AUSTRALIA - PERU FREE TRADE AGREEMENT

PREAMBLE

Australia and the Republic of Peru, hereinafter referred to as "the Parties", resolving to:

ESTABLISH a comprehensive agreement that promotes economic integration to liberalise trade and investment, bring economic growth and social benefits, create new opportunities for workers and businesses, contribute to raising living standards, benefit consumers, reduce poverty and promote sustainable growth;

STRENGTHEN the bonds of friendship and cooperation between them and their peoples;

BUILD on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization;

STRENGTHEN the competitiveness of their businesses in global markets and enhance the competitiveness of their economies by promoting opportunities for businesses, including promoting the development and strengthening of supply chains;

SUPPORT the growth and development of micro-, small and medium-sized enterprises by enhancing their ability to participate in and benefit from the opportunities created by this Agreement;

ESTABLISH a predictable legal and commercial framework for trade and investment through mutually advantageous rules;

FACILITATE trade by promoting efficient and transparent customs procedures that reduce costs and ensure predictability for their importers and exporters;

RECOGNISE their inherent right to regulate and resolve to preserve the flexibility of the Parties to set legislative and regulatory priorities, safeguard public welfare, and protect legitimate public welfare objectives, such as public health, safety, the environment, the conservation of living or non-living exhaustible natural resources, the integrity and stability of the financial system and public morals;

AFFIRM that state-owned enterprises can play a legitimate role in the diverse economies of the Parties, while recognising that the provision of unfair advantages to state-owned enterprises undermines fair and open trade and investment, and resolve to establish rules for state-owned enterprises that promote a level playing field with privately owned businesses, transparency and sound business practices;

PROMOTE high levels of environmental protection, including through effective enforcement of environmental laws, and further the aims of sustainable development, including through mutually supportive trade and environmental policies and practices;

PROTECT and enforce labour rights, and strengthen cooperation and the Parties' capacity on labour issues;

PROMOTE transparency, good governance and the rule of law, and eliminate bribery and corruption in trade and investment;

RECOGNISE the important work that their relevant authorities are doing to strengthen macroeconomic cooperation, including on exchange rate issues, in appropriate fora;

RECOGNISE the importance of cultural identity and diversity within the Parties,

and that trade and investment can expand opportunities to enrich cultural identity and diversity at home and abroad;

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

ESTABLISH an Agreement to address future trade and investment challenges and opportunities, and contribute to advancing their respective priorities over time,

HAVE AGREED as follows:

Chapter 1. Initial Provisions and General Definitions

Section A. Initial Provisions

Article 1.1. Establishment of a Free Trade Area

The Parties, consistent with Article XXTV of GATT 1994 and Article V of GATS, hereby establish a free trade area in accordance with the provisions of this Agreement.

Article 1.2. Relation to other Agreements

1. The Parties affirm their existing rights and obligations with respect to each other under existing international agreements, to which both Parties are party, including the WTO Agreement.

2. Unless otherwise provided for in this Agreement:

(a) this Agreement shall not be construed to derogate from any international legal obligation between the Parties that provides for more favourable treatment of goods, services, investments, or persons than that provided for under this Agreement; and

(b) in the event of any inconsistency between this Agreement and other agreements to which both Parties are party, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution, taking into consideration general principles of international law.

Section B. General Definitions

Article 1.3. General Definitions

For the purposes of this Agreement, unless otherwise provided in this Agreement:

Agreement means the Peru-Australia Free Trade Agreement;

Agreement on Agriculture means the Agreement on Agriculture, set out in Annex 1A to the WTO Agreement;

Agreement on Trade-Related Investment Measures means the Agreement on Trade- Related Investment Measures, set out in Annex 1A to the WTO Agreement;

APEC means Asia-Pacific Economic Cooperation; central level of government means:

(a) for Australia, the Commonwealth government; and

(b) for Peru, the national level of government; covered investment means, with respect to a Party, an investment in its territory of an investor of the other Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

customs administration means:

(a) for Australia, the Department of Immigration and Border Protection; and

(b) for Peru, the National Superintendence of Customs and Tax Administration (Superintendencia Nacional de Aduanas y de Administracién Tributaria),

or any successor of such customs administration;

customs duty includes any duty or charge of any kind imposed on or in connection with the importation of a good, and any surtax or surcharge imposed in connection with such

importation, but does not include any:

(a) charge equivalent to an internal tax imposed consistently with Article XI:2 of GATT 1994;

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

(c) antidumping or countervailing duty;

Customs Valuation Agreement means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, set out in Annex 1A to the WTO Agreement;

days means calendar days;

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

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

GATS means the General Agreement on Trade in Services, set out in Annex 1B to the WTO Agreement;

GATT 1994 means the General Agreement on Tariffs and Trade 1994, set out in Annex 1A to the WTO Agreement;

goods means any merchandise, product, article or material;

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

government procurement means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale or use in the production or supply of goods or services for commercial sale or resale;

Harmonized System (HS) means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes, Chapter Notes and Subheading Notes as adopted and implemented by the Parties in their respective laws;

heading means the first four digits in the tariff classification number under the Harmonized System;

Joint Commission means the Joint Commission established under Article 26.1 (Establishment of the Joint Commission);

measure includes any law, regulation, procedure, requirement or practice; national means:

(a) for Australia, a natural person who is an Australian citizen as defined in the Australian Citizenship Act 2007 (Cth), as amended from time to time, or any successor legislation, or a permanent resident; and

(b) for Peru, a natural person who has the nationality of Peru by birth, naturalisation or option in accordance with the Political Constitution of Peru (Constitucién Politica del Per') and other relevant domestic legislation, or a permanent resident;

originating means qualifying as originating under the rules of origin set out in Chapter 3 (Rules of Origin and Origin Procedures);

person means a natural person or an enterprise;

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

preferential tariff treatment means the customs duty rate applicable to an originating good, pursuant to each Party's Tariff Schedule set out in Annex 2-B (Tariff Commitments);

recovered material means a material in the form of one or more individual parts that results from:

(a) the disassembly of a used good into individual parts; and

(b) the cleaning, inspecting, testing or other processing of those parts as necessary for improvement to sound working condition;

regional level of government means:

(a) for Australia, a state of Australia, the Australian Capital Territory, or the Northern Territory; and

(b) for Peru, regional government in accordance with the Political Constitution of Peru (Constitucién Politica del Peri) and other applicable legislation;

remanufactured good means a good classified in HS Chapters 84 through 90 or under heading 94.02 except goods classified under HS headings 84.18, 85.09, 85.10, and 85.16, 87.03 or subheadings 8414.51, 8450.11, 8450.12, 8508.11, and 8517.11, that is entirely or partially composed of recovered materials and:

(a) has a similar life expectancy and performs the same as or similar to such a good when new; and

(b) has a factory warranty similar to that applicable to such a good when new;

Safeguards Agreement means the Agreement on Safeguards, set out in Annex 1A to the WTO Agreement;

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

SCM Agreement means the Agreement on Subsidies and Countervailing Measures, set out in Annex 1A to the WTO Agreement;

SME means a small and medium-sized enterprise, including a micro-sized enterprise;

SPS Agreement means the Agreement on the Application of Sanitary and Phytosanitary Measures, set out in Annex 1A to the WTO Agreement;

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

subheading means the first six digits in the tariff classification number under the Harmonized System;

territory means:

(a) for Australia, the territory of Australia:

(i) excluding all external territories other than the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, the Territory of Ashmore and Cartier Islands, the Territory of Heard Island and McDonald Islands, and the Coral Sea Islands Territory; and

(ii) including Australia's air space, territorial sea, contiguous zone, exclusive economic zone and continental shelf over which Australia exercises sovereign rights or jurisdiction in accordance with international law;

(b) for Peru, the mainland territory, the islands, the maritime areas and the air space above them, under sovereignty or sovereign rights and jurisdiction of Peru, in accordance with the provisions of the Political Constitution of Peru (Constitucién Polftica del Peri) and other relevant domestic law and international law;

TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights, set out in Annex 1C to the WTO Agreement (1)

WTO means the World Trade Organization; and

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

(1) For greater certainty, TRIPS Agreement includes any waiver in force between the Parties of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement.

Chapter 2. National Treatment and Market Access for Goods

Section A. Definitions and Scope

Article 2.1. Definitions

For the purposes of this Chapter:

advertising films and recordings means recorded visual media or audio materials, consisting essentially of images or sound, showing the nature or operation of goods or services offered for sale or lease by a person of a Party, that are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public;

commercial samples of negligible value means commercial or trade samples having a value, individually or in the aggregate as shipped, of not more than one U.S. dollar or the equivalent amount in the currency of either Party; or so

marked, torn, perforated or otherwise treated that they are unsuitable for sale or for use except as commercial samples;

consular transactions means requirements that goods of a Party intended for export to the territory of the other Party must first be submitted to the supervision of the consul of the importing Party in the territory of the exporting Party for the purpose of obtaining consular invoices or consular visas for commercial invoices, certificates of origin, manifests, shippers' export declarations, or any other customs documentation required on or in connection with importation;

consumed means, with respect to a good:

(a) actually consumed; or

(b) further processed or manufactured:

(i) so as to result in a substantial change in the value, form or use of the good; or

(ii) in the production of another good;

duty-free means free of customs duty;

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

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

Import Licensing Agreement means the Agreement on Import Licensing Procedures, set out in Annex 1A to the WTO Agreement;

performance requirement means a requirement that:

(a) a given level or percentage of goods or services be exported;

(b) domestic goods or services of the Party granting a waiver of customs duties or an import licence be substituted for imported goods;

(c) a person benefiting from a waiver of customs duties or a requirement for an import licence purchase other goods or services in the territory of the Party that grants the waiver of customs duties or the import licence or accord a preference to domestically produced goods;

(d) a person benefiting from a waiver of customs duties or a requirement for an import licence produce goods or supply services in the territory of the Party that grants the waiver of customs duties or the import licence, with a given level or percentage of domestic content; or

(e) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows,

but does not include a requirement that an imported good be:

(f) subsequently exported;

(g) used as a material in the production of another good that is subsequently exported;

(h) substituted by an identical or similar good used as a material in the production of another good that is subsequently exported; or

(i) substituted by an identical or similar good that is subsequently exported; and printed advertising materials means those goods classified in Chapter 49 of the

Harmonized System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials and posters, that are used to promote, publicise or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge.

Article 2.2. Scope

Unless otherwise provided in this Agreement, this Chapter shall apply to trade in goods of a Party.

Section B. National Treatment and Market Access for Goods

Article 2.3. National Treatment

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its interpretative notes, and to this end, Article II of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis.

2. For greater certainty, the treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment that the regional level of government accords to any like, directly competitive or substitutable goods, as the case may be, of the Party of which it forms a part.

3. Paragraph 1 shall not apply to the measures set out in Annex 2-A.

Article 2.4. Elimination of Customs Duties

1. Unless otherwise provided in this Agreement, neither Party shall increase any existing customs duty, or adopt any new customs duty, on an originating good.

2. Unless otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods in accordance with its Schedule to Annex 2-B.

3. On request of either Party, the Parties shall consult to consider accelerating the elimination of customs duties or improving the market access conditions set out in their Schedules to Annex 2-B.

4. An agreement between the Parties to accelerate the elimination of a customs duty on an originating good shall supersede any duty rate or staging category determined pursuant to the Parties' Schedules to Annex 2-B for that good once approved by each Party in accordance with its applicable legal procedures.

5. A Party may at any time unilaterally accelerate the elimination of customs duties set out in its Schedule to Annex 2-B on originating goods of the other Party. A Party shall inform the other Party as early as practicable before the new rate of customs duty takes effect.

6. For greater certainty, neither Party shall prohibit an importer from claiming for an originating good the rate of customs duty applied under the WTO Agreement.

7. For greater certainty, a Party may raise a customs duty to the level set out in its Schedule to Annex 2-B following a unilateral reduction for the respective year.

Article 2.5. Waiver of Customs Duties

1. Neither Party shall adopt any new waiver of a customs duty, or expand with respect to an existing recipient or extend to any new recipient the application of an existing waiver of a customs duty, that is conditioned, explicitly or implicitly, on the fulfilment of a performance requirement.

2. Neither Party shall, explicitly or implicitly, condition the continuation of any existing waiver of a customs duty on the fulfilment of a performance requirement.

Article 2.6. Goods Re-entered after Repair and Alteration

1. Neither Party shall apply a customs duty to a good, regardless of its origin, that re-enters the Party's territory after that good has been temporarily exported from the Party's territory to the territory of the other Party for repair or alteration, regardless of whether that repair or alteration could have been performed in the territory of the Party from which the good was exported for repair or alteration or increased the value of the good.

2. Neither Party shall apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of the other Party for repair or alteration.

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

(a) destroys a good's essential characteristics or creates a new or commercially different good; or

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

Article 2.7. Duty-free Entry of Commercial Samples of Negligible Value and Printed Advertising Material

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

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

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

Article 2.8. Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission for the following goods, regardless of their origin:

(a) professional equipment, including equipment for the press or television, software, and broadcasting and cinematographic equipment, that is necessary for carrying out the business activity, trade or profession of a person who qualifies for temporary entry pursuant to the laws of the importing Party;

(b) goods intended for display or demonstration; and

(c) commercial samples and advertising films and recordings.

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

3. Neither Party shall condition the duty-free temporary admission of the goods referred to in paragraph 1, other than to require that those goods:

(a) be used solely by or under the personal supervision of a national of the other Party in the exercise of the business activity, trade or profession of that national of the other Party;

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

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

(d) be capable of identification when imported and exported;

(e) be exported on the departure of the national referred to in subparagraph (a), or within any other period reasonably related to the purpose of the temporary admission that the Party may establish, or within one year, unless extended;

(f) be admitted in no greater quantity than is reasonable for their intended use; and

(g) be otherwise admissible into the Party's territory under its laws.

4. Neither Party shall apply import duties or taxes on the temporary admission of containers, pallets or packing material used in the international transportation of goods.

5. If any condition that a Party imposes under paragraph 3 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on the good in addition to any other charges or penalties provided for under its law.

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

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

8. Each Party shall, in accordance with its law, provide that the importer or other person responsible for a good admitted

under this Article shall not be liable for failure to export the good on presentation of satisfactory proof to the importing Party that the good was destroyed within the period fixed for temporary admission, including any lawful extension.

Article 2.9. Import and Export Restrictions

1. Unless otherwise provided in this Agreement, neither Party shall adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994 and its interpretative notes, and to this end Article XI of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis.

2. The Parties understand that GATT 1994 rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, a Party from adopting or maintaining:

(a) export and import price requirements, except as permitted in enforcement of countervailing and antidumping duty orders and undertakings;

(b) import licensing conditioned on the fulfilment of a performance requirement; or

(c) voluntary export restraints.

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 2-A.

4. Neither Party shall, as a condition for engaging in importation or for the importation of a good, require a person of the other Party to establish or maintain a contractual or other relationship with a distributor in its territory.

5. For greater certainty, paragraph 4 does not prevent a Party from requiring a person referred to in that paragraph to designate a point of contact for the purpose of facilitating communications between its regulatory authorities and that person.

6. For the purposes of paragraph 4: distributor means a person of a Party who is responsible for the commercial distribution, agency, concession or representation in the territory of that Party of goods of the other Party.

Article 2.10. Import Licensing

1. Neither Party shall adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.

2. Promptly after this Agreement enters into force, each Party shall notify the other Party of its existing import licensing procedures, if any. The notice shall include the information specified in Article 5.2 of the Import Licensing Agreement.

3. Neither Party shall apply an import licensing procedure to a good of the other Party unless it has, with respect to that procedure, met the requirements of paragraph 2.

Article 2.11. Administrative Fees and Formalities

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

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

3. Each Party shall make publicly available online a current list of the fees and charges it imposes in connection with importation or exportation.

4. Each Party shall periodically review its fees and charges, with a view to reducing their number and diversity, if practicable.

Article 2.12. Export Duties, Taxes or other Charges

Neither Party shall adopt or maintain any duty, tax or other charge on the export of any good to the territory of the other Party, unless such duty, tax or charge is adopted or maintained on that good when destined for domestic consumption.

Article 2.13. Treatment of Certain Spirits

1. Australia confirms that the Australia New Zealand Food Standards Code ("the Code") allows recognition of Pisco Peru as a product exclusively produced in Peru and that no variation of the Code is necessary for such recognition.

2. To the extent contemplated in the Code, Australia shall not permit the sale of any product as Pisco Peru unless such product has been produced in Peru according to the laws and regulations of Peru governing the production of Pisco Peru and complies with all applicable Peruvian laws and regulations for the consumption, sale or export as Pisco Peru.

3. Australia shall only permit the sale of a product that uses the term Pisco in the identification of a product in accordance with its domestic laws, including the Code, and its international obligations, including this Agreement.

Article 2.14. Committee on Goods

1. The Parties hereby establish a Committee on Goods (Committee), comprised of government representatives of each Party.

2. The Committee's functions shall include:

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

(b) monitoring the implementation, and administration of this Chapter, Chapter 3 (Rules of Origin and Origin Procedures) and Chapter 7 (Technical Barriers to Trade);

(c) as it considers appropriate, reporting to the Joint Commission on the implementation and administration of these Chapters;

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

(e) reviewing future amendments to the Harmonized System to ensure that each Party's commitments under this Chapter are not altered, and consulting to resolve any conflicts between:

(i) amendments to the Harmonized System and Annex 2-B or Annex 3-B (Product Specific Rules); or

(ii) Annex 2-B and national nomenclatures;

(f) consulting on and endeavouring to resolve any differences that may arise between the Parties on matters related to the classification of goods under the Harmonized System and Annex 2-B;

(g) considering solutions to address issues related to the interpretation, application and administration of Chapter 3 (Rules of Origin and Origin Procedures) or amendments to take into account developments in technology, production processes or other related matters;

(h) referring for the consideration of the Joint Commission any possible amendments or modifications to Chapter 3 (Rules of Origin and Origin Procedures); and

(i) promptly addressing any issue that either Party raises related to the development, adoption, application, or enforcement of standards, technical regulations, or conformity assessment procedures.

3. The Committee shall undertake any additional work that the Joint Commission may assign to it.

4. The Committee shall meet when the Parties consider it appropriate.

Section C. Agriculture

Article 2.15. Definitions

For the purposes of this Section:

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

export subsidies shall have the meaning assigned to that term in Article 1(e) of the Agreement on Agriculture;

modern biotechnology means the application of:

(a) in vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (rDNA) and direct injection of nucleic acid into cells or organelles; or

(b) fusion of cells beyond the taxonomic family,

that overcome natural physiological reproductive or recombinant barriers and that are not techniques used in traditional breeding and selection; and

products of modern biotechnology means agricultural goods, as well as fish and fish products (1), developed using modern biotechnology, but does not include medicines and medical products.

(1) For the purposes of Article 2.18 and the definition of "products of modern biotechnology", "fish and fish products" are defined as products in Chapter 3 of the Harmonized System.

Article 2.16. Scope

This Section shall apply to measures adopted or maintained by a Party relating to trade in agricultural goods.

Article 2.17. Agricultural Export Subsidies

Neither Party shall adopt or maintain any export subsidy on any agricultural good destined for the territory of the other Party.

Article 2.18. Trade of Products of Modern Biotechnology

1. The Parties confirm the importance of transparency, cooperation and exchanging information related to the trade of products of modern biotechnology.

