that have made an investment in the territory of the other Party; and (b) for Peru: (i) natural persons who, according to the law of the Republic of Peru, have its nationality; or (ii) all juridical persons established in accordance with the laws of the Republic of Peru, including civil and commercial companies and other associations with or without a legally acknowledged existence that perform an economic activity included within the sphere of this Chapter and which are directly or indirectly controlled by nationals of the Republic of Peru, that have made an investment in the territory of the other Party; and returns means the amounts yielded by investments, such as profits, dividends, interests, capital gains, royalties, fees or other legitimate income.

### **Article 127. Scope and Coverage**

1. This Chapter applies to measures adopted or maintained by a Party relating to: (a) investors of the other Party; and (b) investments of investors of the other Party. 2. This Chapter shall not apply to measures adopted or maintained by a Party affecting trade in services. 3. Notwithstanding paragraph 2, for the purpose of protection of investment with respect to the commercial presence mode of service supply, Article 132 (Fair and Equitable Treatment and Full Protection and Security),



Article 133 (Expropriation), 134 (Compensation for Losses), Article 135 (Transfers), Article 136 (Subrogation) and Article 137 (Denial of Benefits) shall apply to any measure affecting the supply of a service by a service supplier of a Party through commercial presence in the territory of the other Party. Article 139 (Investor-State Dispute Settlement) shall apply to Article 132 (Fair and Equitable Treatment and Full Protection and Security), Article 133 (Expropriation), Article 134 (Compensation for Losses), Article 135 (Transfers), and Article 136 (Subrogation) with respect to the supply of a service through commercial presence. 4. For greater certainty, the provisions of this Chapter do not bind either 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. 5. This Chapter shall not apply to laws, regulations, policies or procedures of general application governing the procurement by government agencies of goods and services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or the supply of services for commercial sale. 6. Notwithstanding paragraph 5, Article 132 (Fair and Equitable Treatment and Full Protection and Security), Article 133 (Expropriation), Article 134 (Compensation for Losses), Article 135 (Transfers), Article 136 (Subrogation), Article 137 (Denial of Benefits) and Article 139 (Investor-State Dispute Settlement) shall apply to the laws, regulations, policies or procedures mentioned hereinbefore. 7. This Chapter shall apply to all investments made by investors of a Party in the territory of the other Party, whether made before or after the entry into force of this Agreement, but Article 139 (Investor-State Dispute Settlement) shall not apply to any dispute or any claim concerning an investment which was already under judicial or arbitral process before the entry into force of this Agreement.

## **Article 128. Promotion and Protection of Investment**

1. Each Party shall encourage investors of the other Party to make investments in its territory and admit such investments in accordance with its laws and regulations. 2. Subject to its laws and regulations, each Party shall provide assistance in and facilities for obtaining visas and working permit to nationals of the other Party engaging in activities associated with investments made in the territory of that Party.

## **Article 129. 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 management, conduct, operation, and sale or other disposition of investments in its territory. 2. Each Party shall accord to investments of investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the management, conduct, operation, and sale or other disposition of investments. 3. Notwithstanding paragraphs 1 and 2, the Parties reserve the right to adopt or maintain any measure that accords differential treatment to socially or economically disadvantaged minorities and ethnic groups. (12)

## **Article 130. Non-conforming Measures**

1. Article 129 (National Treatment) does not apply to: (a) any existing non-conforming measures maintained within its territory; (b) the continuation 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 increase the non-conformity of the measure, as it existed immediately before the amendment, with those obligations. 2. The Parties will endeavour to progressively remove the non-conforming measures.

## **Article 131. Most-favoured-nation Treatment**

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 any third State 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 investments of investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any third State with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments (13). 3. Notwithstanding paragraphs 1 and 2, the Parties reserve the right to adopt or maintain any measure that accords differential treatment: (a) to socially or economically disadvantaged minorities and ethnic groups (14); or (b) involving cultural industries related to the production of books, magazines, periodical publications, or printed or electronic newspapers and music scores. 4. The treatment and protection as mentioned in paragraphs 1 to 2 of this Article shall not include any preferential treatment accorded by the other Party to investments of investors of any third State based on free trade agreement, free trade zone, custom union, economic union, or agreement relating to avoidance of double taxation or for facilitating frontier trade.

## **Article 132. Fair and Equitable Treatment and Full Protection and Security**

1. Each Party shall accord fair and equitable treatment and full protection and security in accordance with customary international law in its territory to investment of investors of the other Party. 2. For greater certainty, (a) the concepts of "fair and equitable treatment" and "full protection and security" do not require additional treatment to that required under the minimum standard of treatment of aliens in accordance with the standard of customary international law; (b) a determination that there has been a breach of another provision of this Agreement or another international agreement does not imply that the minimum standard of treatment of aliens has been breached; (c) "fair and equitable treatment" includes the prohibition against denial of justice in criminal, civil, or administrative proceedings in accordance with the general accepted principles of customary international law; and (d) the "full protection and security" standard does not imply, in any case, a better treatment to that accorded to nationals of the Party where the investment has been made.

### **Article 133. Expropriation**

1. Neither Party shall expropriate or nationalize, either directly or indirectly through measures equivalent to expropriation or nationalization (hereinafter referred to as "expropriation") against investments of investors of the other Party in its territory, unless the following conditions are met: (a) for the public interest (15); (b) under domestic legal procedure; (c) without discrimination; and (d) against compensation. 2. The compensation mentioned in subparagraph 1(d) of this Article shall be equivalent to the fair market value of the expropriated investments immediately before the expropriation took place ("the date of expropriation"), convertible and freely transferable. The compensation shall be paid without unreasonable delay.

### **Article 134. Compensation for Losses**

Investors of one Party who suffer losses in respect of their investments in the territory of the other Party owing to war, a state of national emergency, insurrection, riot or other similar events, shall be accorded by the latter Party, as regards restitution, indemnification, compensation and other settlements, treatment no less favourable than that accorded to the investors of its own or any third State, whichever is more favourable to the investor concerned.

### **Article 135. Transfers**

1. Each Party shall guarantee investors of the other Party the transfer of their investments and returns held in the territory of the former Party, including: (a) profits, dividends, interests and other legitimate income; (b) amounts from total or partial liquidation of investments; (c) payments made pursuant to a loan agreement in connection with investment; (d) royalties referred to in the "returns" definition of Article 126 (Definitions); (e) payments of technical assistance or technical service fee, management fee; (f) payments in connection with projects on contract associated with investment; (g) earnings of nationals of a Party who work in connection with an investment in the territory of the other Party; and (h) the free transfer of compensation and other payments under Article 133 (Expropriation) and Article 134 (Compensation for Losses). 2. The transfers mentioned above shall be made in a freely usable currency at the prevailing market rate of exchange of the Party accepting the investments 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, futures, options, or derivatives; (c) criminal or penal offenses; or (d) ensuring compliance with orders or judgments in judicial or administrative proceedings.

### **Article 136. Subrogation**

If one Party or its designated agency makes a payment to its investors under a guarantee or a contract of insurance against non-commercial risks it has accorded in respect of an investment made in the territory of the other Party, the latter Party shall recognize: (a) the assignment, whether under the law or pursuant to a legal transaction in the former Party, of any rights or claims by the investors to the former Party or to its designated agency; (b) that the former Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and assume the obligations related to the investment to the same extent as the investor.

### **Article 137. Denial of Benefits**

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to: (a) investors of the other Party where the investment is being made by an enterprise that is owned or controlled by persons of a third State and the enterprise has no substantive business activities in the territory of the other Party; or (b) investors of the other Party where the investment is being made by an enterprise that is owned or controlled by persons of the denying Party.

## **Article 138. Settlement of Disputes between the Parties**

1. Any dispute between the Parties concerning the interpretation or application of this Chapter shall, as far as possible, be settled with consultation through diplomatic channel. 2. If a dispute cannot thus be settled within 6 months, it shall, upon the request of either Party, be submitted to an ad hoc arbitral tribunal. 3. Such tribunal comprises of 3 arbitrators. Within 2 months of the receipt of the written notice requesting arbitration, each Party shall appoint one arbitrator. Those 2 arbitrators shall, within further 2 months, together select a national of a third State having diplomatic relations with both Parties who, upon approval by the Parties, shall be appointed as Chairman of the arbitral tribunal. 4. If the arbitral tribunal has not been constituted within 4 months from the receipt of the written notice requesting arbitration, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Party or is otherwise prevented from discharging the said functions, the Member of the International Court of Justice next in seniority who is not a national of either Party or is not otherwise prevented from discharging the said functions shall be invited to make such necessary appointments. 5. The arbitral tribunal shall determine its own procedure. The arbitral tribunal shall reach its award in accordance with the provisions of this Agreement and the principles of international law recognized by both Parties. 6. The arbitral tribunal shall reach its award by a majority of votes. Such award shall be final and binding upon both Parties. The arbitral tribunal shall, upon the request of either Party, explain the reasons of its award. 7. Each Party shall bear the costs of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and tribunal shall be borne in equal parts by the Parties.

## **Article 139. Investor-state Dispute Settlement**

1. Any dispute between an investor of one Party and the other Party in connection with an investment in the territory of the other Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute. 2. If the dispute cannot be settled through negotiations within 6 months from the date on which the disputing investor requested for the consultation or negotiation in writing, and if the disputing investor has not submitted the dispute for resolution to the competent court (16) or any other binding dispute settlement mechanism (17) of the Party receiving the investment, it may be submitted to one of the following international conciliation or arbitration fora by the choice of the investor (18): (a) conciliation or arbitration in accordance with the International Center for Settlement of Investment Disputes (ICSID), under the Convention on the Settlement of Disputes between States and Nationals of Other States, done at Washington on March 18th, 1965; (b) conciliation or arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes so long as the ICSID Convention is not in force between the Parties; (c) arbitration under the arbitration Rules of the United Nations Commission on International Trade Law; and (d) if agreed with the disputing Party, any arbitration in accordance with other arbitration rules. For more clarity, the election of one dispute settlement fora shall be definitive and exclusive. 3. An arbitral tribunal established under paragraph 2 shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law. 4. The disputing investor who intends to submit the dispute to conciliation or arbitration pursuant to paragraph 2 shall give to the disputing Party written notice of its intent to do so at least 90 days before the claim is submitted. The notice of intent shall specify: (a) the name and address of the disputing investor; (b) the specific measures of the disputing Party at issue and a brief summary of the factual and legal basis of the investment dispute sufficient to present the problem clearly, including the obligations under this Chapter alleged to have been breached; (c) the waiver of the disputing investor from the right to initiate any proceedings before any of the other dispute settlement for referred to in paragraph 2 in relation to the matter under dispute; (d) conciliation or arbitration set forth in paragraph 2 which the disputing investor will choose; and (e) the relief sought and the approximate amount of expropriation claimed. 5. Notwithstanding paragraph 4, no claim may be submitted to conciliation or arbitration set forth in paragraph 2, if more than 3 years have elapsed since the date on which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation under this Chapter causing loss or damage to the disputing investor or its investment referred to in paragraph 1. 6. The arbitration award shall be final and binding upon both parties to the dispute. Both Parties shall commit themselves to the enforcement of the award. 7. Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only: (a) monetary damages and any applicable interest; and (b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution. A tribunal may also award costs and attorney's fees in accordance with the applicable arbitration rules. 8. Any disputing investor shall serve notices and other documents on disputes under this Article: (a) for China, to the: Ministry of Commerce 2, East Chang An Avenue 100731, Beijing, People's Republic of China; (b) for Peru, to the: Division of International Economy, Competition and Private Investment Affairs Ministry of Economy and Finance Jirón Lampa 277, floor 5th Lima, Peru.

## **Article 140. Meetings**

1. The representatives of the Parties shall hold meetings from time to time for the purpose of: (a) reviewing the implementation of this Chapter; (b) exchanging legal information and investment opportunities; (c) forwarding proposals on promotion of investment; and (d) studying other issues in connection with investments. 2. Where either Party requests consultation on any matters referred to in paragraph 1 of this Article, the other Party shall give prompt response and the consultation shall be held alternately in Beijing and Lima.

## **Article 141. Essential Security**

Nothing in this Chapter shall be construed to: (a) require a Party to furnish or allow access to any information, the disclosure of which determines to be contrary to its essential security interests; or (b) preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations under United Nation Charter for the maintenance or restoration of international peace or security, or the protection of its own essential security interests (19).