2. Nothing in this Article shall prevent a Party from adopting measures in accordance with its rights and obligations under the WTO Agreement or other provisions of this Agreement.

3. Nothing in this Article shall require a Party to adopt or modify its laws, regulations and policies for the control of products of modern biotechnology within its territory.

4. Each Party shall, when available and subject to its laws, regulations and policies, make available publicly:

(a) any documentation requirements for completing an application for the authorisation of a product of modern biotechnology;

(b) asummary of any risk or safety assessment that has led to the authorisation of a product of modern biotechnology; and

(c) a list or lists of the products of modern biotechnology that have been authorised in its territory.

5. Each Party shall designate and notify a contact point or contact points for the sharing of information on issues related to low level presence (LLP)(2) occurrences, in accordance with Article 26.5 (Contact Points).

6. To reduce the likelihood of trade disruptions from LLP occurrences:

(a) the exporting Party shall, consistent with its laws, regulations and policies, endeavour to encourage technology developers to submit applications to the importing Party for authorisation of plants and plant products of modern biotechnology; and

(b) a Party authorising plant and plant products derived from modem biotechnology shall endeavour to:

(i) allow year-round submission and review of applications for authorisation of plants and plant products of modern biotechnology; and

(ii) increase communications between the Parties regarding new

authorisations of plants and plant products of modern biotechnology so as to improve global information exchange.

(2) For the purposes of this Article, "LLP occurrence" means the inadvertent low level presence in a shipment of plants or plant products, except for a plant or plant product that is a medicine or medical product, of rDNA plant material that is authorised for use in at least one country, but not in the importing Party, and if authorised for food use, a food safety assessment has been done based on the Codex Guideline for the Conduct of a Food Safety Assessment of Foods Derived from Recombinant-DNA Plants (CAC/GL 45-2003).

ANNEX 2-A. National treatment and import and export restrictions

For Peru, Article 2.3.1, Article 2.9.1 and Article 2.9.2 shall not apply to:

(a) used clothing and footwear pursuant to Law No. 28514 of 23 May 2005;

(b) used vehicles and used automotive engines, parts and replacements pursuant to Legislative Decree No. 843 of 30 August 1996, Urgent Decree No. 079- 2000 of 20 September 2000, Urgent Decree No. 050-2008 of 18 December 2008;

(c) used tyres pursuant to Supreme Decree No. 003-97-SA of 7 June 1997; and,

(d) used goods, machinery and equipment which utilise radioactive energy sources pursuant to Law No. 27757 of 19 June 2002.

ANNEX 2-B. Tariff commitments

1. The base rate of customs duty and staging category for determining the interim rate of customs duty at each stage of reduction for an item are indicated for that item in each Party's Schedule.

2. Interim staged rates shall be rounded down at least to the nearest tenth of a percentage point or, if the rate of duty is expressed in monetary units, as specified in each Party's Schedule.

3. The rates of customs duties provided for in any tariff line in a Party's Schedule in any staging category other than "EIF" shall be initially reduced on the date of entry into force of this Agreement.

4. The second stage of tariff reduction shall take effect on 1 January of the following year, and each subsequent annual stage of tariff reduction for that Party shall take effect on 1 January of each subsequent year.

5. In the event of a discrepancy in a Party's Schedule to this Annex between the staging category specified for an item and any tariff rate specified for that item for a particular year, that Party shall apply the rate required in accordance with the staging category specified for the item.

6. For the purposes of a Party's Schedule:

(a) year 1 means the year of entry into force of this Agreement in accordance with Article 29.4 (Entry into Force);

(b) year 2 means the year after year 1; year 3 means the year after year 2, year 4 means the year after year 3, and so on; and

(c) year means a calendar year beginning on 1 January and ending on 31 December, except as otherwise provided in a Party's Schedule.

ANNEX 2-B. Schedule of australia

GENERAL NOTES

1. The provisions of this Schedule are generally expressed in terms of the corresponding items in Schedule 3 to the Customs Tariff Act 1995 (Cth) (Tariff Act), and the interpretation of the provisions of this Schedule, including the product coverage of subheadings of this Schedule, shall be governed by the Tariff Act. To the extent that provisions of this Schedule are identical to the corresponding provisions of the Tariff Act, the provisions of this Schedule shall have the same meaning as the corresponding provisions of the Tariff Act.

2. The base rates of duty set out in this Schedule reflect Australia's Most-Favoured-Nation (MEN) rates of duty in effect on 1 January 2017.

3. The following staging categories shall apply to the elimination or reduction of customs duties by Australia pursuant to Article 2.4.2:

(a) customs duties on originating goods provided for in the items in staging category EIF shall be eliminated entirely, and these goods shall be duty-free on the date of entry into force of this Agreement;

(b) customs duties on originating goods provided for in the items in staging category B3 shall be eliminated in three annual stages and these goods shall be duty-free from 1 January of year 3;

(c) customs duties on originating goods provided for in the items in staging category B4 shall be eliminated in four annual stages and these goods shall be duty-free from 1 January of year 4;

(d) the ad valorem component of the customs duties on originating goods provided for in the items in staging category AU-R1 shall be eliminated on the date of entry into force of this Agreement. The non-ad valorem component of the customs duty on these goods shall be maintained.

4. The annual stages referred to in paragraph 3 for the elimination or reduction of customs duties shall be equal, annual stages.

ANNEX 2-B. Schedule of peru

GENERAL NOTES

1. The provisions of this Schedule are generally expressed in terms of the Customs Tariff Schedule of Peru (Arancel de Aduanas de la Republica del Pera (AAPERU)), and the interpretation of the provisions of this Schedule, including the product coverage of subheadings of this Schedule, shall be governed by the General Notes, Section Notes and Chapter Notes of the AAPERU. To the extent that provisions of this Schedule are identical to the corresponding provisions of the AAPERU, the provisions of this Schedule shall have the same meaning as the corresponding provisions of the AAPERU.

2. The following staging categories shall apply to the elimination of customs duties by Peru pursuant to Article 2-4:

(a) customs duties on originating goods provided for in the items in staging category "EIF" shall be eliminated entirely, and these goods shall be duty- free on the date of entry into force of this Agreement for Peru;

(b) customs duties on originating goods provided for in the items in staging category "BS" shall be eliminated in five annual stages, and these goods shall be duty-free effective January 1 of year 5;

(c) customs duties on originating goods provided for in the items in staging category "B10" shall be eliminated in 10 annual stages, and these goods shall be duty-free effective January 1 of year 10;

(d) customs duties on originating goods provided for in the items in staging category "TRQ DR" (Dairy Products) are exempt from tariff elimination. Notwithstanding the above, Peru shall allow duty-free imports (ad valorem duties and the specific duties derived from the application of the Peruvian Price Band System established in the Supreme Decree N° 115-2001-EF and its amendments will not be applied) for an aggregate quota in any calendar year specified herein, and shall not exceed the quantity specified below for Peru in each such year:

Year	**Quantity (Metric Tons)**
1	7,200
2	7,300
3	7,700
4	8,000
5	8,300
6	8,700
7	9,000

8	9,300
9	9,700
10 and subsequent years	10,000

The quantities shall enter on a first-come, first-served basis.

This paragraph applies to the following tariff items: 0401100000, 0401200000, 0402101000, 0402109000, 0402211100, 0402211900, 0402219100, 0402219900, 0402291100, 0402291900, 0402299100, 0402299900, 0402991000, 0404109000, 0405100000, 0405902000, 0405909000, 0406300000, 0406904000, 0406905000, 0406906000, 0406909000, 1901902000, 1901909000, 2106907900 and 2106909000.

(e) customs duties on originating goods provided for in the items in staging category "TRQ SG" (Sugar) are exempt from tariff elimination. Notwithstanding the above, Peru shall allow duty-free imports (ad valorem duties and the specific duties derived from the application of the Peruvian Price Band System established in the Supreme Decree N° 115-2001-EF and its amendments will not be applied) for an aggregate quota in any calendar year specified herein, and shall not exceed the quantity specified below for Peru in each such year:

Year	**Quantity (Metric Tons)**
1	30,000
2	37,500
3	45,000
4	52,000
5	60,000
6	62,400
7	64,700
8	67,000
9	69,300
10	71,600
11	73,900
12	76,200
13	78,500
14	80,800
15	83,100

16	85,400
17	87,700
18 and subsequent years	90,000

The quantities shall enter on a first-come, first-served basis.

This paragraph applies to the following tariff items: 1701120000, 1701140000, 1701999000, 1702600000, 1702902000, 1702903000 and 1702904000.

(f) customs duties on originating goods provided for in the items in staging category "TRQ RC" (Rice) are exempt from tariff elimination. Notwithstanding the above, Peru shall allow duty-free imports (ad valorem duties and the specific duties derived from the application of the Peruvian Price Band System established in the Supreme Decree N° 115-2001-EF and its amendments will not be applied) for an aggregate quota in any calendar year specified herein, and shall not exceed the quantity specified below for Peru in each such year:

Year	**Quantity (Metric Tons)**
1	9,000
2	10,250
3	11,500
4	12,750
5 and subsequent years	14,000

The quantities shall enter on a first-come, first-served basis.

This paragraph applies to the following tariff items: 1006109000, 1006200000, 1006300000 and 1006400000.

(g) customs duties on originating goods provided for in the items in staging category "TRQ SH" (Sorghum) are exempt from tariff elimination. Notwithstanding the above, Peru shall allow duty-free imports (ad valorem duties and the specific duties derived from the application of the Peruvian Price Band System established in the Supreme Decree N° 115-2001-EF and its amendments will not be applied) for an aggregate quota in any calendar year specified herein, and shall not exceed the quantity specified below for Peru in each such year:

Year	**Quantity (Metric Tons)**
1	15,000
2	16,250
3	17,500
4	18,750
5 and subsequent years	20,000

The quantities shall enter on a first-come, first-served basis. This paragraph applies to the following tariff item: 1007900000.

(h) customs duties on originating goods provided for in the items in staging category "X" are exempt from tariff elimination.

Chapter 3. Rules of Origin and Origin Procedures

Section A. Rules of Origin

Article 3.1. Definitions

For the purposes of this Chapter:

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

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

Generally Accepted Accounting Principles means those principles recognised by consensus or with substantial authoritative support in the territory of a Party with respect to the recording of revenues, expenses, costs, assets and liabilities; the disclosure of information; and the preparation of financial statements. These principles may encompass broad guidelines for general application, as well as detailed standards, practices and procedures;

good means any merchandise, product, article or material;

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

(a) fuel, energy, catalysts and solvents;

(b) equipment, devices and supplies used to test or inspect the good;

(c) gloves, glasses, footwear, clothing, safety equipment and supplies;

(d) tools, dies and moulds;

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

(f) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings; and

(g) any other material that is not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production;

material means a good that is used in the production of another good;

non-originating good or **non-originating material** means a good or material that does not qualify as originating in accordance with this Chapter;

originating good or **originating material** means a good or material that qualifies as originating in accordance with this Chapter;

packing materials and containers for shipment means goods used to protect another good during its transportation, but does not include the packaging materials or containers in which a good is packaged for retail sale;

producer means a person who engages in the production of a good;

production means operations including growing, cultivating, raising, mining, harvesting, fishing, trapping, hunting, capturing, collecting, breeding, extracting, aquaculture, gathering, manufacturing, processing or assembling a good;

transaction value means the price actually paid or payable for the good when sold for export or other value determined in accordance with the Customs Valuation Agreement; and

value of the good means the transaction value of the good excluding any costs incurred in the international shipment of the good.

Article 3.2. Originating Goods

Except as otherwise provided in this Chapter, each Party shall provide that a good is originating if it is:

(a) wholly obtained or produced entirely in the territory of one or both Parties as established in Article 3.3;

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

(c) produced entirely in the territory of one or both Parties using non-originating materials provided the good satisfies all applicable requirements of Annex 3- B,

and the good satisfies all other applicable requirements of this Chapter.

Article 3.3. Wholly Obtained or Produced Goods

Each Party shall provide that for the purposes of Article 3.2, a good is wholly obtained or produced entirely in the territory of one or both Parties if it is:

(a) a plant or plant good, grown, cultivated, harvested, picked or gathered there;

(b) a live animal born and raised there;

(c) a good obtained from a live animal there;

(d) an animal obtained by hunting, trapping, fishing, gathering or capturing there;

(e) a good obtained from aquaculture there;

(f) a mineral or other naturally occurring substance, not included in subparagraphs (a) through (e), extracted or taken from there;

(g) fish, shellfish, other goods of sea-fishing and other marine life taken from the sea, seabed or subsoil outside the territories of the Parties and, in accordance with international law, outside the territorial sea of non-Parties (1) by vessels that are registered or recorded with a Party and entitled to fly the flag of that Party;

(h) a good produced from goods referred to in subparagraph (g) on board a factory ship that is registered or recorded with a Party and entitled to fly the flag of that Party;

(i) a good other than fish, shellfish, other goods of sea-fishing and other marine life taken by a Party or a person of a Party from the seabed or subsoil outside the territories of the Parties, and beyond areas over which non-Parties exercise jurisdiction provided that Party or person of that Party has the right to exploit that seabed or subsoil in accordance with international law;

(j) a good that is:

(i) waste or scrap derived from production there, provided that such goods are fit only for the recovery of raw materials; or

(ii) waste or scrap derived from used goods collected there, provided that those goods are fit only for the recovery of raw materials; and

(k) a good produced there, exclusively from goods referred to in subparagraphs (a) through (j), or from their derivatives.

(1) Nothing in this Chapter shall prejudice the positions of the Parties with respect to matters relating to the law of the sea.

Article 3.4. Regional Value Content

Each Party shall provide that a regional value content requirement specified in this Chapter, including Annex 3-B, to determine whether a good is originating, is calculated as follows:

(a) build-down method: based on the value of non-originating materials:

RVC = Value of the Good - VNM x100

Value of the Good

(b) build-up method: based on the value of originating materials:

RVC = VOM x100

Value of the Good

where:

RVC is the regional value content of a good, expressed as a percentage;

VNM is the value of non-originating materials, including materials of undetermined origin, used in the production of the good;

VOM is the value of originating materials used in the production of the good in the territory of one or both Parties.

2. Each Party shall provide that all costs considered for the calculation of regional value content are recorded and maintained in conformity with the Generally Accepted Accounting Principles applicable in the territory of the Party where the good is produced.

Article 3.5. Materials Used In Production

1. Each Party shall provide that if a non-originating material undergoes further production such that it satisfies the requirements of this Chapter, the material is treated as originating when determining the originating status of the subsequently produced good, regardless of whether that material was produced by the producer of the good.

2. Each Party shall provide that if a non-originating material is used in the production of a good, the following may be counted as originating content for the purpose of determining whether the good meets a regional value content requirement:

(a) the value of processing of the non-originating materials undertaken in the territory of one or both Parties; and

(b) the value of any originating material used in the production of the non- originating material undertaken in the territory of one or both Parties.

Article 3.6. Value of Materials Used In Production

Each Party shall provide that for the purposes of this Chapter, the value of a material is:

(a) for a material imported by the producer of the good, the transaction value of the material at the time of importation, including the costs incurred in the international shipment of the material;

(b) for a material acquired in the territory where the good is produced:

(i) the price paid or payable by the producer in the Party where the producer is located;

(ii) the value as determined for an imported material in subparagraph (a); or

(iii) the earliest ascertainable price paid or payable in the territory of the Party; or

(c) for a material that is self-produced:

(i) all the costs incurred in the production of the material, which includes general expenses; and

(ii) an amount equivalent to the profit added in the normal course of trade,

or equal to the profit that is usually reflected in the sale of goods of the same class or kind as the self-produced material that is being valued.

Article 3.7. Further Adjustments to the Value of Materials

1. Each Party shall provide that for an originating material, the following expenses may be added to the value of the material, if not included under Article 3.6:

(a) the costs of freight, insurance, packing and all other costs incurred to transport the material within the territories of the Parties to the location of the producer of the good;

(b) duties, taxes and customs brokerage fees on the material, paid in the territory of one or both Parties, other than duties

and taxes that are waived, refunded, refundable or otherwise recoverable, which include credit against duty or tax paid or payable; and

(c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by-product.

2. Each Party shall provide that, for a non-originating material or material of undetermined origin, the following expenses may be deducted from the value of the material:

(a) the costs of freight, insurance, packing and all other costs incurred in transporting the material within the territories of the Parties to the location of the producer of the good;

(b) duties, taxes and customs brokerage fees on the material paid in the territory of one or both Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, which include credit against duty or tax paid or payable; and

(c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by-product.

3. If the cost or expense listed in paragraph 1 or 2 is unknown or documentary evidence of the amount of the adjustment is not available, then no adjustment is allowed for that particular cost.

Article 3.8. Accumulation

1. Originating goods or materials of a Party, incorporated into a good in the territory of the other Party, shall be considered to be originating in the territory of the other Party.

2. A good shall be considered originating where the good is produced in the territory of one or both Parties by one or more producers, provided that the good satisfies the requirements established in Article 3.2 and all other applicable requirements in this Chapter.

Article 3.9. De Minimis

1. Each Party shall provide that a good that contains non-originating materials that do not satisfy the applicable change in tariff classification requirement specified in Annex 3-B for the good is nonetheless an originating good if:

(a) the value of all these materials does not exceed 10 per cent of the value of the good, as defined under Article 3.1, or

(b) the good is classified in Chapters 50 through 63 of the Harmonized System, the total weight of all such materials does not exceed 10 per cent of the total weight of the good,

and the good meets all the other applicable requirements of this Chapter.

2. Paragraph 1 shall apply only when using a non-originating material in the production of another good.

3. If a good described in paragraph 1 is also subject to a regional value content requirement, the value of those non-originating materials shall be included in the value of non-originating materials for the applicable regional value content requirement.

Article 3.10. Fungible Goods or Materials

Each Party shall provide that a fungible good or material is treated as originating based on the:

(a) physical segregation of each fungible good or material; or

(b) use of any inventory management method recognised in the Generally Accepted Accounting Principles if the fungible good or material is commingled, provided that the inventory management method selected is used throughout the fiscal year of the person that selected the inventory management method.

Article 3.11. Accessories, Spare Parts, Tools and Instructional or other Information Materials

1. Each Party shall provide that:

(a) in determining whether a good is wholly obtained or satisfies a process or change in tariff classification requirement as set out in Annex 3-B, accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, are to be disregarded; and

(b) in determining whether a good meets a regional value content requirement, the value of the accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, are to be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

2. Each Party shall provide that a good's accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, have the originating status of the good with which they are delivered.

3. For the purposes of this Article, accessories, spare parts, tools, and instructional or other information materials are covered when:

(a) the accessories, spare parts, tools and instructional or other information materials are classified with, delivered with but not invoiced separately from the good; and

(b) the types, quantities and value of the accessories, spare parts, tools and instructional or other information materials are customary for that good.

Article 3.12. Packaging Materials and Containers for Retail Sale

1. Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale, if classified with the good, are disregarded in determining whether all the non-originating materials used in the production of the good have satisfied the applicable process or change in tariff classification requirement set out in Annex 3-B or whether the good is wholly obtained or produced entirely.

2. Each Party shall provide that if a good is subject to a regional value content requirement, the value of the packaging materials and containers in which the good is packaged for retail sale, if classified with the good, are taken into account as originating or non-originating, as the case may be, in calculating the regional value content of the good.

Article 3.13. Packing Materials and Containers for Shipment

Each Party shall provide that packing materials and containers for shipment are disregarded in determining whether a good is originating.