## **Article 142. Taxation Measures**

1. Except as provided in this Article nothing in this Agreement shall apply to taxation measures. 2. Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention. In the event of any inconsistency between the provision of this Agreement and any such convention, the provisions of that convention shall apply to the extent of the inconsistency. 3. Without prejudice to the application of paragraph 2, the disciplines referred to hereinafter shall apply to taxation measures: (a) Article 7 (National Treatment) of Chapter 2 (National Treatment and Market Access for Goods) and such other provisions of this Agreement as are necessary to give effect to that Article to the same extent as does Article III of the GATT 1994; and (b) Article 106 (National Treatment) of Chapter 8 (Trade in Services), subject to the exceptions provided for in Article XIV letters (d) and (e) of the GATS, which are hereby incorporated. 4. The provisions of Article 133 (Expropriation) and Annex 9 (Expropriation) of this Chapter shall apply to taxation measures alleged to be expropriatory. 5. The provisions of Article 139 (Investor-State Dispute Settlement) apply with respect to paragraph 4 of this Article. 6. If an investor invokes Article 133 (Expropriation) and Annex 9 (Expropriation) of this Chapter as the basis of a claim to arbitration according to Article 139 (Investor-State Dispute Settlement), the following procedure shall apply: The investor must first refer to the competent tax authorities described in subparagraph 7(c), at the time that it gives written notice of intent under Article 139 (Investor-State Dispute Settlement), the issue of whether the tax measure concerned involves an expropriation. In case of such referral, the competent tax authorities shall consult. Only if, within 6 months of the referral, they do not reach an agreement that the measure does not involve an expropriation, or in case the competent tax authorities of the Parties fail to consult with each other, the investor may submit its claim to arbitration under Article 139 (Investor-State Dispute Settlement). 7. For purposes of this Article: (a) taxation measures do not include: (i) a customs duty; or (ii) the measures listed in exceptions (b) and (c) of the definition of customs duty; (b) tax convention means a convention, or other international arrangement on taxation, to avoid double taxation; and (c) competent tax authorities means: (i) for China, the State Administration of Taxation; and (ii) for Peru, the Ministry of Economy and Finance, or its successor.

## **Article 143. Other Obligations**

If the legislation of either Party or international obligations existing at present or established hereafter between the Parties result in a position entitling investments by investors of the other Party to a treatment more favourable than is provided for by this Agreement, such position shall not be affected by this Agreement.

# **Chapter 12. Cooperation**

## **Article 149. Objectives**

1. The Parties reaffirm the importance of all forms of cooperation, with particular attention to economic, trade, financial, technical, educational and cultural cooperation, as means to contribute to implementing the objectives and principles derived from this Agreement. 2. The objectives of this Chapter are to facilitate the establishment of close cooperation aimed, inter alia, at: (a) strengthening the capacities of the Parties to maximize the opportunities and benefits deriving from this Agreement; (b) strengthening and develop cooperation at a bilateral, regional or multilateral level; (c) promoting economic and social development; (d) stimulating productive synergies, creating new opportunities for trade and investment and promoting competitiveness and innovation; (e) increasing the level of and deepening cooperation actions while taking into account the association relation between the Parties; (f) reinforcing and expanding cooperation, collaboration and mutual interchanges in the cultural areas; and (g) encouraging the presence of the Parties and their goods and services in the international markets.

## **Article 150. Scope**

1. The Parties affirm the importance of all forms of cooperation in contributing towards implementation of the objectives and principles of this Agreement. 2. Cooperation between the Parties under this Chapter will supplement the cooperation and cooperative activities between the Parties set out in other Chapters of this Agreement.

## **Article 151. Economic Cooperation**

1. The Parties will encourage the utilization of cooperation instruments and mechanisms with a view to strengthen the processes of economic integration and commercial exchange. 2. The objectives of economic cooperation will be: (a) to build on existing agreements or arrangements already in place for trade and economic cooperation; and (b) to advance and strengthen trade and economic relations between the Parties. 3. The Parties will encourage and facilitate, as appropriate, the following activities, including, but not limited to: (a) dialogue about policies and regular exchanges of information and views on ways to promote and expand trade in goods and services between the Parties; (b) joint elaboration of studies and technical projects of economic interest according to the economic development needs identified by the Parties; (c) keeping each other informed of important economic and trade issues, and any impediments to furthering their economic cooperation; (d) providing assistance and facilities to business persons and trade missions that visit the other Party with the knowledge and support of the relevant agencies; (e) supporting dialogue and exchanges of experience among the respective business communities of the Parties; (f) establishing and developing mechanisms for providing information and identifying opportunities for business cooperation, trade in goods and services, investment, and government procurement; and (g) stimulating and facilitating actions of public and/or private sectors in areas of economic interest.

## **Article 152. Research, Science and Technology Cooperation**

1. The aims of cooperation in research, science and technology, carried out in the mutual interest of the Parties and in compliance with their policies, will be: (a) to build on existing agreements already in place for cooperation on research, science and technology; (b) to encourage, where appropriate, government agencies, research institutions, universities, private companies and other research organizations in the Parties to conclude direct arrangements in support of cooperative activities, programs or projects within the framework of this Agreement, specially related to trade and commerce; and (c) to focus cooperative activities towards sectors where mutual and complementary interests exist, with special emphasis on information and communication technologies and software development to facilitate trade between the Parties. 2. The Parties will encourage and facilitate, as appropriate, the following activities including, but not limited to: (a) identifying strategies, in consultation with universities and research centres, to encourage joint postgraduate studies and research visits; (b) exchange of technical and scientific personnel with the purpose of training and improvement in scientific and technical institutes, universities, factories, government agencies and other institutions of each Party; (c) exchange of experts of each Party with a view to provide technical and scientific know-how, providing services specialized in certain fields of science and technology; (d) exchange and supply of non confidential scientific and technical data, as well as exchange of scientific samples; (e) promotion of advanced science and technology studies and projects that contribute to the long-term sustainable development of the Parties; and (f) promoting public/private sector partnerships in support of the development of innovative products and services and study joint efforts to enter into new markets.

## **Article 153. Information Technologies Cooperation**

1. The aims of cooperation in Information Technologies sectors, carried out in the mutual interest of the Parties and in compliance with their policies, will be: (a) to focus on cooperative activities towards information technology areas where mutual and complementary interests exist; and (b) to build on existing agreements and arrangements already in place between the Parties. 2. Information Technologies cooperation may include, but not be limited to: (a) scientific and technical cooperation for the Software Industry of the Parties and encouraging cooperation in software development for populations with specific needs; (b) facilitate the cooperation on academic, industrial and entrepreneurial networks in the area of Information Technology; (c) encouraging exchange of experience on management and research and development for Information Technology Parks; (d) research and development on Information Technology products and services, integrating television, multimedia, and cellular telephones; and (e) encouraging exchange of experience for research and development in networks and telecommunications.

## **Article 154. Education**

1. The aims of education cooperation will be: (a) to build on existing agreements or arrangements already in place for cooperation in education; and (b) to promote networking, mutual understanding and close working relationships in the area of education between the Parties. 2. In pursuit of the objectives in Article 149 (Objectives), the Parties shall encourage and

facilitate, as appropriate, exchanges between and among their respective education-related agencies, institutions, organizations, in fields such as: (a) education quality assurance processes; (b) pre school, primary and secondary education systems; (c) higher education; (d) technical education; and (e) enterprise and industry collaboration for technical training. 3. The Parties shall encourage cooperation in education focusing on: (a) exchange of information, teaching aids, and demonstration materials; (b) joint planning and implementation of programs and projects, and joint coordination of targeted activities in agreed fields; (c) development of collaborative training, exchange of experiences, joint research and development, across graduate and postgraduate studies; (d) cooperation between the institutions of higher education of the Parties through the exchange of teaching staff, researchers and students in relation to academic programs; (e) developing a better understanding of each Party education systems and policies including information on evaluation of qualifications; (f) development of innovative quality assurance resources; (g) means and methods to support learning and assessment, as well as the professional development of teachers and trainers; (h) collaboration between higher education institutions and enterprises, to develop the level of specialized knowledge and skills to the labor market; and (i) development of an information system on educational statistics.

## **Article 155. Small and Medium-sized Enterprises**

1. The Parties will promote a favourable environment for the development of the small and medium enterprises (SME) on the basis of strengthening of the relevant private and governmental bodies, as well as the exchange of experiences and good practices with the SME. 2. Cooperation shall include, among other subjects: (a) the designing and development of mechanisms to encourage partnership and productive chain linkage development; (b) development of human resources and management skills to increase the knowledge of the Chinese and Peruvian markets; (c) defining and developing methods and strategies for clusters development; (d) increasing access to information regarding mandatory procedures and any other relevant information for an SME exporter; (e) defining technological transference: programs oriented to transfer technological innovation to SME and to improve their productivity; (f) increasing access to information on technological promotion programs for SME and financial support and encouragement programs for SME; (g) supporting new exporting SME (sponsorship, credits and guarantees, seed capital); and (h) encouraging partnership and information exchange for SME financing institutions (credits, banks, guarantee organizations, seed capital firms). 3. Cooperation shall be developed, among other activities, through: (a) information exchange; (b) conferences, seminars, experts dialogue and training programs with experts; and (c) promoting contacts between economic operators, encouraging opportunities for industrial and technical prospecting.

## **Article 156. Cultural Cooperation**

1. The aims of cultural cooperation will be: (a) to build on existing agreements or arrangements already in place for cultural cooperation; and (b) to promote information and cultural exchanges between the Parties. 2. The Parties will encourage and facilitate, as appropriate, the following activities, including, but not limited to: (a) dialogue on cultural policies and promotion of local culture; (b) exchange of cultural events and promote awareness of artistic works; (c) exchange of experience in conservation and restoration of national heritage; (d) exchange of experience on management for the arts; (e) protecting archaeological monuments and cultural heritage; (f) having a consultation mechanism between the Parties' culture authorities; and (g) cooperation in the audio-visual field, mainly coproduction and training programs in this sector and means of communication, including training, development and distribution activities.

## **Article 157. Mining and Industrial Cooperation**

1. The aims of cooperation in mining and industry sectors, carried out in the mutual interest of the Parties and in compliance with their policies, will be: (a) to focus cooperative activities towards sectors where mutual and complementary interests exist; and (b) to build on existing agreements and arrangements already in place between the Parties. 2. Mining and Industrial cooperation may include work in, but not be limited to, the following areas: (a) bio-mining (mining using biotechnology procedures); (b) mining techniques, specially underground mining, and conventional metallurgy; (c) productivity in mining; (d) industrial robotics for mining and other sector applications; (e) informatics and telecommunication applications for mining and industrial plant production; and (f) software development for mining and industrial applications. 3. The Parties will encourage and facilitate, as appropriate, the following activities including, but not limited to: (a) exchange of information, documentation and institutional contacts in areas of interest; (b) mutual access to academic, industrial and entrepreneurial networks in the area of mining and industry; (c) identification of strategies, in consultation with universities and research centres, that encourage joint postgraduate studies, research visits and joint research projects; (d) exchange of scientists, researchers and technical experts; (e) promotion of public/private sector partnerships and joint ventures in the support of the development of innovative products and services specially related to productivity in the sector activities; (f) technology transfer in the areas mentioned in paragraph 2; (g) designing of innovation technology models based in public/private cooperation and association ventures; and (h) information and experience

exchange on mining environmental issues.

## **Article 158. Tourism**

1. In this field, the objective of the cooperation will be to strengthen the promotion of the tourist potentialities of the Parties, as well as to facilitate the information exchange and the conservation of natural and cultural attractions. 2. The Parties will develop tourism through: (a) strengthening of public and private institutions related to the development of tourism; and (b) promotion of the main tourist destinations of each Party.

## **Article 159. Competition Policy**

1. The Parties recognize the importance of cooperation and technical assistance between their national competition authorities, including inter alia, the exchange of information and experiences, and the improvement of technical capacities in order to reinforce their competition policies. 2. In this sense, cooperation shall be conducted in accordance with their respective domestic laws and through their national competition authorities, who may sign a cooperation agreement.

## **Article 160. Traditional Medicine Cooperation**

1. The aims of Traditional Medicine cooperation will be: (a) to build on existing agreements or arrangements already in place for Traditional Medicine cooperation; and (b) to promote information exchanges on Traditional Medicine between the Parties. 2. In pursuit of the objectives in Article 149 (Objectives), the Parties will encourage and facilitate, as appropriate, the following activities, including, but not limited to: (a) encouraging dialogue on Traditional Medicine policies and promotion of respective Traditional Medicine; (b) raising awareness of active effects of Traditional Medicine; (c) encouraging exchange of experience in conservation and restoration of Traditional Medicine; (d) encouraging exchange of experience on management, research and development for Traditional Medicine; (e) encouraging cooperation in the Traditional Medicine education field, mainly through training programs and means of communication; (f) having a consultation mechanism between the Parties' Traditional Medicine authorities; (g) encouraging cooperation in Traditional Medicine therapeutic services and products manufacturing; and (h) encouraging cooperation in research in the fields of Traditional Medicine in order to contribute in efficacy and safety assessments of natural resources and products used in health care.