Article 3.14. Indirect Materials

Each Party shall provide that an indirect material is considered to be originating without regard to where it is produced.

Article 3.15. Sets of Goods

1. Each Party shall provide that for a set classified as a result of the application of rule 3(a) or (b) of the General Rules for the Interpretation of the Harmonized System, the originating status of the set shall be determined in accordance with the product-specific tule of origin that applies to the set.

2. Each Party shall provide that for a set classified as a result of the application of rule 3(c) of the General Rules for the Interpretation of the Harmonized System, the set is originating only if each good in the set is originating and both the set and the goods meet the other applicable requirements of this Chapter.

3. Notwithstanding paragraph 2, for a set classified as a result of the application of tule 3(c) of the General Rules for the Interpretation of the Harmonized System, the set is originating if the value of all the non-originating goods in the set does not exceed 20 per cent of the value of the set.

4. For the purposes of paragraph 3, the value of the non-originating goods in the set and the value of the set shall be calculated in the same manner as the value of non- originating materials and the value of the good.

Article 3.16. Transport Through Non- Parties

Each Party shall provide that if an originating good is transported from the exporting Party to the importing Party through the territory of one or more non-Parties, the good retains its originating status provided that the good does not undergo

subsequent production or any other operation in non-Parties, other than unloading, reloading, storing, separating from a bulk shipment, labelling or any other operation necessary to preserve it in good condition or to transport the good to the territory of the importing Party and the good remains under customs control in the territory of that or those non-Parties.

Section B. Origin Procedures

Article 3.17. Claims for Preferential Treatment

1. Each Party shall provide that an importer may make a claim for preferential tariff treatment, based on certificate of origin completed by the exporter, producer, or an authorised representative of the exporter or producer.

2. Each Party shall provide that the certificate of origin:

(a) need not follow a prescribed format;

(b) be in writing;

(c) specifies that the good is both originating and meets the requirements of this Chapter;

(d) contains a set of data requirements as set out in Annex 3-A; and

(e) be in English or in Spanish. The importing Party may require the importer to submit a translation in the language of the importing Party.

3. Each Party shall provide that a certificate of origin may apply to: (a) asingle shipment of a good into the territory of a Party; or (b) multiple shipments of identical goods within any period specified in the certificate of origin, from or after the date of issuance but not exceeding the period of validity of the certificate.

4. Each Party shall provide that the certificate of origin is valid for one year after the date that it was issued or for such longer period specified by the laws and regulations of the importing Party.

Article 3.18. Basis of a Certificate of Origin

1. Each Party shall provide that if a producer certifies the origin of a good, the certificate of origin is completed on the basis of the producer having information that the good is originating.

2. Each Party shall provide that if the exporter is not the producer of the good, the certificate of origin may be completed by the exporter of the good on the basis of:

(a) the exporter having information that the good is originating; or

(b) reasonable reliance on the producer's information that the good is originating.

3. Each Party shall provide that a certificate of origin may be completed by an authorised representative of an exporter or producer of the good on the basis of reasonable reliance on supporting documentation provided by the exporter or producer that the good is originating.

4. For greater certainty, nothing in paragraph 1 or 2 shall be construed to allow a Party to require an exporter or producer to complete or provide a certificate of origin to another person.

Article 3.19. Discrepancies and Minor Errors

Each Party shall provide that it shall not reject a certificate of origin due to minor errors contained in it, such as typing errors, or discrepancies with other documentation (2), provided the errors or discrepancies do not cast doubt on the origin of the good.

(2) For greater certainty, a difference between the HS code on the certificate of origin and the import declaration would not constitute a minor error.

Article 3.20. Waiver of Certificate of Origin

Neither Party shall require a certificate of origin if:

(a) the customs value of the importation does not exceed AUD $1000 for Australia or US $800 for Peru, or any higher amount as the importing Party may establish; or

(b) itis a good for which the importing Party has waived the requirement or does not require the importer to present a certificate of origin,

provided that the importation does not form part of a series of importations carried out or planned for the purpose of evading compliance with the importing Party's laws governing claims for preferential tariff treatment under this Agreement.

Article 3.21. Obligations Relating to Importation

1. Except as otherwise provided for in this Chapter, each Party shall provide that, for the purpose of claiming preferential tariff treatment, the importer shall:

(a) declare that the good qualifies as an originating good;

(b) have valid a certificate of origin in its possession at the time the declaration referred to in subparagraph (a) is made;

(c) provide a copy of the certificate of origin to the importing Party if required by the Party; and

(d) if required by a Party to demonstrate that the requirements in Article 3.16 have been satisfied, provide transport documents, and in the case of storage, additional relevant documents, such as storage or customs documents. If the good has been transported directly from the territory of the exporting Party to the importing Party nothing shall prevent a Party from requiring the importer to present transport documents which show that the good has been transported from the territory of the exporting Party to the importing Party.

2. Each Party shall provide that, if the importer has reason to believe that the certificate of origin is based on incorrect information that could affect the accuracy or validity of the certificate of origin, the importer shall correct the importation document and pay any customs duty and, if applicable, penalties owed.

3. Neither Party shall subject an importer to a penalty for making an invalid claim for preferential tariff treatment if the importer, on becoming aware that such a claim is not valid and prior to discovery of the error by that Party, voluntarily corrects the claim and pays any applicable customs duty under the circumstances provided for in the Party's law.

Article 3.22. Record Keeping Requirements

1. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the territory of that Party shall maintain documentation related to the importation, including the certificate of origin that served as the basis for the claim, for a period of no less than five years from the date of importation of the good.

2. Each Party shall provide that a producer or exporter in its territory that provides a certificate of origin shall maintain all records necessary to demonstrate that a good for which the exporter or producer provided the certificate of origin is originating, for a period of no less than five years from the date the certificate of origin was issued.

(a) be in English or in the official language of the Party of the person to whom the request is made;

(b) include the identity of the government authority issuing the request;

(c) state the reason for the request, including the specific issue the requesting Party seeks to resolve with the verification;

(d) include sufficient information to identify the good that is being verified;

(e) include a copy of relevant information submitted with the good, including the certificate of origin; and

(f) in the case of a verification visit, request the written consent of the exporter or producer whose premises are going to be visited, and state the proposed date and location for the visit and its specific purpose.

5. If the importing Party has initiated a verification in accordance with paragraph 1(b) or 1(c), it shall inform the importer of the initiation of the verification.

6. For a verification under paragraphs 1(a) through 1(c), the importing Party shall:

(a) ensure that a written request for information or for documentation to be reviewed during a verification visit, is limited to information and documentation to determine whether the good is originating;

(b) describe the information or documentation in sufficient detail to allow the importer, exporter or producer to identify the information and documentation necessary to respond;

(c) allow the importer, exporter or producer at least 45 days from the date of receipt of the written request for information under paragraph 1(a) or 1(b) to respond;

(d) allow the exporter or producer 30 days from the date of receipt of the written request for a visit under paragraph 1(c) to consent or refuse the request; and

(e) make a determination following a verification as expeditiously as possible and no later than 90 days after it receives the information necessary to make the determination, including, if applicable, any information received under paragraph 9, and no later than 365 days after the first request for information or other action under paragraph 1.

7. If the importing Party makes a verification request for information from an exporter or producer under paragraph 1(b), it shall inform the exporting Party. In addition, on request of the importing Party, the exporting Party may, as it deems appropriate and in accordance with its laws and regulations, assist with the verification. This assistance may include providing a contact point for the verification, collecting information from the exporter or producer on behalf of the importing Party, or other activities in order that the importing Party may make a determination as to whether the good is originating. The importing Party shall not deny a claim for preferential tariff treatment solely on the ground that the exporting Party did not provide requested assistance.

8. If the importing Party initiates a verification under paragraph 1(c), it shall, at the time of the request for the visit, inform the Party where the exporter or producer is located and provide the opportunity for the officials of the Party where the exporter or producer is located to accompany them during the visit.

9. Prior to issuing a written determination, the importing Party shall inform the importer and the exporter or producer that provided information directly to the importing Party, of the results of the verification and, if the importing Party intends to deny preferential tariff treatment, provide those persons a period of at least 30 days for the submission of additional information relating to the origin of the good.

10. The importing Party shall:

(a) provide the importer with a written determination of whether the good is originating that includes the basis for the determination; and

(b) provide the importer, exporter or producer that provided information during the verification or to the exporter or the producer that certified that the good was originating with the results of the verification and the reasons for that result.

11. During verification, the importing Party shall allow the release of the good, subject to payment of duties or provision of security as provided for in its law. If as a result of the verification the importing Party determines that the good is an originating good, it shall grant preferential tariff treatment to the good and refund any excess duties paid or release any security provided, unless the security also covers other obligations.

12. If verifications of identical goods by a Party indicate a pattern of conduct (3) by an importer, exporter or producer of false or unsupported representations, statements, declarations or certificates relevant to a claim that a good imported into its territory qualifies as an originating good, the Party may withhold preferential tariff treatment to identical goods imported, exported or produced by that person until that person demonstrates that the identical goods qualify as originating. For the purposes of this paragraph, "identical goods" means goods that are the same in all respects relevant to the particular rule of origin that qualifies the goods as originating.

13. For the purpose of a verification request, it is sufficient for a Party to rely on the contact information of an exporter, producer or importer in a Party provided in a certificate of origin.

(3) Pattern of conduct means a series of acts over a period of time, however short, evidencing a breach of the provisions of this Chapter.

Article 3.24. Determinations on Claims for Preferential Tariff Treatment

1. Except as otherwise provided in paragraph 2, each Party shall grant a claim for preferential tariff treatment made in accordance with this Chapter on or after the date of entry into force of this Agreement.

2. The importing Party may deny a claim for preferential tariff treatment if:

(a) it determines that the good does not qualify for preferential treatment;

(b) pursuant to a verification under Article 3.23, it has not received sufficient information to determine that the good qualifies as originating;

(c) the exporter, producer or importer fails to respond to a written request for information in accordance with Article 3.23;

(d) after receipt of a written notification for a verification visit, the exporter or producer does not provide its written consent in accordance with Article 3.23;

(e) the importer, exporter or producer fails to comply with the requirements of this Chapter; or

(f) the goods entered into home consumption of a Party before entry into force of the Agreement.

3. If the importing Party denies a claim for preferential tariff treatment, it shall issue a determination to the importer that includes the reasons for the determination.

4. A Party shall not reject a claim for preferential tariff treatment for the sole reason that the invoice was issued in a non-Party, provided that the good covered by the certificate of origin corresponds to that described in any other documentation submitted to the importing Party.

Article 3.25. Refunds and Claims for Preferential Tariff Treatment after Importation

1. Each Party shall provide that an importer may apply for preferential tariff treatment and a refund of any excess duties paid for a good, provided that the good would have qualified for preferential tariff treatment when it was imported into the territory of the Party.

2. As a condition for preferential tariff treatment under paragraph 1, the importing Party may require that the importer:

(a) make aclaim for preferential tariff treatment;

(b) provide a statement that the good was originating at the time of importation;

(c) provide a copy of the certificate of origin; and

(d) provide such other documentation relating to the importation of the good as the importing Party may require,

no later than one year after the date of importation or within a longer period if specified in the laws or regulations of the importing Party.

Article 3.26. Penalties

A Party may establish or maintain appropriate penalties for violations of its laws and regulations related to this Chapter.

Article 3.27. Confidentiality

Each Party shall maintain the confidentiality of the information collected in accordance with this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the person providing the information.

ANNEX 3-A. Data requirements

A certificate of origin that is the basis for a claim for preferential tariff treatment under this Agreement shall include, at a minimum, the following elements:

1. Exporter, producer, or the authorised representative of the exporter or producer as certifier of the certificate of origin

Indicate whether the certifier is the exporter, producer, or both. In the case of an authorised representative, indicate whether the certificate has been completed on behalf of the exporter, producer, or both, in accordance with Article 3.17.

2. Certifier

Provide the certifier's name, address (including country), telephone number and e- mail address. The address of the certifier shall be in the exporting Party.

3. Exporter

Provide the exporter's name, address (including country), e-mail address and telephone number if different from the certifier. This information is not required if the producer is completing the certificate of origin and does not know the identity of the exporter. The address of the exporter shall be in the exporting Party.

4. Producer

Provide the producer's name, address (including country), e-mail address and telephone number, if different from the certifier or exporter or, if there are multiple producers, state "Various" or provide a list of producers. A person that wishes for this information to remain confidential may state "Available upon request by the importing authorities". The address of a producer shall be in the exporting Party.

5. Importer

Provide the importer's name, address (including country), e-mail address and telephone number. The address of the importer shall be in the importing Party.

6. Description and HS tariff classification of the good

Provide a description of the good and the HS tariff classification of the good to the 6-digit level. The description may include number and kinds of packages, marks and numbers on the packages, invoice number (s) and date (s), or sufficient details to identify the good.

If the certificate of origin covers a single shipment of a good, indicate the invoice number and date related to the exportation.

7. Origin criterion

Specify the rule of origin under which the good qualifies according to Article 3.2.

8. Blanket period

Indicate the period if the certificate of origin covers multiple shipments of identical goods for a specified period of up to 12 months as set out in Article 3.17.3.

9. Authorised signature and date

If the exporter or producer is the certifier, the certificate of origin must be signed, dated and accompanied by the following statement:

I certify that the goods described in this document qualify as originating according to the Free Trade Agreement between Australia and Peru and the information contained in this document is true and accurate. I assume responsibility for proving such representations and agree to maintain and present upon request or to make available during verification, documentation necessary to support this certificate.

If the authorised representative is the certifier, the certificate of origin must be signed, dated and accompanied by the following statement:

I certify that the goods described in this document qualify as originating according to the Free Trade Agreement between Australia and Peru and the information contained in this document is true and accurate. The exporter or the producer, as the case may be, assumes responsibility for providing such representations and agrees to maintain and present upon request or to make available during verification, documentation necessary to support this certificate.

ANNEX 3-B. Product-specific rules of origin

Section A. General Interpretative Notes

For the purpose of interpreting the product-specific rules of origin in this Annex:

(a) the product-specific rule of origin that applies to a subheading is set out immediately adjacent to it;

(b) the product-specific rules of origin apply to goods in which production process non-originating materials have been used, as defined in Article 3.2 (c);

(c) the following definitions shall apply to this Annex:

(i) **CC** means Change of Chapter (non-originating materials must be classified in a different chapter (2 digits) from the classification of the good);

(ii) **CTH** means Change of Heading (non-originating materials must be classified in a heading (4 digits) different from the classification of the good);

(iii) **CTSH** means Change of Subheading (non-originating materials must be classified in a different subheading (6 digits) from the classification of the good); and

(iv) **RVC** means Regional Value Content, as established in Article 3.4;

(d) in the case of Regional Value Content, when a specific percentage is included in the product-specific rule of origin, it may be calculated under the build-up or build-down method;

(e) where a product-specific rule of origin is defined by a criterion of change of tariff classification accompanied by the expression "except", it shall be construed to mean that the product-specific rule of origin requires that the excluded materials be originating for the good to be originating;

(f) if a good is subject to a product-specific rule of origin that includes multiple requirements, the good shall be originating only if it satisfies all of the requirements;

(g) section, chapter or heading notes, where applicable, are found at the beginning of the relevant section or at the beginning of each chapter, and are read in conjunction with the product-specific rule of origin and may impose further conditions on, or provide an alternative to, the product-specific rule of origin; and

(h) for the purposes of determining whether a good classified in Chapters 61 through 63 is originating under Article 3.2(c), a material classified in headings 51.06, 51.07, 51.11 or 51.12 shall be consider originating provided that the material contains 100 per cent by weight of merino wool and this wool is finer than 17 microns. When this subparagraph is applied, the good shall meet the relevant product-specific rule of origin and a regional value content of not less than 60 per cent.

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(f) if a good is subject to a product-specific rule of origin that includes multiple requirements, the good shall be originating only if it satisfies all of the requirements;

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(h) for the purposes of determining whether a good classified in Chapters 61 through 63 is originating under Article 3.2(c), a material classified in headings 51.06, 51.07, 51.11 or 51.12 shall be consider originating provided that the material contains 100 per cent by weight of merino wool and this wool is finer than 17 microns. When this subparagraph is applied, the good shall meet the relevant product-specific rule of origin and a regional value content of not less than 60 per cent.

Chapter 4. Customs Administration and Trade Facilitation

Article 4.1. Customs Procedures

Each Party shall ensure that its customs procedures are applied in a manner that is predictable, consistent and transparent.

Article 4.2. Cooperation

1. With a view to facilitating the effective operation of this Agreement, each Party shall:

(a) encourage cooperation with the other Party regarding significant customs issues that affect goods traded between the Parties; and

(b) endeavour to provide the other Party with advance notice of any significant administrative change, modification of a law or regulation, or similar measure related to its laws or regulations that governs importations, exportations or transit, that is likely to substantially affect the operation of this Agreement.

2. Each Party shall, in accordance with its law, cooperate with the other Party through information sharing and other activities as appropriate, to achieve compliance with their respective laws and regulations that pertain to:

(a) the implementation and operation of the provisions of this Agreement governing importations, exportations or transit, including claims for preferential tariff treatment, procedures for making claims for preferential tariff treatment and verification procedures;

(b) the implementation, application and operation of the Customs Valuation Agreement;

(c) restrictions or prohibitions on imports, exports or transit;

(d) investigation and prevention of customs offences, including duty evasion and smuggling; and

(e) other customs matters as the Parties may decide.

3. If a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importations, exportations or transit, it may request that the other Party provide specific confidential information that is normally collected in connection with the importation, exportation or transit of goods.

4. If a Party makes a request under paragraph 3, it shall:

(a) be in writing;

(b) specify the purpose for which the information is sought; and

(c) identify the requested information with sufficient specificity for the other Party to locate and provide the information.

5. The Party from which the information is requested under paragraph 3 shall, subject to its law and any relevant international agreements to which it is a party, provide a written response containing the requested information.

6. For the purposes of paragraph 3, "a reasonable suspicion of unlawful activity" means a suspicion based on relevant factual information obtained from public or private sources comprising one or more of the following:

(a) historical evidence of non-compliance with laws or regulations that govern importations, exportations and transit by an importer or exporter;

(b) historical evidence of non-compliance with laws or regulations that govern importations, exportations and transit by a manufacturer, producer or other person involved in the movement of goods from the territory of a Party to the territory of the other Party;

(c) historical evidence of non-compliance with laws or regulations that govern importations by some or all of the persons involved in the movement of goods within a specific product sector from the territory of a Party to the territory of the other Party; or

(d) other information that the Parties agree is sufficient in the context of a particular request.

7. Each Party shall endeavour to provide the other Party with any other information that would assist that Party to determine whether imports from, or exports to, that Party are in compliance with the receiving Party's laws or regulations that govern importations, exportations and transit, in particular those related to unlawful activities, including smuggling and similar infractions.

8. In order to facilitate trade between the Parties, a Party receiving a request shall endeavour to provide the other Party with technical advice and assistance for the purpose of:

(a) developing and implementing improved best practices and risk management techniques;

(b) facilitating the implementation of international supply chain standards;

(c) simplifying and enhancing procedures for clearing goods through customs in a timely and efficient manner;

(d) developing the technical skill of customs personnel; and

(e) enhancing the use of technologies that can lead to improved compliance with the requesting Party's laws or regulations that govern importations, exportations and transit.

9. The Parties shall endeavour to establish or maintain channels of communication for cooperation, including by establishing contact points in order to facilitate the rapid and secure exchange of information and improve coordination on importation issues.