## **Article 161. Labor Cooperation**

The Parties shall enhance their communication and cooperation on labor, social security and environment issues through Memorandum of Understanding on Labor Cooperation between the Government of the People's Republic of China and the Government of the Republic of Peru.

## **Article 162. Cooperation on Forestry Matters and Environmental Protection**

1. The aims of cooperation on forestry matters and environmental protection will be, but not limited to, as follows: (a) establishing bilateral cooperation relations in the forestry sector; (b) developing a training program and studies for sustainable management of forests; (c) improving the rehabilitation and sustainable management of forest with the aim of increasing carbon sinks and reduce the impact of climate change in the Asia-Pacific region; (d) cooperating on the execution of national projects, aimed at: improving the management of forest plantations for its transformation for industrial purposes and environmental protection; (e) elaborating studies on sustainable use of timber; (f) developing new technologies for the transformation and processing of timber and non-timber species; and (g) improving cooperation in agro-forestry technologies. 2. To achieve the objectives of the Article 149 (Objectives), the Parties may focus, as a means of cooperation and negotiations on concluding a bilateral agreement on forestry cooperation between the two Parties. Such collaboration will be as follows: (a) exchanges on science and technology as well as policies and laws relating the sustainable use of forest resources; (b) cooperation in training programs, internships, exchange of experts and projects advisory; (c) advice and technical assistance to public institutions and organizations of the Parties on sustainable use of forest resources and environmental protection; (d) facilitating forest policy dialogue and technical cooperation under the Network of Sustainable Forest Management and Forest Rehabilitation in Asia- Pacific Region, initiated at the 15th Asia Pacific Economic Cooperation (APEC) Meeting; (e) encouraging joint studies, working visits, exchange of experiences, among others; and (f) others activities mutually agreed.

## **Article 163. Fishery**

1. The objective of cooperation on fishery will be to strengthen the research and productive capacities for the development

of crops and processing of hydro-biological species, with the aim of increasing direct human consumption, as well as to facilitate information exchange and the conservation of natural resources, under the approach of responsible fishing. 2. The Parties will develop fishery through: (a) strengthening public and private institutions related to fisheries and aquaculture development; (b) promoting in each Party the consumption of the main hydro-biological resources; and (c) combat of illegal, unreported and unregulated fishing.

## **Article 164. Agricultural Cooperation**

The aims of the cooperation on agriculture will be: (a) to promote sustainable rural development through the exchange of experience, generation of partnership and execution of projects in areas of mutual interest such as: agricultural innovation and technology transfer for the development of small farming, the conservation and management of the water resource for agricultural use, the application of good agricultural and agro industrial practices, including gender approach in development policies and strategies, among others; (b) to promote the exchange of relevant information for agricultural exports between the 2 markets; and (c) to develop a training program addressed to leader producers, technicians and professionals for the application of new technologies in order to increase and improve agriculture and animal husbandry productivity and competitiveness, in particular of value added products.

## **Article 165. Mechanisms for Cooperation**

1. Pursuant to Article 149 (Objectives), the Parties hereby establish a Committee on Cooperation comprising representatives of each Party. 2. The Parties will designate nationals contact points to facilitate communication on possible cooperation activities. The contact points will work with government agencies, business sector representatives and educational and research institutions for the operation of this Chapter. 3. The Parties shall use diplomatic channels to promote dialogue and cooperation consistent with this Agreement. 4. The Committee shall have the following functions: (a) to monitor and assess the progress in implementing of the cooperation projects agreed by the Parties; (b) to establish rules and procedures for the conduct of its work; (c) to make recommendations of the cooperation activities under this Chapter, in accordance with the strategic priorities of the Parties; and (d) to review through regular reporting from the Parties, the operation of this Chapter and the application and fulfillment of its objectives between the relevant institutions of the Parties.

## **Article 166. Dispute Settlement**

No Party may have recourse to Chapter 15 (Dispute Settlement) for any issue arising from or relating to this Chapter.

# **Chapter 13. Transparency**

## **Article 167. Transparency**

1. The Parties shall publish their laws, or otherwise make publicly available their laws, regulations and administrative rulings of general application as well as their respective international agreements regarding trade entering into force after this Agreement that may affect the operation of this Agreement. 2. The Parties shall respond to specific questions and provide, upon request, information to each other on matters referred to in paragraph 1 within 60 days following the request, to the extent possible. 3. Any information, request or notification to the other Party referred to in this Chapter shall be carried out through the contact point, unless otherwise agreed by the Parties.

## **Article 168. Confidential Information**

Nothing in this Agreement shall require any Party to disclose confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of any economic operator.

# **Chapter 14. Administration of the Agreement**

## **Article 169. Trade and Economic Mixed Commission**

1. The Parties hereby incorporate the Trade and Economic Mixed Commission (Mixed Commission) into this Agreement. 2. The Mixed Commission was established according to the Basic Agreement on Economic and Technical Cooperation between the Government of the People's Republic of China and the Government of the Republic of Peru, signed in Lima, on November 2nd, 1988. 3. The Mixed Commission is composed of officials as follows: (a) for China, the high ranking official of



the Ministry of Commerce; and (b) for Peru, the high ranking officer of the Ministry of Foreign Affairs, or its appointee. 4. The Mixed Commission shall: (a) hear the reports of the Free Trade Commission; (b) provide guidance to the work of the Free Trade Commission; (c) consider any other matter that may affect the operation of this Agreement; and (d) deal with any other issues related to bilateral cooperation in the area of economy, trade and investment.

## **Article 170. Free Trade Commission**

1. The Parties hereby establish the Free Trade Commission, comprised of ministerial level officials of the Parties or their appointees with the same decision ability, as set out in Annex 11 (Free Trade Commission). 2. The Commission shall: (a) oversee the fulfillment and correct application of the provisions of this Agreement; (b) evaluate the achieved results in the application of this Agreement; (c) oversee the further elaboration of this Agreement; (d) seek to resolve disputes that may arise regarding the interpretation or application of this Agreement, in accordance with Chapter 15 (Dispute Settlement); (e) supervise the work of all Committees and Working Groups established under this Agreement and recommend appropriate actions; (f) consider and make decisions on issues referred to it by the Committees and Working Groups established under this Agreement or by either Party; (g) establish the amount of remuneration and expenses that will be paid to Panelists; and (h) consider and make decisions on any other matter that may affect the operation of this Agreement, or that is entrusted to it by the Parties. 3. The Commission may: (a) establish and delegate responsibilities to Committees and Working Groups for each Chapter; (b) consider and adopt any amendment or modification of the rights and obligations under this Agreement, subject to the fulfillment of the internal legal procedures of each Party, pursuant to Article 199 (Amendments) of Chapter 17 (Final Provisions); (c) convene the Parties to future negotiations to examine deepening the liberalization reached in the different sectors covered by this Agreement; (d) issue interpretations of the provisions of this Agreement; and (e) take any other action agreed by the Parties. 4. The Free Trade Commission shall establish its rules and procedures. 5. All decisions of the Free Trade Commission shall be taken by consensus. 6. The Free Trade Commission shall convene in regular session once a year on a rotating basis and at other times at the request of either Party. Regular sessions of the Free Trade Commission shall be chaired successively by each Party. Other sessions of the Free Trade Commission shall be chaired by the Party hosting the meeting. The sessions may be held by any technological means available to the Parties. Communications of the Free Trade Commission shall be made in a common working language.

## **Article 171. Committees**

1. The Parties agree on establishing Committees in the following matters: (a) Trade in Goods; (b) Trade in Services; (c) Investment; (d) Sanitary and Phytosanitary Measures; (e) Technical Barriers to Trade; (f) Trade Facilitation; (g) Rules of Origin; and (h) Cooperation, including Intellectual Property. 2. The Free Trade Commission may create additional Committees, if needed. The Committees on Sanitary and Phytosanitary Measures, Technical Barriers to Trade and Rules of Origin shall coordinate their tasks with those of the Committee on Trade in Goods. 3. Except as otherwise provided in this Agreement, the Committees shall convene in regular session once a year at the same time the Free Trade Commission convenes. When special circumstances arise, the Parties shall meet at any time upon agreement at the request of one Party. Regular sessions of the Committees shall be chaired successively by each Party. Other sessions of the Committee shall be chaired by the Party hosting the meeting. The sessions may be held by any technological means available to the Parties. 4. When necessary, the Committees created hereby shall consult with such other Committees as needed to address the issues they handle.

## **Article 172. Contact Points**

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement. 2. Upon request of the other Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party. Contact points shall work jointly to develop agendas and make other preparations for the Free Trade Commission meetings and follow-up on the Free Trade Commission's decisions as appropriate; provide administrative support to the Panels established under Chapter 15 (Dispute Settlement) and address any other matter entrusted by the Free Trade Commission.

# **Chapter 15. Dispute Settlement**

## **Article 173. Cooperation**

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation or consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation when a dispute occurs.

## **Article 174. Scope of Application**

Except 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, whenever a Party considers that the other Party has failed to carry out its obligations under this Agreement.

## **Article 175. Choice of Forum**

1. Where a dispute arises under this Agreement and under another free trade agreement to which both Parties are parties or the WTO Agreement, the complaining Party may select the forum to settle the dispute. 2. Once the complaining Party has requested a Panel under other agreements referred to in paragraph 1, the forum selected shall be used to the exclusion of the others in respect of that matter.

## **Article 176. Consultations**

1. A Party may request in writing consultations with the other Party with respect to any matter referred to in Article 174 (Scope of Application). 2. The requesting Party shall deliver the request to the other Party, and shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the complaint. 3. The requested Party shall reply to the request in writing within 25 days following the date of receipt of the request. 4. The Parties shall enter into consultations in good faith within: (a) 35 days following the date of receipt of the request for consultations regarding urgent matters (20); or (b) 40 days following the date of receipt of the request for consultations for all other matters. 5. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter raised through consultations under this Article or other consultative provisions of this Agreement. 6. If the requested Party does not respond the consultation request within 25 days or does not enter into consultations within the timeframe set in paragraph 4 of this Article, the requesting Party may request directly the establishment of a Panel without waiting for the completion of the period established in paragraph 4 or it may act according to Article 177 (Request for a Panel). 7. Consultations may be held in person or by any technological means available to the Parties. Unless otherwise agreed by the consulting Parties, if in person, consultations shall be held in a rotating basis between cities of each country. The city for such meetings will be defined by the hosting country. In person meetings will begin to be held in a city of the requested Party. 8. In a consultation, each Party shall: (a) provide sufficient information to enable a full examination of how the measure in force or other matter at issue might affect the operation and application of this Agreement; and (b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information. 9. The consultations shall be confidential and without prejudice to the rights of any Party in any further proceedings.

## **Article 177. Request for a Panel**

1. Unless the Parties agree on a different period for consultations, a complaining Party may request in writing the establishment of a Panel if the consultation referred to in the Article 176 (Consultations) fails to resolve a matter within 60 days, after the date of receipt of the request for consultations or 50 days in case of urgent matters. 2. The complaining Party shall deliver the request to the other Party, indicating at least, the reason of the request, the identification of the measure, an indication of the provision of this Agreement that it considers relevant and an indication of the legal basis of the complaint. The Panel will be considered as established on the date of receipt of the corresponding request to the other Party. 3. Unless otherwise agreed by the disputing Parties, the Panel shall be selected and perform its functions in a manner consistent with the provisions of this Chapter.

## **Article 178. Qualifications of Panelists**

All Panelists shall: (a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements relevant to the subject matter of the dispute; (b) be chosen strictly on the basis of objectivity, impartiality, reliability, and sound judgment; (c) be independent of, and not be affiliated with or take instructions from, any Party; (d) not delegate their responsibilities to any other person; and (e) comply with the Model Rules of Procedure established in Annex 12 (Model Rules of Procedure).

## **Article 179. Panel Selection**

1. The Parties shall apply the following procedures in selecting a Panel: (a) the Panel shall comprise 3 members; (b) within 15 days following the date of the establishment of the Panel, each Party shall nominate a Panelist; (c) the Parties shall endeavor

to agree on a third Panelist who shall serve as chair within 30 days following the date of the establishment of the Panel; (d) if any member of the Panel has not been designated or appointed within 30 days following the date of the establishment of the Panel, at the request of any Party to the dispute, the Director-General of the WTO (21) is expected to designate a member within a further 30 days; and (e) the chair of the Panel shall not be a national of any of the Parties, nor have his or her usual place of residence in the territory of any of the Parties, nor be or have been employed by any of the Parties, nor have dealt in any capacity with the subject raised on the dispute, unless the Parties otherwise agree. 2. If a Panelist appointed under this Article resigns or becomes unable to act, a successor Panelist shall be appointed within 30 days in accordance with the selection procedure as prescribed for the appointment of the original Panelist and the successor shall have all the powers and duties of the original Panelist. The work of the Panel shall be suspended during the appointment of the successor Panelist.