Article 4.3. Advance Rulings

1. Each Party shall issue, prior to the importation of a good of the other Party into its territory, a written advance ruling at the written request of an importer in its territory, or an exporter or producer in the territory of the other Party,(1) with regard to: (2)

(a) tariff classification;

(b) the application of customs valuation criteria for a particular case in accordance with the Customs Valuation Agreement;

(c) whether a good is originating in accordance with Chapter 3 (Rules of Origin and Origin Procedures); and

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

2. Each Party shall issue an advance ruling as expeditiously as possible and in no case later than 150 days after it receives a request, provided that the requester has submitted all the information that the receiving Party requires to make the advance ruling. This includes a sample of the good for which the requester is seeking an advance ruling if requested by the receiving Party.

3. In issuing an advance ruling, the Party shall take into account the facts and circumstances that the requester has provided. For greater certainty, a Party may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of administrative or judicial review. A Party that declines to issue an advance ruling shall promptly notify the requester in writing, setting out the relevant facts and circumstances and the basis for its decision to decline to issue the advance ruling.

4. Each Party shall provide that its advance rulings shall take effect on the date that they are issued or on another date specified in the ruling, and remain in effect for at least three years, provided that the law, facts and circumstances on which the ruling is based remain unchanged. If a Party's law provides that an advance ruling becomes ineffective after a fixed period of time, that Party shall endeavour to provide procedures that allow the requester to renew the ruling expeditiously before it becomes ineffective, in situations in which the law, facts and circumstances on which the ruling was based remain unchanged.

5. After issuing an advance ruling, the Party may modify or revoke the advance ruling if there is a change in the law, facts or circumstances on which the ruling was based, if the ruling was based on inaccurate or false information, or if the ruling was in error.

6. A Party may apply a modification or revocation in accordance with paragraph 4 after it provides notice of the modification or revocation and the reasons for it.

7. Neither Party shall apply a revocation or modification retroactively to the detriment of the requester unless the ruling was based on inaccurate or false information provided by the requester.

8. Each Party shall ensure that requesters have access to administrative review of advance rulings.

9. Subject to any confidentiality requirements in its law, each Party shall endeavour to make its advance rulings publicly available, including online.

(1) For greater certainty, an importer, exporter or producer may submit a request for an advance ruling through a duly authorised representative.

(2) For greater certainty, a Party is not required to provide an advance ruling when it does not maintain measures of the type subject to the ruling request.

Article 4.4. Response to Requests for Advice or Information

On request from an importer in its territory, or an exporter or producer in the territory of the other Party, a Party shall expeditiously provide advice or information relevant to the facts contained in the request on:

(a) the requirements for qualifying for quotas, such as tariff rate quotas;

(b) the application of duty drawback, deferral or other types of relief that reduce, tefund or waive customs duties;

(c) the eligibility requirements for goods under Article 2.6 (Goods Re-entered after Repair and Alteration);

(d) country of origin marking, if it is a prerequisite for importation; and

(e) other matters as the Parties may decide.

Article 4.5. Review and Appeal

1. Each Party shall ensure that any person to whom it issues a determination (3) on a customs matter has access to:

(a) administrative review of the determination, independent (4) of the employee or office that issued the determination; and

(b) judicial review of the determination.

2. Each Party shall ensure that an authority that conducts a review under paragraph 1 notifies the parties to the matter in writing of its decision and the reasons for the decision. A Party may require a request as a condition for providing the reasons for a decision in the review. Article 4.6: Automation 1. Each Party shall:

(a) endeavour to use international standards with respect to procedures for the release of goods;

(b) make electronic systems accessible to customs users;

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

(d) endeavour to implement common standards and elements for import and export data in accordance with the World Customs Organization (WCO) Data Model;

(e) take into account, as appropriate, WCO standards, recommendations, models and methods developed through the WCO or APEC; and

(f) work toward developing a set of common data elements that are drawn from the WCO Data Model and related WCO recommendations as well as guidelines to facilitate government to government electronic sharing of data for purposes of analysing trade flows.

2. Each Party shall endeavour to provide a facility that allows importers and exporters to electronically complete standardised import and export requirements at a single entry point.

(3) For the purposes of this Article, a determination, if made by Peru, means an administrative act.

(4) The level of administrative review may include any authority supervising the customs administration.

Article 4.7. Express Shipments

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

(a) provide for information necessary to release an express shipment to be submitted and processed before the shipment arrives;

(b) allow a single submission of information covering all goods contained in an express shipment, such as a manifest, through, if possible, electronic means; (5)

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

(d) under normal circumstances, provide for express shipments to be released within six hours after submission of the necessary customs documents, provided the shipment has arrived;

(e) apply to shipments of any weight or value recognising that a Party may require formal entry procedures as a condition for release, including declaration and supporting documentation and payment of customs duties, based on the good's weight or value; and

(f) provide that, under normal circumstances, no customs duties will be assessed on express shipments valued at or below a fixed amount set under the Party's law. (6)

2. If a Party does not provide the treatment in paragraph 1(a) through (f) to all shipments, that Party shall provide a separate (7) and expedited customs procedure that provides that treatment for express shipments.

(5) For greater certainty, additional documents may be required as a condition for release.

(6) Notwithstanding this Article, a Party may assess customs duties, or may require formal entry documents, for restricted or controlled goods, such as goods subject to import licensing or similar requirements.

(7) For greater certainty, "separate" does not mean a specific facility or lane.

Article 4.8. Penalties

Each Party shall adopt or maintain measures that allow for the imposition of a penalty by a Party's customs administration for a breach of its customs laws, regulations or procedural requirements, including those governing tariff classification, customs valuation, country of origin and claims for preferential treatment under this Agreement.

Article 4.9. Risk Management

1. Each Party shall adopt or maintain a risk management system for assessment and targeting that enables its customs administration to focus its inspection activities on high-risk goods and that simplifies the clearance and movement of low-risk goods.

2. In order to facilitate trade, each Party shall periodically review and update, as appropriate, the risk management system specified in paragraph 1.

Article 4.10. Release of Goods

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties. This paragraph shall not require a Party to release a good if its requirements for release have not

been met.

2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures that:

(a) provide for the release of goods within a period no longer than that required to ensure compliance with its customs laws and, to the extent possible, within 48 hours of the arrival of the goods;

(b) provide for the electronic submission and processing of customs information in advance of the arrival of the goods in order to expedite the release of goods from customs control upon arrival;

(c) allow goods to be released at the point of arrival without temporary transfer to warehouses or other facilities; and

(d) allow an importer to obtain the release of goods prior to the final determination of customs duties, taxes and fees by the importing Party's customs administration when these are not determined prior to or promptly upon arrival, provided that the good is otherwise eligible for release and any security required by the importing Party has been provided or payment under protest, if required by a Party, has been made. Payment under protest refers to payment of duties, taxes and fees if the amount is in dispute and procedures are available to resolve the dispute.

3. If a Party allows for the release of goods conditioned on a security, it shall adopt or maintain procedures that:

(a) ensure that the amount of the security is no greater than that required to ensure that obligations arising from the importation of the goods will be fulfilled;

(b) ensure that the security shall be discharged as soon as possible after its customs administration is satisfied that the obligations arising from the importation of the goods have been fulfilled; and

(c) allow importers to provide security using non-cash financial instruments, including, in appropriate cases where an importer frequently enters goods, instruments covering multiple entries.

Article 4.11. Publication

1. Each Party shall make publicly available, including online, its customs laws, regulations, and general administrative procedures and guidelines, to the extent possible in the English language.

2. Each Party shall designate or maintain one or more enquiry points to address enquiries from interested persons concerning customs matters and shall make information concerning the procedures for making such enquiries publicly available online.

3. To the extent possible, each Party shall publish in advance regulations of general application governing customs matters that it proposes to adopt and shall provide interested persons the opportunity to comment before the Party adopts the regulation.

Article 4.12. Confidentiality

1. Ifa Party provides information to the other Party in accordance with this Chapter and designates the information as confidential, the other Party shall keep the information confidential. The Party that provides the information may require the other Party to use it only for the purposes specified in the other Party's request.

2. This Article shall not preclude the use or disclosure of information provided pursuant to this Chapter to the extent such use or disclosure is required by the domestic laws and regulations of the Party of the customs administration receiving the information. Such customs administration shall, whenever possible, give advance notice of any such disclosure to the customs administration providing information.

3. A Party may decline to provide information requested by the other Party if that Party has failed to act in accordance with paragraph 1.

4. Each Party shall adopt or maintain procedures for protecting from unauthorised disclosure confidential information submitted in accordance with the administration of the Party's customs laws, including information the disclosure of which could prejudice the competitive position of the person providing the information.

Chapter 5. Trade Remedies

Section A. Safeguard Measures

Article 5.1. Definitions

For the purposes of this Section:

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

serious injury means a significant overall impairment in the position of a domestic industry;

threat of serious injury means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent;

transition period means, in relation to a particular good, the three-year period beginning on the date of entry into force of this Agreement, except where the tariff elimination for the good occurs over a longer period of time, in which case the transition period shall be the period of the staged tariff elimination for that good; and

transitional safeguard measure means a measure described in Article 5.3.2.

Article 5.2. Global Safeguards

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement, and any other relevant provisions in the WTO Agreement.

2. This Agreement shall not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

Article 5.3. Imposition of Transitional Safeguard Measure

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

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

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

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

(i) the most-favoured-nation applied rate of customs duty in effect at the time the measure is applied; and

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

3. Neither Party shall apply or maintain tariff rate quotas nor quantitative restrictions as transitional safeguard measures.

4. Neither Party shall apply or maintain a transitional safeguard measure to any product imported under a tariff rate quota established by the Party under this Agreement.

5. Neither Party shall apply a transitional safeguard measure against an originating good of the other Party where the exporting Party's share of imports of the originating good in the importing Party does not exceed three per cent.

Article 5.4. Investigation Procedures and Transparency Requirements

A Party shall apply a transitional safeguard measure only following an investigation by the Party's competent authorities in accordance with Article 3 and Article 4.2 of the Safeguards Agreement; to this end, Article 3 and Article 4.2 of the Safeguards Agreement are incorporated into and made part of this Agreement mutatis mutandis.

Article 5.5. Standards for a Transitional Safeguard Measure

1. A Party shall maintain a transitional safeguard measure only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment.

2. That period shall not exceed two years, except that the period may be extended by up to one year if the competent authority of the Party that applies the measure determines, in conformity with the procedures set out in Article 5.4, that the transitional safeguard measure continues to be necessary to prevent or remedy further or ongoing serious injury and to facilitate adjustment.

3. Neither Party shall maintain a transitional safeguard measure beyond the expiration of the transition period.

4. In order to facilitate adjustment in a situation where the expected duration of a transitional safeguard measure is over one year, the Party that applies the measure shall progressively liberalise it at regular intervals during the period of application.

5. On the termination of a transitional safeguard measure, the Party that applied the measure shall apply the rate of customs duty set out in the Party's Schedule to Annex 2-B (Tariff Commitments) as if that Party had never applied the transitional safeguard measure.

6. Neither Party shall apply a transitional safeguard measure more than once on the same good.

Article 5.6. Notification and Consultation

1. A Party shall immediately notify the other Party, in writing, if it:

(a) initiates a transitional safeguard investigation under this Chapter;

(b) makes a finding of serious injury, or threat of serious injury, caused by increased imports, in accordance with Article 5.3;

(c) takes a decision to apply or extend a transitional safeguard measure; and

(d) takes a decision to modify a transitional safeguard measure previously undertaken.

2. A Party shall make available to the other Party a copy of the public version of the report of its competent authorities that is required under Article 5.4.

3. When a Party makes a notification pursuant to paragraph 1(c) that it is applying or extending a transitional safeguard measure, that Party shall include in that notification:

(a) evidence of a serious injury, or threat of serious injury, caused by increased imports of an originating good of the other Party as a result of the reduction or elimination of a customs duty pursuant to this Agreement;

(b) a precise description of the originating good subject to the transitional safeguard measure including its heading or subheading under the HS Code, on which the schedules of tariff commitments in Annex 2-B (Tariff Commitments) are based;

(c) aprecise description of the transitional safeguard measure;

(d) the date of the transitional safeguard measure's introduction, its expected duration and, if applicable, a timetable for progressive liberalisation of the measure; and

(e) in the case of an extension of the transitional safeguard measure, evidence that the domestic industry concerned is adjusting.

4. Onrequest of the Party whose good is subject to a proceeding for the application or extension of a transitional safeguard under this Chapter, the other Party shall enter into consultations with the requesting Party to review a notification under paragraph 1 or any public notice or report that the competent investigating authority issued in connection with that proceeding.

Article 5.7. Compensation

1. A Party applying or extending a transitional safeguard measure shall, in consultation with the other Party, provide mutually agreed trade liberalising compensation in the form of concessions that have substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the transitional safeguard measure. The Party

shall provide an opportunity for those consultations no later than 30 days after the application of the transitional safeguard measure.

2. If the consultations under paragraph 1 do not result in an agreement on trade liberalising compensation within 30 days, a Party against whose good the transitional safeguard measure is applied may suspend the application of substantially equivalent concessions to the trade of the other Party.

3. The Party against whose good the transitional safeguard measure is applied shall notify the other Party in writing at least 30 days before it suspends concessions in accordance with paragraph 2.

4. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 terminates on the termination of the transitional safeguard measure.

Article 5.8. Relation to other Safeguard Measures

Neither Party shall apply or maintain two or more of the following measures, with respect to the same good, at the same time:

(a) a transitional safeguard measure under this Chapter;

(b) asafeguard measure under Article XIX of GATT 1994 and the Safeguards Agreement;

(c) asafeguard measure under the Agreement on Agriculture.

Section B. Antidumping and Countervailing Duties

Article 5.9. Antidumping and Countervailing Duties

1. Each Party retains its rights and obligations under Article VI of GATT 1994 and the WTO Agreement with regard to the application of antidumping and countervailing duties.

2. This Agreement shall not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article VI of GATT 1994 and the WTO Agreement with regard to the application of antidumping and countervailing duties.

3. Neither Party shall have recourse to dispute settlement under Chapter 27 (Dispute Settlement) for any matter arising under this Section.

Chapter 6. Sanitary and Phytosanitary Measures

Article 6.1. Definitions

The definitions in Annex A of the SPS Agreement are incorporated into this Chapter and shall form part of this Chapter, *mutatis mutandis*.

Article 6.2. Scope

This Chapter shall apply to all sanitary and phytosanitary (SPS) measures of a Party that may, directly or indirectly, affect trade between the Parties.

Article 6.3. Reaffirmation of Rights and Obligations Under the Wto

1. Parties reaffirm their rights and obligations under the WTO SPS Agreement.

2. Nothing in this Agreement shall affect the rights and obligations that each Party has under the SPS Agreement. Article 6.4: Objectives

The objectives of this Chapter are to:

(a) protect human, animal or plant life or health in the territories of the Parties while facilitating and expanding trade;

(b) reinforce and build on the SPS Agreement;

(c) strengthen communication, consultation and cooperation between the Parties, their competent authorities and government representatives;

(d) ensure that SPS measures implemented by a Party do not create a disguised restriction on trade;

(e) enhance transparency in, and understanding of, the application of each Party's SPS measures; and

(f) encourage the development and adoption of international standards, guidelines and recommendations, and promote their implementation by the Parties.

Article 6.5. Committee on Sps Measures

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on SPS Measures (Committee), composed of government representatives of each Party responsible for SPS matters.

2. The objectives of the Committee are to:

(a) enhance each Party's implementation of this Chapter;

(b) consider SPS matters of mutual interest; and

(c) enhance communication and cooperation on SPS matters.

3. The Committee:

(a) shall provide a forum to improve the Parties' understanding of SPS issues that relate to the implementation of the WTO SPS Agreement and this Chapter;

(b) shall provide a forum to enhance mutual understanding of each Party's SPS measures and the regulatory processes that relate to those measures;

(c) shall exchange information on the implementation of this Chapter;

(d) shall determine the appropriate means to undertake specific tasks related to the functions of the Committee;

(e) may identify and develop cooperation projects between the Parties on SPS measures;

(f) may serve as a forum for either Party to share information on and discuss an SPS issue that has arise between them; and

(g) may consult on matters and positions for the meetings of the Committee on Sanitary and Phytosanitary Measures established under Article 12 of the SPS Agreement (WTO SPS Committee), and meetings held under the auspices of the Codex Alimentarius Commission, the World Organisation for Animal Health and the International Plant Protection Convention.

4. The Committee shall establish its terms of reference at its first meeting and may revise those terms as needed.

5. The Committee shall meet within one year of the date of entry into force of this Agreement, and on annual basis, unless the Parties agree otherwise. The Committee may meet face to face, via videoconference, teleconference, or any other means as agreed by the Parties.

Article 6.6. Adaptation to Regional Conditions, Including Pest- or Disease-free Areas and Areas of Low Pest or Disease Prevalence

1. The Parties recognise that adaptation to regional conditions is an important means to facilitate trade.

2. The Parties shall take into account the relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

3. The Parties may cooperate on the recognition of pest- or disease-free areas, and areas of low pest or disease prevalence with the objective of acquiring confidence in the procedures followed by each Party for the recognition of pest- or disease-free areas, and areas of low pest or disease prevalence.

4. When the importing Party receives a request for a determination of regional conditions from the exporting Party and determines that the information provided by the exporting Party is sufficient, it shall initiate an assessment within a reasonable period of time.

5. When the importing Party commences an assessment of a request for a determination of regional conditions under paragraph 4, that Party shall promptly, on request of the exporting Party, explain its process for making the determination of regional conditions.

6. On request of the exporting Party, the importing Party shall inform the exporting Party of the status of the assessment of the exporting Party's request for a determination of regional conditions.

7. When the importing Party adopts a measure that recognises specific regional conditions of the exporting Party, the importing Party shall communicate that measure to the exporting Party in writing, and implement the measure within a reasonable period of time.

8. If the evaluation of the information provided by the exporting Party does not result in a determination to recognise regional conditions, the importing Party shall provide the exporting Party with the rationale for its determination.

Article 6.7. Equivalence

1. The Parties acknowledge that recognition of the equivalence of SPS measures is an important means to facilitate trade. Further to Article 4 of the WTO SPS Agreement, the Parties shall apply equivalence to a group of measures or on a systems-wide basis, to the extent feasible and appropriate. In determining the equivalence of a specific SPS measure, group of measures or on a systems-wide basis, each Party shall take into account the relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

2. When an importing Party receives a request for an equivalence assessment and determines that the information provided by the exporting Party is sufficient, it shall initiate the equivalence assessment within a reasonable period of time.

3. In determining the equivalence of an SPS measure, an importing Party shall take into account available knowledge, information and relevant experience, as well as the regulatory competence of the exporting Party.

4. When an importing Party adopts a measure that recognises the equivalence of an exporting Party's specific SPS measure, group of measures or measures on a systems- wide basis, the importing Party shall communicate the measure it has adopted to the exporting Party in writing and implement the measure within a reasonable period of time.

Article 6.8. Science and Risk Analysis

1. The Parties recognise the importance of ensuring that their respective SPS measures are based on scientific principles.

2. Each Party shall ensure that its SPS measures either conform to the relevant international standards, guidelines or recommendations or, if its SPS measures do not conform to international standards, guidelines or recommendations, that they are based on documented and objective scientific evidence that is rationally related to the measures, while recognising the Parties' obligations regarding assessment of risk under Article 5 of the SPS Agreement.

3. Recognising the Parties' rights and obligations under the relevant provisions of the SPS Agreement, nothing in this Chapter shall be construed to prevent a Party from:

(a) establishing the level of protection it determines to be appropriate;

(b) establishing or maintaining an approval procedure that requires a risk analysis to be conducted before the Party grants a product access to its market; or

(c) adopting or maintaining an SPS measure on a provisional basis.

4. Each Party shall conduct its risk analysis in a manner that is documented and that provides the other Party an opportunity to comment, in a manner to be determined by the Party conducting the risk analysis (1).

5. Each Party shall ensure that each risk assessment it conducts is appropriate to the circumstances of the risk at issue and takes into account reasonably available and relevant scientific data, including qualitative and quantitative information.

6. If the importing Party requires a risk analysis to evaluate a request from the exporting Party to authorise importation of a good of that exporting Party, the importing Party shall provide, on request of the exporting Party, an explanation of the information required for the risk assessment. On receipt of the required information from the exporting Party, the importing Party shall endeavour to facilitate the evaluation of the request for authorisation by scheduling work on this request in accordance with the procedures, policies, resources, and laws and regulations of the importing Party.

7. On request of the exporting Party, the importing Party shall inform the exporting Party of the progress of a specific risk

analysis request, and of any delay that may occur during the process.

8. If the importing Party, as a result of a risk analysis, adopts an SPS measure that allows trade to commence or resume, the importing Party shall implement the measure within a reasonable period of time.

(1) For greater certainty, this subparagraph applies only to a risk analysis for a sanitary or phytosanitary measure that constitutes a sanitary or phytosanitary regulation for the purposes of Annex B of the SPS Agreement.

Article 6.9. Transparency

1. The Parties recognise the value of sharing information about their SPS measures on an ongoing basis, and of providing the other Party with the opportunity to comment on their proposed SPS measures.

2. Each Party shall notify the other Party of a proposed SPS measure that may have a significant effect on the trade of the other Party, including any that conforms to international standards, guidelines or recommendations, by using the WTO SPS notification submission system.

3. Unless urgent problems of human, animal or plant life or health protection arise or threaten to arise, or the measure is of a trade-facilitating nature, a Party shall normally allow at least 60 days for interested persons and the other Party to provide written comments on the proposed measure after it makes the notification under paragraph 2. If feasible and appropriate, the Party should allow more than 60 days. The Party shall consider any reasonable request from the other Party to extend the comment period. On request of the other Party, the Party shall respond to the written comments of the other Party in an appropriate manner.

Article 6.10. Contact Points

1. The Parties designate the following contact points on SPS Measures to facilitate communications between the Parties on any matter covered by this Chapter:

(a) for Australia, the Department of Agriculture and Water Resources, or its successor; and

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

2. A Party may request information from the other Party on a matter arising under this Chapter. A Party that receives a request for information shall endeavour to provide available information to the requesting Party within a reasonable period of time, and if possible, by electronic means.

Article 6.11. Cooperation

1. The Parties shall explore opportunities for further cooperation, collaboration and information exchange between the Parties on SPS matters of mutual interest, consistent with this Chapter. Those opportunities may include trade facilitation initiatives and technical assistance. The Parties shall cooperate to facilitate the implementation of this Chapter.

2. The Parties shall give positive consideration to further cooperation through:

(a) exchanging views and information at a bilateral level and in relevant international bodies engaged in food safety and human, animal or plant life or health issues;

(b) facilitating the timely exchange of information on their respective SPS measures; and

(c) promoting the implementation of electronic certification and other technologies to facilitate trade.

3. The Parties shall cooperate and may jointly identify work on SPS matters with the goal of eliminating unnecessary obstacles to trade between the Parties.

Article 6.12. Technical Consultations

1. When a Party considers that an SPS measure of the other Party is or might be inconsistent with this Chapter, such Party may request technical consultations, with the aim of resolving the matter.

2. The technical consultations shall be held within 60 days of receiving the request, unless otherwise agreed by the Parties,

and may be conducted via teleconference, video- conference, or through any other means mutually agreed upon by the Parties.

3. Neither Party shall recourse to dispute settlement under Chapter 27 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 7. Technical Barriers to Trade

Article 7.1. Definitions

1. The definitions of the terms used in this Chapter contained in Annex 1 to the WTO Agreement on Technical Barriers to Trade, set out in Annex 1A to the WTO Agreement, including the chapeau and explanatory notes of Annex 1, are incorporated into, and shall form part of, this Chapter, *mutatis mutandis.*

2. In addition, for the purposes of this Chapter:

mutual recognition agreement means a binding government-to-government agreement for recognition of the results of conformity assessment conducted against the appropriate technical regulations or standards in one or more sectors, including government-to- government agreements to implement the APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment of May 8, 1998 and the Electrical and Electronic Equipment Mutual Recognition Arrangement of July 7, 1999 and other agreements that provide for the recognition of conformity assessment conducted against appropriate technical regulations or standards in one or more sectors;

mutual recognition arrangement means an international or regional arrangement (including a multilateral recognition arrangement) between accreditation bodies recognising the equivalence of accreditation systems (based on peer review) or between conformity assessment bodies recognising the results of conformity assessment; and TBT Agreement means the Agreement on Technical Barriers to Trade, set out in Annex 1A to the WTO Agreement.

Article 7.2. Objective

The objective of this Chapter is to facilitate trade, including by eliminating unnecessary technical barriers to trade, enhancing transparency, and promoting greater regulatory cooperation and good regulatory practice.

Article 7.3. Scope

1. This Chapter shall apply to the preparation, adoption, and application of all standards, technical regulations, and conformity assessment procedures of the central level of government, as defined in the TBT Agreement, that may, directly or indirectly, affect trade in goods between the Parties.

2. Each Party shall take reasonable measures as may be available to it to ensure compliance with this Chapter by regional or local governments and non-governmental bodies within its territory which are responsible for the preparation, adoption and application of technical regulations, standards and conformity assessment procedures.

2. All references in this Chapter to technical regulations, standards and conformity assessment procedures shall be construed to include any amendments to them and any addition to the rules or the product coverage of those technical regulations, standards and procedures, except amendments and additions of an insignificant nature.

3. This Chapter shall not apply to technical specifications prepared by a governmental entity for its production or consumption requirements. These specifications are covered by Chapter 14 (Government Procurement).

4. This Chapter shall not apply to sanitary and phytosanitary measures. These are covered by Chapter 6 (Sanitary and Phytosanitary Measures).

Article 7.4. Affirmation of the Tbt Agreement

The Parties affirm their rights and obligations with respect to each other under the TBT Agreement.

Article 7.5. International Standards, Guides and Recommendations

1. The Parties recognise the important role that international standards, guides and recommendations can play in supporting greater regulatory alignment, good regulatory ptactice and reducing unnecessary barriers to trade.

2. In this respect, and further to Articles 2.4 and 5.4 and Annex 3 of the TBT Agreement, to determine whether there is an international standard, guide or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement, each Party shall apply the Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995 (G/TBT/1/Rev.13), as may be revised, issued by the WTO Committee on Technical Barriers to Trade.

3. The Parties shall cooperate with each other, when feasible and appropriate, to ensure that international standards, guides and recommendations that are likely to become a basis for technical regulations and conformity assessment procedures do not create unnecessary obstacles to international trade.

Article 7.6. Conformity Assessment

1. Further to Article 6.4 of the TBT Agreement, each Party shall accord to conformity assessment bodies located in the territory of the other Party treatment no less favourable than that it accords to conformity assessment bodies located in its own territory. In order to ensure that it accords such treatment, each Party shall apply the same or equivalent procedures, criteria and other conditions to accredit, approve, license or otherwise recognise conformity assessment bodies located in the territory of the other Party that it may apply to conformity assessment bodies in its own territory.

2. Further to Article 9.1 of the TBT Agreement, a Party shall consider adopting measures to approve conformity assessment bodies that have accreditation for the technical regulations or standards of the importing Party, by an accreditation body that is a signatory to an international or regional mutual recognition arrangement. The Parties recognise that these arrangements can address the key considerations in approving conformity assessment bodies, including technical competence, independence, and the avoidance of conflicts of interest.

3. A Party shall publish, preferably by electronic means, any procedures, criteria and other conditions that it may use as the basis for determining whether conformity assessment bodies are competent to receive accreditation, approval, licensing or other recognition, including accreditation, approval, licensing or other recognition granted pursuant to a mutual recognition agreement.

4. If a Party:

(a) accredits, approves, licenses or otherwise recognises a body assessing conformity with a particular technical regulation or standard in its territory, and refuses to accredit, approve, license or otherwise recognise a body assessing conformity with that technical regulation or standard in the territory of the other Party; or

(b) declines to use a mutual recognition arrangement, it shall, on request of the other Party, explain the reasons for its decision.

5. If a Party does not accept the results of a conformity assessment procedure conducted in the territory of the other Party, it shall, on the request of the other Party, explain the reasons for its decision. 6. Further to Article 6.3 of the TBT Agreement, if a Party declines the request of the other Party to enter into negotiations to conclude an agreement for mutual recognition of the results of each other's conformity assessment procedures, it shall, on request of the other Party, explain the reasons for its decision.

Article 7.7. Transparency

1. Each Party shall allow persons of the other Party to participate in the development of technical regulations, standards and conformity assessment procedures by its central government bodies (1) on terms no less favourable than those that it accords to its own persons.

2. Each Party is encouraged to consider methods to provide additional transparency in the development of technical regulations, standards and conformity assessment procedures, including through the use of electronic tools and public outreach or consultations.

3. If appropriate, each Party shall encourage non-governmental bodies in its territory to observe the obligations in paragraphs 1 and 2.

4. Each Party shall publish all proposals for new technical regulations and conformity assessment procedures and proposals for amendments to existing technical regulations and conformity assessment procedures, and all new final technical regulations and conformity assessment procedures and final amendments to existing technical regulations and conformity assessment procedures, of central government bodies.

5. Each Party shall publish preferably by electronic means, in a single official journal or website, all proposals for new

technical regulations and conformity assessment procedures and proposals for amendments to existing technical regulations and conformity assessment procedures, and all new final technical regulations and conformity assessment procedures and final amendments to existing technical regulations and conformity assessment procedures, of central government bodies, that a Party is required to notify or publish under the TBT Agreement or this Chapter, and that may have a significant effect on trade. (2)

6. Each Party shall notify proposals for new technical regulations and conformity assessment procedures that are in accordance with the technical content of relevant international standards, guides or recommendations, if any, and that may have a significant effect on trade, according to the procedures established under Article 2.9 or 5.6 of the TBT Agreement.

7. Notwithstanding paragraph 6, if urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Party, that Party may notify a new technical regulation or conformity assessment procedure that is in accordance with the technical content of relevant international standards, guides or recommendations, if any, upon the adoption of that regulation or procedure, according to the procedures established under Article 2.10 or 5.7 of the TBT Agreement.

8. For the purposes of determining whether a proposed technical regulation or conformity assessment procedure may have a significant effect on trade and should be notified in accordance with Article 2.9, 2.10, 3.2, 5.6, 5.7 or 7.2 of the TBT Agreement or this Chapter, a Party shall consider, among other things, the relevant Decisions and Recommendations Adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995 (G/TBT/1/Rev. 13), as may be revised.

9. A Party that publishes a notice and that files a notification in accordance with Article 2.9, 3.2, 5.6 or 7.2 of the TBT Agreement or this Chapter shall:

(a) include in the notification an explanation of the objectives of the proposal and how it would address those objectives; and

(b) transmit the notification and the proposal electronically to the other Party through their enquiry points established in accordance with Article 10 of the TBT Agreement, at the same time as it notifies WTO Members.

10. Each Party shall normally allow 60 days from the date it transmits a proposal under paragraph 13 for the other Party or an interested person of the other Party to provide comments in writing on the proposal. A Party shall consider any reasonable request from the other Party or an interested person of the other Party to extend the comment period. A Party that is able to extend a time limit beyond 60 days, for example 90 days, is encouraged to do so.

11. Each Party is encouraged to provide sufficient time between the end of the comment period and the adoption of the notified technical regulation or conformity assessment procedure, for its consideration of, and preparation of responses to, the comments received.

12. Each Party shall endeavour to notify the final text of a technical regulation or conformity assessment procedure at the time the text is adopted or published, as an addendum to the original notification of the proposed measure filed under Article 2.9, 3.2, 5.6 or 7.2 of the TBT Agreement or this Chapter.

13. A Party that files a notification in accordance with Article 2.10 or 5.7 of the TBT Agreement and this Chapter shall, at the same time, transmit the notification and text of the technical regulation or conformity assessment procedure electronically to the other Party through the enquiry points referred to in paragraph 9(b).

(1) A Party satisfies this obligation by, for example, providing interested persons a reasonable opportunity to provide comments on the measure it proposes to develop and taking those comments into account in the development of the measure.

(2) For greater certainty, a Party may comply with this obligation by ensuring that the proposed and final measures in this paragraph are published on, or otherwise accessible through, the WTO's official website.

Article 7.8. Compliance Period for Technical Regulations and Conformity Assessment Procedures

1. For the purposes of applying Articles 2.12 and 5.9 of the TBT Agreement the term "reasonable interval" means normally a period of not less than six months, except when this would be ineffective in fulfilling the legitimate objectives pursued by the technical regulation or by the requirements concerning the conformity assessment procedure.

2. If feasible and appropriate, each Party shall endeavour to provide an interval of more than six months between the publication of final technical regulations and conformity assessment procedures and their entry into force.

3. In addition to paragraphs 1 and 2, in setting a "reasonable interval" for a specific technical regulation or conformity assessment procedure, each Party shall ensure that it provides suppliers with a reasonable period of time, under the circumstances, to be able to demonstrate the conformity of their goods with the relevant requirements of the technical regulation or standard by the date of entry into force of the specific technical regulation or conformity assessment procedure. In doing so, each Party shall endeavour to take into account the resources available to suppliers.

Article 7.9. Cooperation and Trade Facilitation

1. Further to Articles 5, 6 and 9 of the TBT Agreement, the Parties acknowledge that a broad range of mechanisms exist to facilitate the acceptance of conformity assessment results. In this regard, a Party may:

(a) implement mutual recognition of the results of conformity assessment procedures performed by bodies located in its territory and the other Party's territory with respect to specific technical regulations;

(b) recognise existing regional and international mutual recognition arrangements between or among accreditation bodies or conformity assessment bodies;

(c) use accreditation to qualify conformity assessment bodies, particularly international systems of accreditation;

(d) designate conformity assessment bodies or recognise the other Party's designation of conformity assessment bodies;

(e) unilaterally recognise the results of conformity assessment procedures performed in the other Party's territory; and

(f) accept a supplier's declaration of conformity.

2. The Parties recognise that a broad range of mechanisms exist to support greater regulatory alignment and to eliminate unnecessary technical barriers to trade, including:

(a) regulatory dialogue and cooperation to, among other things:

(i) exchange information on regulatory approaches and practices;

(ii) promote the use of good regulatory practices to improve the efficiency and effectiveness of technical regulations, standards and conformity assessment procedures;

(iii) provide technical advice and assistance, on mutually agreed terms and conditions, to improve practices related to the development, implementation and review of technical regulations, standards, conformity assessment procedures and metrology; or

(iv) provide technical assistance and cooperation, on mutually agreed terms and conditions, to build capacity and support the implementation of this Chapter;

(b) greater alignment of national standards with relevant international standards, except where inappropriate or ineffective;

(c) facilitation of the greater use of relevant international standards, guides and recommendations as the basis for technical regulations and conformity assessment procedures; and

(d) promotion of the acceptance of technical regulations of the other Party as equivalent.

3. With respect to the mechanisms listed in paragraphs 1 and 2, the Parties recognise that the choice of the appropriate mechanism in a given regulatory context depends on a variety of factors, such as the product and sector involved, the volume and direction of trade, the relationship between Parties' respective regulators, the legitimate objectives pursued and the risks of non-fulfilment of those objectives.

4. The Parties shall strengthen their exchange and collaboration on mechanisms to facilitate the acceptance of conformity assessment results, to support greater regulatory alignment and to eliminate unnecessary technical barriers to trade.

5. A Party shall, on request of the other Party, give due consideration to any sector- specific proposal for cooperation under this Chapter.

6. Further to Article 2.7 of the TBT Agreement, a Party shall, on request of the other Party, explain the reasons why it has not accepted a technical regulation of the other Party as equivalent.

7. The Parties shall encourage cooperation between their respective organisations responsible for standardisation, conformity assessment, accreditation and metrology, whether they are public or private, with a view to addressing issues covered by this Chapter.

Article 7.10. Information Exchange and Technical Discussions

1. A Party may request the other Party to provide information on any matter arising under this Chapter. A Party receiving a request under this paragraph shall provide that information within a reasonable period of time, and if possible, by electronic means.

2. A Party may request technical discussions with the other Party with the aim of resolving any matter that arises under this Chapter.

3. The Parties shall discuss the matter raised within 60 days of the date of the request. If the requesting Party considers that the matter is urgent, it may request that any discussions take place within a shorter time frame. The responding Party shall give positive consideration to that request.

4. The Parties shall endeavour to resolve the matter as expeditiously as possible, recognising that the time required to resolve a matter will depend on a variety of factors, and that it may not be possible to resolve every matter through technical discussions.

5. Unless the Parties agree otherwise, the discussions and any information exchanged in the course of the discussions shall be confidential and without prejudice to the rights and obligations of the Parties under this Agreement, the WTO Agreement or any other agreement to which both Parties are party.

6. Where the Parties have had recourse to technical discussions under paragraph 2, such technical discussions shall constitute consultations under Article 27.5 (Consultations) should a Party request the establishment of a dispute settlement Panel on the matter under Article 27.7 (Establishment of a Panel).

7. Requests for information or technical discussions shall be conveyed through the respective contact points designated pursuant to Article 7.11.

Article 7.11. Contact Points

1. Each Party shall designate and notify a contact point for matters arising under this Chapter, in accordance with Article 26.5 (Contact Points).

2. A Party shall promptly notify the other Party of any change of its contact point or the details of the relevant officials.

The responsibilities of each contact point shall include:

(a) communicating with the other Party's contact points, including facilitating discussions, requests and the timely exchange of information on matters arising under this Chapter;

(b) communicating with and coordinating the involvement of relevant government agencies, including regulatory authorities, in its territory on relevant matters pertaining to this Chapter;

(c) consulting and, if appropriate, coordinating with interested persons in its territory on relevant matters pertaining to this Chapter.

ANNEX 7-A. Wine and distilled spirits

1. This Annex shall apply to wine and distilled spirits. 2. For the purposes of this Annex:

container means any bottle, barrel, cask or other closed receptacle, irrespective of size or of the material from which it is made, used for the retail sale of wine or distilled spirits;

distilled spirits mean a potable alcoholic distillate, including spirits of wine, whiskey, rum, brandy, gin, tequila, mezcal and all dilutions or mixtures of those spirits for consumption;

label means any brand, mark, pictorial or other descriptive matter that is written, printed, stencilled, marked, embossed or impressed on, or firmly affixed to the primary container of wine or distilled spirits;

oenological practices mean winemaking materials, processes, treatments and techniques, but does not include labelling,

bottling or packaging for final sale;

single field of vision means any part of the surface of a primary container, excluding its base and cap, that can be seen without having to turn the container;

supplier means a producer, importer, exporter, bottler or wholesaler; and

wine means a beverage that is produced by the complete or partial alcoholic fermentation exclusively of fresh grapes, grape must, or products derived from fresh grapes in accordance with oenological practices that the country in which the wine is produced authorises under its laws and regulations.