## **Article 180. Role of the Panel**

1. The role of the Panel shall be to make an objective assessment of the dispute under its consideration, including an examination of the facts of the case and the applicability of and conformity with this Agreement, incorporating necessary findings for settling the dispute. 2. The report of the Panel shall be binding on the disputing Parties. 3. The Panel shall take its decisions by consensus. However, if the Panel is unable to reach consensus, it may take its decisions by majority vote. 4. Where a Panel concludes that a measure is inconsistent with this Agreement, it shall recommend that the Party complained against bring the measure into conformity with this Agreement. In addition to these recommendations, the Panel will be entitled to suggest ways in which the Party complained against could implement the recommendations. 5. The Panel, in its findings and recommendations, may not add to or diminish the rights and obligations provided in this Agreement.

## **Article 181. Model Rules of Procedure**

1. The procedure before the Panel shall be conducted in accordance with the Model Rules of Procedure set out in Annex 12 (Model Rules of Procedure). Exceptionally, the disputing Parties may agree on different rules to be applied by the Panel. 2. The Model Rules of Procedure are necessary for the good development of all the steps in this Chapter. In addition, these rules shall regulate the development of the procedure, pursuant to the following principles: (a) the procedures shall ensure the right to at least one hearing before the Panel, as well as the opportunity for each disputing Party to provide initial and rebuttal written submissions, and allow the use of any technological means to ensure its authenticity; and (b) the hearings before the Panel, the deliberations, as well as all the submissions and communications submitted during the hearings, shall be confidential. 3. If needed, the Panel shall, apart from the matters set out in this Article and in Annex 12 (Model Rules of Procedure), regulate its own procedures in relation to the settlement of the dispute in consultation with the Parties. 4. Unless otherwise agreed by the disputing Parties within 20 days following the establishment of the Panel, the terms of reference shall be: "To examine, in light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of a Panel pursuant to Article 177 (Request for a Panel) and to make findings of law and fact together with the reasons therefore for the resolution of the dispute, as well as a recommendation for its implementation, if needed." 5. Unless otherwise agreed by the disputing Parties, the hearings shall be held in a rotating basis between cities of each country. The city for such meetings will be defined by the hosting country. In person meetings will begin to be held in a city of the Party complained against. 6. The working language of the dispute settlement proceedings shall be English. Whenever a document is presented in either Chinese or Spanish, the Party presenting the document shall file a translation to English.

## **Article 182. Role of Experts**

1. On request of a disputing Party, or on its own initiative, the Panel may seek information and technical advice from any person or body that it deems appropriate. The requirements set out in subparagraphs (b) and (c) of Article 178 (Qualifications of Panelists) shall apply to the selection of experts or groups, as appropriate. 2. Before the Panel seeks information or technical advice, appropriate procedures shall be established in consultation with the disputing Parties. The Panel shall: (a) notify the Parties, in advance, of its intention to seek information or technical advice pursuant to paragraph 1, establishing an adequate time period for the Parties to make the comments and observations that they deem convenient; and (b) provide the disputing Parties with a copy of any information or technical advice received pursuant to paragraph 1, and with a period of time for the Parties to submit its comments. 3. When the Panel takes into consideration the information or technical advice sought pursuant to paragraph 1 for the preparation of its report, it shall also take into account any comments or observations submitted by the disputing Parties with respect to such information or technical advice.

## **Article 183. Report of the Panel**

1. Unless the Parties otherwise agree, the Panel shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the disputing Parties, and on any information received by it pursuant to Article 181 (Model

Rules of Procedure). 2. Unless the Parties otherwise agree, the Panel shall present the report to the disputing Parties, within 120 days, or 90 days in the event of urgent matters, after the last Panelist is selected. 3. Only in exceptional cases, if the Panel considers it cannot release its report within 120 days or 90 days in the event of urgent matters, it shall inform the Parties in writing of the justifying reasons for the delay together with an estimate of the period within which it will release its report. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree. 4. The report shall contain: (a) the finding along with its factual and legal basis; (b) the determination as to whether a Party has not conformed with its obligations under this Agreement or any other determination requested in the terms of reference; and (c) its recommendations for the implementation of the decision pursuant to paragraph 4 of Article 180 (Role of the Panel). 5. The Panelists may furnish separate opinions on matters not unanimously agreed. 6. No Panel may disclose which Panelists are associated with majority or minority opinions. 7. Unless the Parties agree otherwise, the report shall be available to the public within 30 days thereafter, subject to the protection of confidential information.

### **Article 184. Request for Clarification of the Report**

1. Within 10 days of the release of the report, either of the disputing Parties may submit a written request to the Panel, a copy of which shall be sent to the other Party, for clarification of any items the Party considers requires further explanation or definition. 2. The Panel shall respond to the request within 10 days following the submission of such request. The clarification of the Panel shall only be a more precise explanation or definition of the original contents of the report, and not an amendment of such report. 3. The filing of this request for clarification will not postpone the effect of the Panel report nor the deadline for compliance of the adopted decision, unless the Panel decides otherwise.

### **Article 185. Suspension and Termination of Procedure**

1. The disputing 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. In any event, if the work of the Panel has been suspended for more than 12 months, the authority of the Panel shall lapse, unless the disputing Parties agree otherwise. If the authority of the Panel lapses and the disputing Parties have not reached an agreement on the settlement of the dispute, nothing in this Article shall prevent a Party from requesting a new proceeding regarding the same matter. 2. At any time prior to the release of the Panel report, the Parties may agree to terminate the procedures before a Panel by jointly notifying the chair of the Panel on this respect.

### **Article 186. Implementation of the Report**

1. The Panel report shall be final and binding on the disputing Parties. 2. If the report issued by the Panel determines that a Party has not conformed with its obligations under this Agreement, the Party complained against shall eliminate the non-conformity. 3. The Party complained against shall comply with the recommendation of the Panel promptly or, if not practicable, within a reasonable period of time. The Parties shall agree on reasonable period of time within 30 days of the notification of the report of the Panel. In any case, such reasonable period of time shall not exceed 300 calendar days after the release of the report.