3. Each Party shall make information about its laws and regulations concerning wine and distilled spirits publicly available.

4. A Party may require a supplier to ensure that any statement required by that Party to be placed on a wine or distilled spirits label is:

(a) clear, specific, truthful, accurate and not misleading to the consumer; and

(b) legible to the consumer; and

(c) that such labels be firmly affixed.

5. Ifa Party requires a supplier to indicate information on a distilled spirits label, the Party shall permit the supplier to indicate that information on a supplementary label that is affixed to the distilled spirits container. Each Party shall permit a supplier to affix the supplementary label on the container of the imported distilled spirits after importation but prior to offering the product for sale in the Party's territory, and may require that the supplier affix the supplementary label prior to release from customs. For greater certainty, a Party may require that the information indicated on a supplementary label meet the requirements in paragraph 4.

6. Each Party shall permit the alcoholic content by volume indicated on a wine or distilled spirits label to be expressed by alcohol by volume (alc/vol), for example 12% alc/vol or alcl2%vol, and to be indicated in percentage terms to a maximum of one decimal point, for example 12.1%.

7. Each Party shall permit suppliers to use the term "wine" as a product name. A Party may require a supplier to indicate additional information on a wine label concerning the type, category, class or classification of the wine.

8. With respect to wine labels, each Party shall permit the information set out in subparagraphs 10(a) through (d) to be presented in a single field of vision for a container of wine. If this information is presented in a single field of vision, then the Party's requirements with respect to placement of this information are satisfied. A Party shall accept any of the information that appears outside a single field of vision if that information satisfies that Party's laws, regulations and requirements.

9. Notwithstanding paragraph 8, a Party may require net contents to be displayed on the principal display panel for a subset of less commonly used container sizes if specifically required by that Party's laws or regulations. 10. Ifa Party requires a wine label to indicate information other than:

(a) product name;

(b) country of origin;

(c) net contents; or

(d) alcohol content, it shall permit the supplier to indicate the information on a supplementary label affixed to the wine container. A Party shall permit the supplier to affix the supplementary label on the container of the imported wine after importation but prior to offering the product for sale in the Party's territory, and may require that the supplier affix the supplementary label prior to release from customs. For greater certainty, a Party may require that information on a supplementary label meet the requirements set out in paragraph 4.

11. For the purposes of paragraphs 4, 5 and 10, if there is more than one label on a container of imported wine or distilled spirits, a Party may require that each label be visible and not obscure mandatory information on another label.

12. Each Party shall permit a supplier to place a lot identification code on a wine or distilled spirits container, if the code is clear, specific, truthful, accurate and not misleading, and shall permit the supplier to determine:

(a) where to place the lot identification code on the container, provided that the code does not cover up essential information printed on the label; and

(b) the specific font size, readable phrasing and formatting for the code provided that the lot identification code is legible by physical or electronic means.

13. A Party may impose penalties for the removal or deliberate defacement of any lot identification code provided by the supplier and placed on the container.

14. For wine or distilled spirits with more than 10 per cent alcohol by volume, neither Party shall require a supplier to indicate any of the following information on a wine or distilled spirits container, labels or packaging:

(a) date of production or manufacture;

(b) date of expiration;

(c) date of minimum durability; or

(d) sell by date,

except that a Party may require a supplier to indicate a date of minimum durability or expiration on products that could have a shorter date of minimum durability or expiration than would normally be expected by the consumer because of: their packaging or container, for example bag-in-box wines or individual serving size wines; or the addition of perishable ingredients.

15. Neither Party shall require a supplier to place a translation of a trademark or trade name on a wine or distilled spirits container, label or packaging.

16. Neither Party shall prevent imports of wine from the other Party solely on the basis that the wine label includes the following descriptors or adjectives describing the wine or relating to wine-making: chateau, classic, clos, cream, crusted/crusting, fine, late bottled vintage, noble, reserve, ruby, special reserve, solera, superior, sur lie, tawny, vintage or vintage character.

17. Neither Party shall require a supplier to disclose an oenological practice on a wine label or container except to meet a legitimate human health or safety objective with respect to that oenological practice.

18. Each Party shall endeavour to base its quality and identity requirements for any specific type, category, class or classification of distilled spirits solely on minimum ethyl alcohol content and the raw materials, added ingredients and production procedures used to produce that specific type, category, class or classification of distilled spirits.

19. Neither Party shall require imported wine or distilled spirits to be certified by an official certification body of the Party in whose territory the wine or distilled spirits were produced or by a certification body recognised by the Party in whose territory the wine or distilled spirits were produced regarding:

(a) vintage, varietal and regional claims for wine; or

(b) raw materials and production processes for distilled spirits,

except that the Party may require that wine or distilled spirits be certified regarding (a) or (b) if the Party in whose territory the wine or distilled spirits were produced requires that certification, that wine be certified regarding (a) if the Party has a reasonable and legitimate concern about a vintage, varietal or regional claim for wine, or that distilled spirits be certified regarding (b) if certification is necessary to verify claims such as age, origin or standards of identity.

20. If a Party deems that certification of wine is necessary to protect human health or safety or to achieve other legitimate objectives, that Party shall consider the Codex Alimentarius Guidelines for Design, Production, Issuance and Use of Generic Official Certificates (CAC/GL 38-2001), in particular the use of the generic model official certificate, as amended from time-to-time, concerning official and officially recognised certificates.

21. A Party shall normally permit a wine or distilled spirits supplier to submit any required certification, test result or sample only with the initial shipment of a particular brand, producer and lot. If a Party requires a supplier to submit a sample of the product for the Party's procedure to assess conformity with its technical regulation or standard, it shall not require a sample quantity larger than the minimum quantity necessary to complete the relevant conformity assessment procedure. Nothing in this provision precludes a Party from undertaking verification of test results or certification, for example, where the Party has information that a particular product may be non-compliant.

22. Unless problems of human health or safety arise or threaten to arise for a Party, a Party shall not normally apply any final technical regulation, standard or conformity assessment procedure to wine or distilled spirits that have been placed on the market in the Party's territory before the date of entry into force of the technical regulation, standard or conformity

assessment procedure, provided that the products are sold within a period of time after the date of entry into force of the technical regulation, standard or conformity assessment procedure, stipulated by the authority responsible for that technical regulation, standard or conformity assessment procedure.

ANNEX 7-B. Organic products

1. This Annex shall apply to a Party if that Party adopts or maintains technical regulations, standards or conformity assessment procedures that relate to the production, processing or labelling of products as organic for sale or distribution within its territory.

2. Each Party is encouraged to take steps to:

(a) exchange information on matters that relate to organic production, certification of organic products, and related control systems; and

(b) cooperate with the other Party to develop, improve and strengthen international guidelines, standards and recommendations that relate to trade in organic products.

3. If a Party maintains a requirement that relates to the production, processing or labelling of products as organic, it shall enforce that requirement.

4. Each Party is encouraged to consider, as expeditiously as possible, a request from the other Party for recognition or equivalence of a technical regulations, standards or conformity assessment procedures that relates to the production, processing, or labelling of products of the other Party as organic. Each Party is encouraged to accept as equivalent or recognise the technical regulations, standards or conformity assessment procedures that relate to the production, processing or labelling of products of the other Party as organic, if the Party is satisfied that the technical regulations, standards or conformity assessment procedures of the other Party adequately fulfils the objectives of the Party's technical regulations, standards or conformity assessment procedures. If a Party does not accept as equivalent or recognise the technical regulations, standards or conformity assessment procedures that relate to the production, processing, or labelling of products of the other Party as organic, it shall, on request of the other Party, explain its reasons.

5. Each Party is encouraged to participate in technical exchanges to support improvement and greater alignment of technical regulations, standards or conformity assessment procedures that relate to the production, processing or labelling of products as organic.

Chapter 8. Investment

Section A. Investment

Article 8.1. Definitions

For the purposes of this Chapter:

Centre means the International Centre for Settlement of Investment Disputes (ICSID) established by the ICSID Convention;

claimant means an investor of a Party that is a party to an investment dispute with the other Party. If that investor is a natural person, who is a permanent resident of a Party and a national of the other Party, that natural person may not submit a claim to arbitration against that latter Party;

covered investment means, with respect to a Party, an investment in its territory of an investor of the other Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

disputing parties means the claimant and the respondent; disputing party means either the claimant or the respondent;

enterprise means an enterprise as defined in Article 1.3 (General Definitions), and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organised under the law of a Party, and a branch of an enterprise of a Party located in the territory of a Party and carrying out business activities there; (1)

freely usable currency means "freely usable currency" as determined by the International Monetary Fund under its Articles of Agreement,

ICSID Additional Facility Rules means the Rules Governing the Additional Facility for the Administration of Proceedings by

the Secretariat of the International Centre for Settlement of Investment Disputes;

ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington on March 18, 1965;

investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

(a) an enterprise;

(b) shares, stock and other forms of equity participation in an enterprise;

(c) bonds, debentures, other debt instruments and loans; (2) (3)

(d) futures, options and other derivatives;

(e) turnkey, construction, management, production, concession, revenue-sharing and other similar contracts;

(f) intellectual property rights;

(g) licences, authorisations, permits and similar rights conferred pursuant to the Party's law;(4) and

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens and pledges,

but investment does not mean an order or judgment entered in a judicial or administrative action.

investor of a non-Party means, with respect to a Party, an investor that attempts to make,(5) is making, or has made an investment in the territory of that Party, that is not an investor of a Party;

investor of a Party means a Party, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party;

negotiated restructuring means the restructuring or rescheduling of a debt instrument that has been effected through:

(a) a modification or amendment of that debt instrument, as provided for under its terms; or

(b) a comprehensive debt exchange or other similar process in which the holders of no less than 75 per cent of the aggregate principal amount of the outstanding debt under that debt instrument have consented to the debt exchange or other process;

New York Convention means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on June 10, 1958;

non-disputing Party means the Party that is not a party to an investment dispute;

protected information means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law, including classified government information;

respondent means the Party that is a party to an investment dispute;

Secretary-General means the Secretary-General of ICSID; and

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law.

(1) For greater certainty, the inclusion of a "branch" in the definitions of "enterprise" and "enterprise of a Party" is without prejudice to a Party's ability to treat a branch under its law as an entity that has no independent legal existence and is not separately organised.

(2) Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

(3) A loan issued by one Party to the other Party is not an investment.

(4) Whether a particular type of licence, authorisation, permit or similar instrument (including a concession to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the Party's law. Among such instruments that do not have the characteristics of an investment are those that do not create any rights protected under the Party's law. For greater certainty, the foregoing is without prejudice to whether any asset associated with such instruments has the characteristics of an investment.

(5) For greater certainty, the Parties understand that, for the purposes of the definitions of "investor of a non-Party" and "investor of a Party", an investor "attempts to make" an investment when that investor has taken concrete action or actions to make an investment, such as channelling resources or capital in order to set up a business, or applying for a permit or licence.

Article 8.2. Scope

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

(a) investors of the other Party;

(b) covered investments; and

(c) with respect to Article 8.10 and Article 8.16, all investments in the territory of that Party.

2. A Party's obligations under this Chapter shall apply to measures adopted or maintained by:

(a) the central, regional or local governments or authorities of that Party; and

(b) any person, including a state enterprise or any other body, when it exercises any governmental authority delegated to it by central, regional or local governments or authorities of that Party.(6)

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

(6) For greater certainty, governmental authority is delegated under the Party's law, including through a legislative grant or a government order, directive or other action transferring or authorising the exercise of governmental authority.

Article 8.3. Relation to other Chapters

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

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

3. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 10 (Financial Services).

Article 8.4. National Treatment (7)

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. For greater certainty, the treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional

level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.

(7) For greater certainty, whether treatment is accorded in "like circumstances" under Article 8.4 or Article 8.5 depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

Article 8.5. 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 non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. For greater certainty, the treatment referred to in this Article does not encompass international dispute resolution procedures or mechanisms, such as those included in Section B.

Article 8.6. Minimum Standard of Treatment (8)

1. Each Party shall accord to covered investments treatment in accordance with applicable customary international law principles, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligations in paragraph 1 to provide:

(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

(b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

4. For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

5. For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

(8) Article 8.6 shall be interpreted in accordance with Annex 8-A.

Article 8.7. Treatment In Case of Armed Conflict or Civil Strife

1. Notwithstanding Article 8.12.6(b), each Party shall accord to investors of the other Party and to covered investments non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

2. Notwithstanding paragraph 1, if an investor of a Party, in a situation referred to in paragraph 1, suffers a loss in the territory of the other Party resulting from:

(a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or

(b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor restitution, compensation or both, as appropriate, for that loss.

3. Paragraph 1 shall not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 8.4 but for Article 8.12.6(b).

Article 8.8. Expropriation and Compensation (9)

1. Neither Party shall expropriate or nationalise a covered investment, either directly or indirectly, through measures equivalent to expropriation or nationalisation (expropriation), except:

(a) for a public purpose; (10)

(b) in anon-discriminatory manner;

(c) on payment of prompt, adequate and effective compensation in accordance with paragraphs 2, 3 and 4; and

(d) in accordance with due process of law.

2. Compensation shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation);

(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

(d) be fully realisable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid, converted into the currency of payment at the market rate of exchange prevailing on the date of payment, shall be no less than:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date; plus

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

5. This Article shall not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation or creation of intellectual property rights, to the extent that the issuance, revocation, limitation or creation is consistent with Chapter 17 (Intellectual Property) and the TRIPS Agreement. (11)

6. For greater certainty, a Party's decision not to issue, renew or maintain a subsidy or grant, or decision to modify or reduce a subsidy or grant,

(a) in the absence of any specific commitment under law or contract to issue, renew or maintain that subsidy or grant; or

(b) in accordance with any terms or conditions attached to the issuance, renewal, modification, reduction and maintenance of that subsidy or grant, standing alone, does not constitute an expropriation.

(9) Article 8.8 shall be interpreted in accordance with Annex 8-B.

(10) For greater certainty, for the purposes of this Article, the term "public purpose" refers to a concept in customary international law. Domestic law may express this or a similar concept by using different terms, such as "public necessity", "public interest", "national security" or "public use".

(11) For greater certainty, the Parties recognise that, for the purposes of this Article, the term "revocation" of intellectual property rights includes the cancellation or nullification of those rights, and the term "limitation" of intellectual property rights includes exceptions to those rights.

Article 8.9. Transfers

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

(a) contributions to capital; (12)

(b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance fees and other fees;

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

(d) payments made under a contract, including a loan agreement;

(e) payments made pursuant to Article 8.7 and Article 8.8; and

(f) payments arising out of a dispute.

2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Each Party shall permit returns in kind relating to a covered investment to be made as authorised or specified in a written agreement between the Party and a covered investment or an investor of the other Party.

4. Notwithstanding paragraphs 1, 2 and 3, a Party may prevent or delay a transfer through the equitable, non-discriminatory and good faith application of its laws and regulations (13) 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 offences;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or

Article 8.10. Performance Requirements

1. Neither Party shall, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any requirement, or enforce any commitment or undertaking: (14)

(a) to export a given level or percentage of goods or services;

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

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

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

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

(f) to transfer a particular technology, a production process or other proprietary knowledge to a person in its territory; or

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

2. Neither Party shall condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, on compliance with any requirement:

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

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

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

(d) to restrict sales of goods or services in its territory that the investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings.

3. Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment of an investor of a Party or of a non-Party in its territory, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

4. Paragraph 1(f) shall not apply:

(a) if a Party authorises use of an intellectual property right in accordance with the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

(b) if the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws and regulations. (15)

5. Paragraphs 1(a), 1(b), 1(c), 2(a) and 2(b) shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.

6. Paragraphs 1(b), 1(c), 1(f), 1(g), 2(a) and 2(b) shall not apply to government procurement.

7. Paragraphs 2(a) and 2(b) shall not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

8. For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, from imposing or enforcing a requirement, or enforcing a commitment or undertaking, to employ or train workers in its territory provided that the employment or training does not require the transfer of a particular technology, production process or other proprietary knowledge to a person in its territory.

9. For greater certainty, paragraphs 1 and 2 shall not apply to any commitment, undertaking or requirement other than those set out in those paragraphs.

10. This Article does not preclude enforcement of any commitment, undertaking or requirement between private parties, if a Party did not impose or require the commitment, undertaking or requirement.

(14) For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "requirement" or a "commitment or undertaking" for the purposes of paragraph 1.

(15) The Parties recognise that a patent does not necessarily confer market power.

Article 8.11. Senior Management and Boards of Directors

1. Neither Party shall require that an enterprise of that Party that is a covered investment appoint to a senior management position a natural person of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality or resident in the territory of the Party, provided that the requirement

does not materially impair the ability of the investor to exercise control over its investment.

Article 8.12. Non-conforming Measures

1. Article 8.4, Article 8.5, Article 8.10 and Article 8.11 shall not apply to:

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

(i) the central level of government, as set out by that Party in its Schedule to Annex I;

(ii) aregional level of government, as set out by that Party in its Schedule to Annex I; or

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 8.4, Article 8.5, Article 8.10 or Article 8.11.

2. Article 8.4, Article 8.5, Article 8.10 and Article 8.11 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out by that Party in its Schedule to Annex II

3. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Article 8.4 shall not apply to any measure that falls within an exception to, or derogation from, the obligations which are imposed by:

(a) Article 17.8 (National Treatment); or

(b) Article 3 of the TRIPS Agreement, if the exception or derogation relates to matters not addressed by Chapter 17 (Intellectual Property).

5. Article 8.5 shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations which are imposed by:

(a) Article 17.8 (National Treatment); or (b) Article 4 of the TRIPS Agreement.

6. Article 8.4, Article 8.5 and Article 8.11 shall not apply to:

(a) government procurement; or

(b) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

7. For greater certainty, any amendments or modifications to a Party's Schedules to Annex I or Annex II, pursuant to this Article, shall be made in accordance with Article 29.2 (Amendments).

Article 8.13. Subrogation

If a Party, or any agency, institution, statutory body or corporation designated by the Party, makes a payment to an investor of the Party under a guarantee, a contract of insurance or other form of indemnity that it has entered into with respect to a covered investment, the other Party in whose territory the covered investment was made shall recognise the subrogation or transfer of any rights the investor would have possessed under this Chapter with respect to the covered investment but for the subrogation, and the investor shall be precluded from pursuing these rights to the extent of the subrogation.

Article 8.14. Special Formalities and Information Requirements

1. Nothing in Article 8.4 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with a covered investment, such as a residency requirement for registration or a requirement that a covered investment be legally constituted under the laws or regulations of the Party, provided that these formalities do not materially impair the protections afforded by the Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Article 8.4 and Article 8.5, a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 8.15. Denial of Benefits (16)

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

(a) is owned or controlled by a person of a non-Party or of the denying Party; and (b) _ has no substantial business activities in the territory of the other Party.

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that other Party and to investments of that investor if persons of a non-Patty own or control the enterprise and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

(16) For greater certainty, the benefits of this Chapter may be denied under this provision at any time, including after an investor has submitted a claim to arbitration under Article 8.20.

Article 8.16. Investment and Environmental, Health and other Regulatory Objectives

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health or other regulatory objectives.

Article 8.17. Corporate Social Responsibility

Each Party encourages enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate into their internal policies those internationally recognised standards, guidelines and principles of corporate social responsibility that have been endorsed or are supported by that Party.

Article 8.18. General Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between investments or between investors, or a disguised restriction on international trade or investment, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures:

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

(b) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter;

(c) imposed for the protection of national treasures of artistic, historic or archaeological value; or

(d) relating to the conservation of living or non-living exhaustible natural resources.

2. The Parties understand that the measures referred to in subparagraph 1(a) include environmental measures to protect human, animal or plant life or health, and that the measures referred to in subparagraph 1(d) include environmental measures relating to the conservation of living or non-living exhaustible natural resources.

Section B. Investor-state Dispute Settlement (17)

Article 8.19. Consultation and Negotiation

1. In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third party procedures, such as good offices, conciliation or mediation.

2. The claimant shall deliver to the respondent a written request for consultations setting out a brief description of facts regarding the measure or measures at issue.

3. For greater certainty, the initiation of consultations and negotiations shall not be construed as recognition of the jurisdiction of the tribunal.

(17) No claim may be brought under this Section in relation to a measure that is designed and implemented to protect or promote public health. For greater certainty, for Australia, such measures include: measures comprising or related to the Pharmaceutical Benefits Scheme, Medicare Benefits Scheme, Therapeutic Goods Administration and Office of the Gene Technology Regulator. A reference to a body or program in this footnote includes any successor of that body or program.

Article 8.20. Submission of a Claim to Arbitration

1. If an investment dispute has not been resolved within six months of the receipt by the respondent of a written request for consultations pursuant to Article 8.19.2:

(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim:

(i) that the respondent has breached an obligation under Section A; and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim:

(i) that the respondent has breached an obligation under Section A; and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach,

2. No claim may be brought under this Section in relation to an investment which has been established through illegal conduct, including fraudulent misrepresentation, concealment or corruption. For greater certainty, this exclusion does not apply to investments established through minor or technical breaches of law.

3. At least 90 days before submitting any claim to arbitration under this Section, the claimant shall deliver to the respondent a written notice of its intention to submit a claim to arbitration (notice of intent). The notice shall specify:

(a) the name and address of the claimant and, if a claim is submitted on behalf of an enterprise, the name, address and place of incorporation of the enterprise;

(b) for each claim, the provision of this Agreement alleged to have been breached and any other relevant provisions;

(c) the legal and factual basis for each claim; and (d) _ the relief sought and the approximate amount of damages claimed.

4. The claimant may submit a claim referred to in paragraph 1 under one of the following alternatives:

(a) the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the respondent and the non-disputing Party are parties to the ICSID Convention;

(b) the ICSID Additional Facility Rules, provided that either the respondent or the non-disputing Party is a party to the ICSID Convention;

(c) the UNCITRAL Arbitration Rules; or

(d) if the claimant and respondent agree, any other arbitral institution or any other arbitration rules.

5. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration (notice of arbitration):

(a) referred to in the ICSID Convention is received by the Secretary-General;

(b) referred to in the ICSID Additional Facility Rules is received by the Secretary-General;

(c) referred to in the UNCITRAL Arbitration Rules, together with the statement of claim referred to therein, are received by the respondent; or

(d) referred to under any arbitral institution or arbitration rules selected under paragraph 4(d) is received by the respondent.

6. A claim asserted by the claimant for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitration rules.

7. The arbitration rules applicable under paragraph 4 that are in effect on the date the claim or claims were submitted to arbitration under this Section shall govern the arbitration except to the extent modified by this Agreement.

8. The claimant shall provide with the notice of arbitration:

(a) the name of the arbitrator that the claimant appoints; or

(b) the claimant's written consent for the Secretary-General to appoint that arbitrator.

Article 8.21. Consent of Each Party to Arbitration

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall be deemed to satisfy the requirements of:

(a) Chapter If of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and

(b) Article II of the New York Convention for an "agreement in writing".

Article 8.22. Conditions and Limitations on Consent of Each Party

1. No claim shall be submitted to arbitration under this Section if more than three years and six months have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 8.20.1 and knowledge that the claimant (for claims brought under Article 8.20.1(a)) or the enterprise (for claims brought under Article 8.20.1(b)) has incurred loss or damage.

2. No claim shall be submitted to arbitration under this Section unless:

(a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and

(b) the notice of arbitration is accompanied:

(i) for claims submitted to arbitration under Article 8.20.1(a), by the claimant's written waiver; and

(ii) for claims submitted to arbitration under Article 8.20.1(b), by the claimant's and the enterprise's written waivers,

of any right to initiate or continue before any court or administrative tribunal under the law of a Party, or any other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 8.20.

3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 8.20.1(a)) and the claimant or the enterprise (for claims brought under Article 8.20.1(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.

Article 8.23. Selection of Arbitrators

1. Unless the disputing parties agree otherwise, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

3. Ifa tribunal has not been constituted within a period of 90 days after the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the

arbitrator or arbitrators not yet appointed. The Secretary-General shall not appoint a national of either Party as the presiding arbitrator unless the disputing parties agree otherwise.

4. For the purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

(a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) aclaimant referred to in Article 8.20.1(a) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and

(c) aclaimant referred to in Article 8.20.1(b) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

5. The Parties shall, prior to the entry into force of this Agreement, provide guidance on the application of the Code of Conduct for Dispute Settlement Proceedings under Chapter 27 (Dispute Settlement) to arbitrators selected to serve on investor-State dispute settlement tribunals pursuant to this Article, including any necessary modifications to the Code of Conduct to conform to the context of investor-State dispute settlement. The Parties shall also provide guidance on the application of other relevant rules or guidelines on conflicts of interest in international arbitration. Arbitrators shall comply with that guidance in addition to the applicable arbitral rules regarding independence and impartiality of arbitrators.

Article 8.24. Conduct of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitration rules applicable under Article 8.20.4. If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitration rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

2. The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.

3. After consultation with the disputing parties, the tribunal may accept and consider written amicus curiae submissions regarding a matter of fact or law within the scope of the dispute that may assist the tribunal in evaluating the submissions and arguments of the disputing parties from a person or entity that is not a disputing party but has a significant interest in the arbitral proceedings. Each submission shall identify the author; disclose any affiliation, direct or indirect, with any disputing party; and identify any person, government or other entity that has provided, or will provide, any financial or other assistance in preparing the submission. Each submission shall be in a language of the arbitration and comply with any page limits and deadlines set by the tribunal. The tribunal shall provide the disputing parties with an opportunity to respond to such submissions. The tribunal shall ensure that the submissions do not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.

4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the competence of the tribunal, including an objection to the tribunal's jurisdiction, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 8.30 or that a claim is manifestly without legal merit:

(a) an objection under this paragraph shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment;

(b) on receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor;

3. After consultation with the disputing parties, the tribunal may accept and consider written amicus curiae submissions regarding a matter of fact or law within the scope of the dispute that may assist the tribunal in evaluating the submissions and arguments of the disputing parties from a person or entity that is not a disputing party but has a significant interest in the arbitral proceedings. Each submission shall identify the author; disclose any affiliation, direct or indirect, with any

disputing party; and identify any person, government or other entity that has provided, or will provide, any financial or other assistance in preparing the submission. Each submission shall be in a language of the arbitration and comply with any page limits and deadlines set by the tribunal. The tribunal shall provide the disputing parties with an opportunity to respond to such submissions. The tribunal shall ensure that the submissions do not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.

4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the competence of the tribunal, including an objection to the tribunal's jurisdiction, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 8.30 or that a claim is manifestly without legal merit:

(a) an objection under this paragraph shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment;

(b) on receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor;

(c) in deciding an objection under this paragraph that a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 8.30, the tribunal shall assume to be true the claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in the relevant article of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute; and

(d) the respondent does not waive any objection as to competence, including an objection to jurisdiction, or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 5.

5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 or any objection that the dispute is not within the tribunal's competence, including an objection that the dispute is not within the tribunal's jurisdiction. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection, stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.

6. When the tribunal decides a respondent's objection under paragraph 4 or 5, it may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

7. For greater certainty, if an investor of a Party submits a claim under this Section, including a claim alleging that a Party breached Article 8.6, the investor has the burden of proving all elements of its claims, consistent with general principles of international law applicable to international arbitration.

8. A respondent may not assert as a defence, counterclaim, right of set-off or for any other reason, that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

9. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 8.20. For the purposes of this paragraph, an order includes a recommendation.

10. In any arbitration conducted under this Section, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any comments and issue its decision or award no later than 45 days after the expiration of the 60 day comment period.

11. In the event that an appellate mechanism for reviewing awards rendered by investor-State dispute settlement tribunals is developed in the future under other institutional arrangements, the Parties shall consider whether awards rendered under Article 8.30 should be subject to that appellate mechanism. The Parties shall strive to ensure that any such appellate mechanism they consider adopting provides for transparency of proceedings similar to the transparency provisions established in Article 8.25.

Article 8.25. Transparency of Arbitral Proceedings

1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Party and make them available to the public:

(a) the notice of intent;

(b) the notice of arbitration;

(c) pleadings, memorials and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 8.24.2, Article 8.24.3 and Article 8.29;

(d) minutes or transcripts of hearings of the tribunal, if available; and

(e) orders, awards and decisions of the tribunal.

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. If a disputing party intends to use information in a hearing that is designated as protected information or otherwise subject to paragraph 3 it shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect such information from disclosure which may include closing the hearing for the duration of the discussion of that information.

3. Nothing in this Section, including paragraph 4(d), requires a respondent to make available to the public or otherwise disclose during or after the arbitral proceedings, including the hearing, protected information, or to furnish or allow access to information that it may withhold in accordance with Article 28.2 (Security Exceptions) or Article 28.5 (Disclosure of Information).(18)

4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:

(a) subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to the non-disputing Party or to the public any protected information if the disputing party that provided the information clearly designates it in accordance with subparagraph (b);

(b) any disputing party claiming that certain information constitutes protected information shall clearly designate the information according to any schedule set by the tribunal;

(c) a disputing party shall, according to any schedule set by the tribunal, submit a redacted version of the document that does not contain the protected information. Only the redacted version shall be disclosed in accordance with paragraph 1; and

(d) the tribunal, subject to paragraph 3, shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that the information was not properly designated, the disputing party that submitted the information may:

(i) withdraw all or part of its submission containing that information; or

(ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c); and

(iii) in either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under subparagraph (d)(i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under subparagraph (d)(ii) of the disputing party that first submitted the information.

5. Nothing in this Section requires a respondent to withhold from the public information required to be disclosed by its laws or regulations. The respondent should endeavour to apply those laws and regulations in a manner sensitive to protecting from disclosure information that has been designated as protected information.

(18) For greater certainty, when a respondent chooses to disclose to the tribunal information that may be withheld in accordance with Article 28.2 (Security Exceptions) or Article 28.5 (Disclosure of Information), the respondent may still withhold that information from disclosure to the public.

Article 8.26. Governing Law

1. Subject to paragraph 2, when a claim is submitted under Article 8.20.1(a)(i) or Article 8.20.1(b)(), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law. (19)

2. A decision of the Joint Commission on the interpretation of a provision of this Agreement under Article 26.2.2(f) (Functions of the Joint Commission) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

(19) For greater certainty, this provision is without prejudice to any consideration of the domestic law of the respondent when it is relevant to the claim as a matter of fact.

Article 8.27. Interpretation of Annexes

1. If a respondent asserts as a defence that the measure alleged to be a breach is within the scope of a non-conforming measure set out in Annex I or Annex I, the tribunal shall, on request of the respondent, request the interpretation of the Joint Commission on the issue. The Joint Commission shall submit in writing any decision on its interpretation under Article 26.2.2(f) (Functions of the Joint Commission) to the tribunal within 90 days of delivery of the request.

2. A decision issued by the Joint Commission under paragraph 1 shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Joint Commission fails to issue such a decision within 90 days, the tribunal shall decide the issue.

Article 8.28. Expert Reports

Without prejudice to the appointment of other kinds of experts when authorised by the applicable arbitration rules, a tribunal, on request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning scientific matters raised by a disputing party in a proceeding, subject to any terms and conditions that the disputing parties may agree.

Article 8.29. Consolidation

1. If two or more claims have been submitted separately to arbitration under Article 8.20.1 and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:

(a) the names and addresses of all the disputing parties sought to be covered by the order;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

3. Unless the Secretary-General finds within a period of 30 days after the date of receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the order agree otherwise, a tribunal established under this Article shall comprise three arbitrators:

(a) one arbitrator appointed by agreement of the claimants;

(b) one arbitrator appointed by the respondent; and

(c) the presiding arbitrator appointed by the Secretary-General, provided that the presiding arbitrator is not a national of the respondent or of a Party of any claimant.

5. If, within a period of 60 days after the date when the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on request of any disputing party sought to be covered by the order, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

6. Ifa tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 8.20.1 have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims;

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

(c) instruct a tribunal previously established under Article 8.23 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that:

(i) that tribunal, on request of a claimant that was not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and

(ii) that tribunal shall decide whether a prior hearing shall be repeated.

7. If atribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 8.20.1 and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6. The request shall specify:

(a) the name and address of the claimant;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought,

and the claimant shall deliver a copy of its request to the Secretary-General.

8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A tribunal established under Article 8.23 shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On the application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 8.23 be stayed, unless the latter tribunal has already adjourned its proceedings.

Article 8.30. Awards

1. When a tribunal makes a final award, 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.

2. For greater certainty, if an investor of a Party submits a claim to arbitration under Article 8.20.1(a), it may recover only for loss or damage that it has incurred in its capacity as an investor of a Party.

3. Atribunal may also award costs and attorney's fees incurred by the disputing parties in connection with the arbitral proceeding, and shall determine how and by whom those costs and attorney's fees shall be paid, in accordance with this Section and the applicable arbitration rules.

4. For greater certainty, for claims alleging the breach of an obligation under Section A with respect to an attempt to make

an investment, when an award is made in favour of the claimant, the only damages that may be awarded are those that the claimant has proven were sustained in the attempt to make the investment, provided that the claimant also proves that the breach was the proximate cause of those damages. If the tribunal determines such claims to be frivolous, the tribunal may award to the respondent reasonable costs and attorney's fees.

5. Subject to paragraph 1, if a claim is submitted to arbitration under Article 8.20.1(b) and an award is made in favour of the enterprise:

(a) an award of restitution of property shall provide that restitution be made to the enterprise;

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and

(c) the award shall provide that it is made without prejudice to any right that any person may have under applicable domestic law with respect to the relief provided in the award.

6. A tribunal shall not award punitive damages.

7. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

8. Subject to paragraph 9 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

9. A disputing party shall not seek enforcement of a final award until:

(a) in the case of a final award made under the ICSID Convention:

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 8.20.4(d):

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award; or

(ii) acourt has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

10. Each Party shall provide for the enforcement of an award in its territory.

11. If the respondent fails to abide by or comply with a final award, on delivery of a request by the non-disputing Party, a panel shall be established under Article 27.7 (Establishment of a Panel). The requesting Party may seek in those proceedings:

(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and

(b) in accordance with Article 27.15 (initial Report), a recommendation that the respondent abide by or comply with the final award.

12. A disputing party may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention regardless of whether proceedings have been taken under paragraph 11.

13. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention.

Article 8.31. Service of Documents

Delivery of notice and other documents to a Party shall be made to the place named for that Party in Annex 8-C. A Party shall promptly make publicly available and notify the other Party of any change to the place referred to in that Annex.

ANNEX 8-A. Customary international law

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 8.6 results from a general and consistent practice of States that they follow from a sense of legal obligation. The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens.

ANNEX 8-B. Expropriation

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

2. Article 8.8.1 addresses two situations. The first is direct expropriation, in which an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation addressed by Article 8.8.1 is indirect expropriation, in which an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

4. The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

(a) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(b) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; (20) and

(c) the character of the government action.

5. Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, (21) safety and the environment, do not constitute indirect expropriations, except in rare circumstances.

(20) For greater certainty, whether an investor's investment-backed expectations are reasonable depends, to the extent relevant, on factors such as whether the government provided the investor with binding written assurances and the nature and extent of governmental regulation or the potential for governmental regulation in the relevant sector.

(21) For greater certainty and without limiting the scope of this subparagraph, regulatory actions to protect public health include, among others, such measures with respect to the regulation, pricing and supply of, and reimbursement for, pharmaceuticals (including biological products), diagnostics, vaccines, medical devices, gene therapies and technologies, health-related aids and appliances and blood and blood-related products.

ANNEX 8-C. Service of documents on a party under section b

Australia

Notices and other documents in disputes under Section B shall be served on Australia by delivery to:

Department of Foreign Affairs and Trade R.G. Casey Building

John McEwen Crescent

Barton ACT 0221

Australia

Peru

Notices and other documents in disputes under Section B shall be served on Peru by delivery to:

Direccién General de Asuntos de Economia Internacional, Competencia y Productividad

Ministerio de Economia y Finanzas

Jirén Lampa 277, piso 5

Lima, Peru

ANNEX 8-D. Foreign investment framework

A decision under Australia's Foreign Investment Framework, which comprises Australia's Foreign Investment Policy; Foreign Acquisitions and Takeovers Act 1975 (Cth); Foreign Acquisitions and Takeovers Regulation 2015 (Cth); Foreign Acquisitions and Takeovers Fees Imposition Act 2015 (Cth); Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015 (Cth); Financial Sector (Shareholdings) Act 1998 (Cth); and Ministerial Statements, shall not be subject to the dispute settlement provisions under Section B or Chapter 27 (Dispute Settlement).

ANNEX 8-E. Public debt

1. The Parties recognise that the purchase of debt issued by a Party entails commercial risk. For greater certainty, no award shall be made in favour of a claimant for a claim under Article 8.20.1(a)(i) or Article 8.20.1(b)(i) with respect to default or non-payment of debt issued by a Party unless the claimant meets its burden of proving that such default or non-payment constitutes a breach of an obligation under Section A, including an uncompensated expropriation pursuant to Article 8.8.

2. Noclaim that a restructuring of debt issued by a Party breaches an obligation under Section A shall be submitted to, or if already submitted continue in, arbitration under Section B if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after that submission, except for a claim that the restructuring violates Article 8.4 or Article 8.5.

3. Notwithstanding Article 8.20.4, and subject to paragraph 2, an investor of the other Party shall not submit a claim under Section B that a restructuring of debt issued by a Party breaches an obligation under Section A, other than Article 8.4 or Article 8.5, unless 270 days have elapsed from the date of receipt by the respondent of the written request for consultations pursuant to Article 8.19.2.

ANNEX 8-F. Submission of a claim to arbitration

1. An investor of a Party may not submit to arbitration under Section B a claim that Peru has breached an obligation under Section A either: (a) on its own behalf under Article 8.20.1(a); or

(b) on behalf of an enterprise of Peru that is a juridical person that the investor owns or controls directly or indirectly under 8.20.1(b),

if the investor or the enterprise, respectively, has alleged that breach of an obligation under Section A in proceedings before a court or administrative tribunal of Peru.

2. For greater certainty, if an investor of a Party elects to submit a claim of the type described in paragraph 1 to a court or administrative tribunal of Peru, that election shall be definitive and exclusive, and the investor may not thereafter submit the claim to arbitration under Section B.