### **Article 187. Examination of Implementation**

1. Without prejudice to the procedures set out in Article 188 (Compensation), once the period of time set out in paragraph 3 of Article 186 (Implementation of the Report) has expired, and there is disagreement between the disputing Parties as to the existence or consistency of the measures taken to comply with the Panel report, such dispute shall be referred to the original Panel wherever possible. If not possible, the procedure pursuant to Article 179 (Panel Selection) shall be followed to appoint a new Panel, in which event the periods set out thereof shall be reduced by half (22). 2. This Panel shall issue its report on the matter within 60 days after the date of the referral of the matter to it. When the Panel considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree.

### **Article 188. Compensation**

1. If the Party complained against does not comply with the Panel report within the period of time set forth in paragraph 3 of the Article 186 (Implementation of the Report), any of the disputing Parties may request in writing negotiations with the other Party with a view to establishing a mutually acceptable compensation. The disputing Parties shall initiate negotiations within a period no longer than 10 days following the receipt of the written request. 2. This compensation shall be effective as of the moment the Parties agree to it and until the Party complained against complies with the Panel report.

## **Article 189. Suspension of Benefits**

1. The complaining Party may, at any time thereafter, communicate in writing to the Party complained against its intention to suspend the application of benefits in 30 days upon reception of such communication, if: (a) the disputing Parties are unable to agree on a compensation within 30 days after the period for establishing such compensation has begun, or the Party complained against has failed to observe the terms of the agreed compensation within 30 days following such agreement; (b) the Panel under the Article 187 (Examination of the Implementation) finds that the Party complained against fails to bring the measure found to be inconsistent with this Agreement into compliance with the recommendations of the Panel within the period of time established; or (c) the Party complained against expresses in writing that it will not implement the recommendations. 2. The complaining Party may initiate the suspension of benefits within 30 days following the latest date between the date of the communication pursuant to paragraph 1 of this Article and the date when the Panel issued its report pursuant to Article 190 (Examination of Benefit Suspension Level). 3. The level of benefits to be suspended shall have an equivalent effect to the benefits not being received. 4. In considering what benefits to suspend pursuant to paragraph 1: (a) the complaining Party should first seek to suspend benefits in the same sector or sectors affected by the measure; and (b) if the complaining Party considers that it is not practicable or effective to suspend benefits in the same sector or sectors, it may suspend benefits in other sectors. The communication in which it announces such a decision shall indicate the reasons on which it is based.

## **Article 190. Examination of the Benefit Suspension Level**

1. If the Party complained against considers that the level of benefits suspended is excessive, it may request in writing the original Panel to examine the level of suspension of benefits. If this is not possible, the procedure established in Article 179 (Panel Selection) shall be followed, in which event the periods set out thereof shall be reduced by half (23). 2. This Panel shall issue its ruling within 60 days following the date of the referral of the matter to it. When the Panel considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree. The ruling of the Panel shall be final and binding. It shall be delivered to the Parties and be made publicly available. 3. If the Panel finds that the level of benefits which the complaining Party has suspended is excessive, it shall determine the appropriate level of benefits it considers to be of equivalent effect.

## **Article 191. Post Suspension**

1. Without prejudice to the procedures in Article 190 (Examination of the Benefit Suspension Level), if the Party complained against considers that it has eliminated the non-conformity that the Panel has found, it may provide written notice to the complaining Party with a description of how non-conformity has been removed. If the complaining Party has disagreement, it may refer the matter to the original Panel within 60 days after receipt of such written notice. Otherwise, the complaining Party shall promptly stop the suspension of benefits. 2. The Panel shall release its report within 60 days after the referral of the matter. If the Panel concludes that the Party complained against has eliminated the non-conformity, the complaining Party shall promptly stop the suspension of benefits.

## **Article 192. Private Rights**

Neither 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.

# **Chapter 16. Exceptions**

## **Article 193. General Exceptions**

1. For purposes of Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Rules of Origin and Operational Procedures Related to Origin), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 5 (Trade Remedies), Chapter 6 (Sanitary and Phytosanitary Measures), Chapter 7 (Technical Barriers to Trade), Article XX of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XX(b) of the GATT 1994, as incorporated into this Agreement, can include any measure necessary to protect human, animal, or plant life or health, and that Article XX(g) of the GATT 1994 applies to measures relating to the conservation of any exhaustible natural resource. 2. For purposes of Chapter 8 (Trade in Services), Article XIV of the GATS (including its footnotes) is incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XIV(b) of the GATS, as incorporated into this Agreement, can include any

measure necessary to protect human, animal, or plant life or health.

## **Article 194. Security Exceptions**

Nothing in this Agreement shall be construed: (a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or (b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests: (i) relating to fissionable and fusionable materials or the materials from which they are derived; (ii) relating to the supply of services as carried out directly for the purpose of provisioning a military establishment; (iii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; and (iv) taken in time of war or other emergency in international relations; or (c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for maintenance of international peace and security.

## **Article 195. Disclosure of Information**

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to confidential information, the disclosure of which would impede enforcement of its Constitution, laws, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

## **Article 196. Measures to Safeguard the Balance of Payments**

Where the Party is in serious balance of payments and external financial difficulties or threat thereof, in accordance with the WTO Agreement and consistent with the Articles of the Agreement of the International Monetary Fund, it may adopt measures deemed necessary.

## **Article 197. Prudential Measures**

1. Notwithstanding any other provisions of this Agreement, a Party shall not be prevented from taking measures relating to financial services for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise supplying financial services, or to ensure the integrity and stability of its financial system. 2. Where measures mentioned in paragraph 1 do not conform to the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

# **Chapter 17. Final Provisions**

## **Article 198. Annexes, Appendices and Footnotes**

The annexes, appendices and footnotes to this Agreement constitute an integral part of this Agreement.

## **Article 199. Amendments**

1. The Parties may agree on any amendment to this Agreement. 2. When so agreed and entered into force according to Article 200 (Entry into Force and Termination) such amendment shall constitute an integral part of this Agreement.

## **Article 200. Entry Into Force and Termination**

1. This Agreement and its amendments shall enter into force 60 days after the date the Parties exchange written notifications certifying that they have completed their respective legal requirements for its entry into force or after such other period as the Parties may agree in written notification. Except as otherwise provided in this Agreement, it does not apply retroactively. 2. Either Party may terminate this Agreement by written notification to the other Party. This Agreement shall expire 180 days after the date of such notification.

## **Article 201. Authentic Texts**

This Agreement shall be done in Chinese, Spanish and English, the three texts are equally valid and authentic. In the event of divergence, the English text shall prevail.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE AT Beijing, China, in duplicate, this twenty-eighth day of April of two thousand and nine.

For the Government of the People's Republic of China

For the Government of the Republic of Peru