Chapter 9. Cross-border Trade In Services

Article 9.1. Definitions

For the purposes of this Chapter:

airport operation services means the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services;

computer reservation system services means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare tules, through which reservations can be made or tickets may be issued;

cross-border trade in services or **cross-border supply of services** means the supply of a service:

(a) from the territory of a Party into the territory of the other Party;

(b) in the territory of a Party to a person of the other Party; or

(c) by a national of a Party in the territory of the other Party,

but does not include the supply of a service in the territory of a Party by a covered investment;

enterprise means an enterprise as defined in Article 1.3 (General Definitions), and a branch of an enterprise;

ground handling services means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering, except the preparation of the food; air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning. Ground handling services do not include: self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra-airport transport systems;

measures adopted or maintained by a Party means measures adopted or maintained by:

(a) central, regional, or local governments or authorities; or

(b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities;

selling and marketing of air transport services means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services or the applicable conditions;

service supplied in the exercise of governmental authority means, for each Party, any service that is supplied neither on a commercial basis nor in competition with one or more service suppliers;

service supplier of a Party means a person of a Party that seeks to supply or supplies a service; and

specialty air services means any specialised commercial operation using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services.

Article 9.2. Scope

1. This Chapter shall apply to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party. Such measures include measures affecting:

(a) the production, distribution, marketing, sale or delivery of a service;

(b) the purchase or use of, or payment for, a service;

(c) the access to and use of distribution, transport or telecommunications networks and services in connection with the supply of a service;

(d) the presence in the Party's territory of a service supplier of the other Party; and

(e) the provision of a bond or other form of financial security as a condition for the supply of a service.

2. In addition to paragraph 1, Article 9.5, Article 9.8 and Article 9.11 shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment. (1)

3. This Chapter shall not apply to:

(a) financial services as defined in Article 10.1 (Definitions), except that paragraph 2 shall apply if the financial service is supplied by a covered investment that is not a covered investment in a financial institution as defined in Article 10.1 (Definitions) in the Party's territory;

(b) government procurement;

(c) services supplied in the exercise of governmental authority; or

(d) 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 national of the other Party who seeks access to its employment market or who is employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment.

5. This Chapter shall not apply to air services, including domestic and international air transportation services, whether scheduled or non-scheduled, or to related services in support of air services, other than the following:

(a) aircraft repair and maintenance services during which an aircraft is withdrawn from service, excluding so-called line maintenance;

(b) selling and marketing of air transport services;

(c) computer reservation system services;

(d) specialty air services;

(e) airport operation services; and

(f) ground handling services.

6. In the event of any inconsistency between this Chapter and a bilateral, plurilateral or multilateral air services agreement to which both Parties are party, the air services agreement shall prevail in determining the rights and obligations of the Parties.

7. If the Parties have the same obligations under this Agreement and a bilateral, plurilateral or multilateral air services agreement, they may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.

8. If the Annex on Air Transport Services of GATS is amended, the Parties shall jointly review any new definitions with a view to aligning the definitions in this Agreement with those definitions, as appropriate.

(1) For greater certainty, nothing in this Chapter, including Annex 9-A, is subject to investor-state dispute settlement pursuant to Section B of Chapter 8 (Investment).

Article 9.3. National Treatment (2)

1. 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.

2. For greater certainty, the treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

(2) For greater certainty, whether treatment is accorded in "like circumstances" under Article 9.3 or Article 9.4 depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives.

Article 9.4. Most-favoured-nation Treatment

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 services and service suppliers of a non-Party.

Article 9.5. Market Access

Neither Party shall adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

(i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

(ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(iii) the total number of service operations or the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;(3) or

(iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; or

(b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

(3) Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of services.

Article 9.6. Local Presence

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

Article 9.7. Non-conforming Measures

1. Article 9.3, Article 9.4, Article 9.5 and Article 9.6 shall not apply to:

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

(i) the central level of government, as set out by that Party in its Schedule to Annex I;

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I; or

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 9.3, Article 9.4, Article 9.5 or Article 9.6.

2. Article 9.3, Article 9.4, Article 9.5 and Article 9.6 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out by that Party in its Schedule to Annex IL

3. If a Party considers that a non-conforming measure applied by a regional level of government of the other Party, as referred to in subparagraph 1(a)(ii), creates a material impediment to the cross-border supply of services in relation to the former Party, it may request consultations with regard to that measure. The Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate. (4)

(4) For greater certainty, a Party may request consultations with the other Party regarding non-conforming measures applied by the central level of government, as referred to in subparagraph 1 (a)(i).

Article 9.8. Domestic Regulation

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. 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, while recognising the right to regulate and to introduce new regulations on the supply of services in order to meet its policy objectives, each Party shall endeavour to ensure that any such measures that it adopts or maintains are:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service; and

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. In determining whether a Party is in conformity with its obligations under paragraph 2, account shall be taken of international standards of relevant international organisations applied by that Party. (5)

4. If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities:

(a) within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application;

(b) to the extent practicable, establish an indicative timeframe for the processing of an application;

(c) if an application is rejected, to the extent practicable, inform the applicant of the reasons for the rejection, either directly or on request, as appropriate;

(d) on request of the applicant, provide, without undue delay, information concerning the status of the application;

(e) to the extent practicable, provide the applicant with the opportunity to correct minor errors and omissions in the application and endeavour to provide guidance on the additional information required;

(f) if they deem appropriate, accept copies of documents that are authenticated in accordance with the Party's laws in place of original documents;

(g) reach and administer its decisions in an independent manner and that the procedures are impartial;

(h) avoid requiring an applicant to approach more than one competent authority for each application for authorisation; and

(i) taking into account their competing priorities and resource constraints, endeavour to accept applications in electronic format.

5. Each Party shall ensure that any authorisation fee charged by any of its competent authorities is reasonable, transparent and does not, in itself, restrict the supply of the relevant service. (6)

6. The Party shall make publicly available the information necessary for service suppliers to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorisation. Such information shall include, inter alia, where it exists:

(a) fees;

(b) contact information of relevant competent authorities;

(c) procedures for appeal or review of decisions concerning applications;

(d) procedures for monitoring or enforcing compliance with the terms and conditions of licenses;

(e) opportunities for public involvement, such as through hearings or comments;

(f) indicative timeframes for processing of an application;

(g) the requirements and procedures; and

(h) technical standards.

7. If licensing or qualification requirements include the completion of an examination, each Party shall ensure that:

(a) the examination is scheduled at reasonable intervals; and

(b) areasonable period of time is provided to enable interested persons to submit an application.

8. Each Party shall ensure that there are procedures in place domestically to assess the competency of professionals of the other Party.

9. Paragraphs 1 through 8 shall not apply to the non-conforming aspects of measures that are not subject to the obligations under Article 9.3 or Article 9.5 by reason of an entry in either Party's Schedule to Annex I, or to measures that are not subject to the obligations under Article 9.3 or Article 9.5 by reason of an entry in either Party's Schedule to Annex I.

10. If the results of the negotiations related to paragraph 4 of Article VI of GATS, or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate, enter into effect, the Parties shall jointly review these results with a view to bringing them into effect, as appropriate, under this Agreement.

(5) "Relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of both Parties to the Agreement.

(6) For the purposes of this paragraph, authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

Article 9.9. Recognition

1. For the purposes of the fulfilment, in whole or in part, of a Party's standards or criteria for the authorisation, licensing or certification of service suppliers, and subject to the requirements of paragraph 4, it may recognise the education or experience obtained, requirements met, or licences or certifications granted, in the territory of the other Party or a non-Party. That recognition, which may be achieved through harmonisation or otherwise, may be based on an agreement or arrangement with the Party or non-Party concerned, or may be accorded autonomously.

2. If a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in the territory of a non-Party, nothing in Article 9.4 shall be construed to require the Party to accord recognition to the education or experience obtained, requirements met, or licences or certifications granted, in the territory of the other Party.

3. 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 to the other Party, on request, to negotiate its accession to that agreement or arrangement, or to negotiate a comparable agreement or arrangement. If a Party accords recognition autonomously, it shall afford adequate opportunity to the other Party to demonstrate that education, experience, licences or certifications obtained or requirements met in that Party's territory should be recognised.

4. A Party shall not accord recognition in a manner that would constitute a means of discrimination between the Parties or between a Party and non-Parties in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers, or a disguised restriction on trade in services.

5. As set out in Annex 9-A, the Parties shall endeavour to facilitate trade in professional services, including through the establishment of a Professional Services Working Group.

Article 9.10. Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

2. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party or by persons of the denying Party that has no substantial business activities in the territory of the other Party.

Article 9.11. Transparency

1. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its regulations that relate to the subject matter of this Chapter. (7)

2. If a Party does not provide advance notice and opportunity for comment pursuant to Article 25.2.2 (Publication) with respect to regulations that relate to the subject matter in this Chapter, it shall, to the extent practicable, provide in writing or otherwise notify interested persons of the reasons for not doing so.

3. To the extent possible, each Party shall allow reasonable time between publication of final regulations and the date when they enter into effect.

(7) The implementation of the obligation to maintain or establish appropriate mechanisms may need to take into account the resource and budget constraints of small administrative agencies.

Article 9.12. Payments and Transfers

1. Each Party shall permit all transfers and payments that relate to the cross-border supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit transfers and payments that relate to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange that prevails at the time 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 and regulations (8) that relate 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.

(8) For greater certainty, this Article does not preclude the equitable, non-discriminatory and good faith application of a Party's laws and regulations relating to its social security, public retirement or compulsory savings programmes.

ANNEX 9-A. Professional services

General Provisions

1. Each Party shall encourage its relevant bodies to establish or maintain dialogues with the relevant bodies of the other Party with the aim of facilitating the supply of professional services between the Parties through greater recognition of education or experience obtained in the territory of the other Party. This includes encouraging relevant professional bodies to engage in cooperation with a view to formalising recognition of licensing, registration and professional standards.

2. Each Party shall encourage its relevant bodies to take into account agreements that relate to professional services in the development of agreements on the recognition of professional qualifications, licensing and registration.

3. A Party may consider, if feasible, taking steps to implement a temporary or project specific licensing or registration regime based on a foreign supplier's home licence or recognised professional body membership, without the need for further written examination. That temporary or limited licence regime should not operate to prevent a foreign supplier from gaining a local licence once that supplier satisfies the applicable local licensing requirements.

Engineering and Architectural Services

4. Further to paragraph 2, the Parties recognise the work in APEC to promote the mutual recognition of professional competence in engineering and architecture, and the professional mobility of these professions, under the APEC Engineer and APEC Architect frameworks.

5. Each Party shall encourage its relevant bodies to work towards becoming authorised to operate APEC Engineer and APEC Architect Registers.

6. A Party shall encourage its relevant bodies operating APEC Engineer or APEC Architect Registers to enter into mutual recognition arrangements with the relevant bodies of the other Party operating those registers.

Legal Services

7. The Parties recognise that transnational legal services that cover the laws of multiple jurisdictions play an essential role in facilitating trade and investment and in promoting economic growth and business confidence.

8. If a Party regulates or seeks to regulate foreign lawyers and transnational legal ptactice, the Party shall encourage its

relevant bodies to consider, subject to its laws and regulations, whether or in what manner:

(a) foreign lawyers may practise foreign law on the basis of their right to practise that law in their home jurisdiction;

(b) foreign lawyers may prepare for and appear in commercial arbitration, conciliation and mediation proceedings;

(c) local ethical, conduct and disciplinary standards are applied to foreign lawyers in a manner that is no more burdensome for foreign lawyers than the requirements imposed on domestic (host country) lawyers;

(d) alternatives for minimum residency requirements are provided for foreign lawyers, such as requirements that foreign lawyers disclose to clients their status as a foreign lawyer, or maintain professional indemnity insurance or alternatively disclose to clients that they lack that insurance;

(e) the following modes of providing transnational legal services are accommodated:

(i) on a temporary fly-in, fly-out basis;

(ii) through the use of web-based or telecommunications technology;

(iii) by establishing a commercial presence; and

(iv) through a combination of fly-in, fly-out and one or both of the other modes listed in subparagraphs (ii) and (iii);

(f) foreign lawyers and domestic (host country) lawyers may work together in the delivery of fully integrated transnational legal services; and

(g) a foreign law firm may use the firm name of its choice.

Professional Services Working Group

9. The Parties hereby establish a Professional Services Working Group, which shall:

(a) meet on request of the Joint Commission to ensure the observance of and discuss progress towards the objectives in paragraphs 1 through 3; and

(b) support the Parties' relevant professional and regulatory bodies in pursuing the activities listed in paragraphs 1 through 3.

Chapter 10. Financial Services

Article 10.1. Definitions

For the purposes of this Chapter:

cross-border financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such a service;

cross-border trade in financial services or **cross-border supply of financial services** means the supply of a financial service:

(a) from the territory of a Party into the territory of the other Party;

(b) in the territory of a Party to a person of the other Party; or

(c) by a national of a Party in the territory of the other Party,

but does not include the supply of a financial service in the territory of a Party by an investment in that territory;

financial institution means any financial intermediary or other enterprise that is authorised to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

financial institution of the other Party means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;

financial service means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a

service of a financial nature. Financial services include the following activities:

Insurance and insurance-related services

(a) direct insurance (including co-insurance):

(i) life;

(ii) non-life;

(b) reinsurance and retrocession;

(c) insurance intermediation, such as brokerage and agency; and

(d) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

Banking and other financial services (excluding insurance)

(e) acceptance of deposits and other repayable funds from the public;

(f) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(g) financial leasing;

(h) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and banker's drafts;

(i) guarantees and commitments;

(j) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(i) money market instruments (including cheques, bills, certificates of deposits);

(ii) foreign exchange;

(iii) derivative products, including futures and options;

(iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(v) transferable securities; and

(vi) other negotiable instruments and financial assets, including bullion; participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services

(k) related to such issues;

(l) money broking;

(m) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(n) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(o) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and

(p) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

investment means "investment" as defined in Article 8.1 (Definitions) (1), except that, with respect to "loans" and "debt instruments" referred to in that Article:

(a) a loan to or debt instrument issued by a financial institution is an investment only if it is treated as regulatory capital by the Party in whose territory the financial institution is located; and

(b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument issued by a financial institution referred to in subparagraph (a), is not an investment;

investor of a Party means a Party, or a person of a Party, that attempts to make (2), is making, or has made an investment in the territory of the other Party;

new financial service means a financial service not supplied in the Party's territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

person of a Party means "person of a Party" as defined in Article 1.3 (General Definitions) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

public entity means a central bank or monetary authority of a Party, or any financial institution that is owned or controlled by a Party; and

self-regulatory organisation means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions by statute or delegation from central or regional government.

(1) For greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment for the purposes of Chapter 8 (Investment), if such loan or debt instrument meets the criteria for investments set out in Article 8.1 (Definitions)

(2) For greater certainty, the Parties understand that an investor "attempts to make" an investment when that investor has taken concrete action or actions to make an investment, such as channelling resources or capital in order to set up a business, or applying for permits or licenses.

Article 10.2. Scope

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

(a) financial institutions of the other Party;

(b) investors of the other Party, and investments of those investors, in financial institutions in the Party's territory; and

(c) cross-border trade in financial services.

2. Chapter 8 (Investment) and Chapter 9 (Cross-Border Trade in Services) shall apply to measures described in paragraph 1 only to the extent that those Chapters or Articles of those Chapters are incorporated into this Chapter.

(a) Article 8.8 (Expropriation and Compensation), Article 8.9 (Transfers), Article 8.14 (Special Formalities and Information Requirements), Article 8.15 (Denial of Benefits), Article 8.16 (Investment and Environmental, Health and other Regulatory Objectives) and Article 9.10 (Denial of Benefits) are hereby incorporated into and made a part of this Chapter.

(b) Article 9.12 (Payments and Transfers) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 10.6 (Cross-Border Trade).

3. This Chapter shall not apply to measures adopted or maintained by a Party relating to:

(a) activities or services forming part of a public retirement plan or statutory system of social security; or

(b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,

except that this Chapter shall apply to the extent that a Party allows any of the activities or services referred to in subparagraph (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

4. This Chapter shall not apply to government procurement of financial services.

5. This Chapter shall not apply to subsidies or grants with respect to the cross-border supply of financial services, including government-supported loans, guarantees and insurance.

Article 10.3. National Treatment (3)

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions in its territory.

2. Each Party shall accord to financial institutions of the other Party, and to investments of investors of the other Party in financial institutions, treatment no less favourable than that it accords to its own financial institutions, and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.

3. For greater certainty, the treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to investors, financial institutions and investments of investors in financial institutions, of the Party of which it forms a part.

4. For the purposes of the national treatment obligations in Article 10.6.1 (Cross- Border Trade), a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

(3) For greater certainty, whether treatment is accorded in "like circumstances" under Article 10.3 or Article 10.4 depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors, investments, financial institutions or financial service suppliers on the basis of legitimate public welfare objectives.

Article 10.4. Most-favoured-nation Treatment

1. Each Party shall accord to:

(a) investors of the other Party, treatment no less favourable than that it accords to investors of a non-Party, in like circumstances;

(b) financial institutions of the other Party, treatment no less favourable than that it accords to financial institutions of a non-Party, in like circumstances;

(c) investments of investors of the other Party in financial institutions, treatment no less favourable than that it accords to investments of investors of a non- Party in financial institutions, in like circumstances; and

(d) cross-border financial service suppliers of the other Party, treatment no less favourable than that it accords to cross-border financial service suppliers of a non-Party, in like circumstances.

2. For greater certainty, the treatment referred to in paragraph 1 does not encompass international dispute resolution procedures or mechanisms.

Article 10.5. Market Access for Financial Institutions

Neither Party shall adopt or maintain, with respect to financial institutions of the other Party or investors of the other Party seeking to establish those institutions, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

(i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

(ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(iii) the total number of financial service operations or the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (4) or

(iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of numerical quotas or the requirement of an economic needs test; or

(b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

(4) Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of financial services.

Article 10.6. Cross-border Trade

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the financial services specified in Annex 10-A.

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit those suppliers to do business or solicit in its territory. A Party may define "doing business" and "solicitation" for the purposes of this obligation provided that those definitions are not inconsistent with paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration or authorisation of cross-border financial service suppliers of the other Party and of financial instruments.

Article 10.7. New Financial Services (5)

Each Party shall permit a financial institution of the other Party to supply a new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without adopting a law or modifying an existing law.(6) Notwithstanding Article 10.5(b), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorisation for the supply of the service. If a Party requires a financial institution to obtain authorisation to supply a new financial service, the Party shall decide within a reasonable period of time whether to issue the authorisation and may refuse the authorisation only for prudential reasons.

(5) The Parties understand that nothing in this Article prevents a financial institution of a Party from applying to the other Party to request that it authorise the supply of a financial service that is not supplied in the territory of either Party. That application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to this Article.

(6) For greater certainty, a Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

Article 10.8. Treatment of Certain Information

Nothing in this Chapter shall require a Party to furnish or allow access to:

(a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or

(b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

Article 10.9. Senior Management and Boards of Directors

1. Neither Party shall require financial institutions of the other Party to engage natural persons of any particular nationality as senior managerial or other essential personnel.

2. Neither Party shall require that more than a minority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

Article 10.10. Non-conforming Measures

1. Article 10.3, Article 10.4, Article 10.5, Article 10.6 and Article 10.9 shall not apply to:

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

(i) the central level of government, as set out in Section A of its Schedule to Annex II;

(ii) a regional level of government, as set out in Section A of its Schedule to Annex III; or

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure as it existed:

(i) immediately before the amendment, with Article 10.3, Article 10.4, Article 10.5 or Article 10.9; or

(ii) on the date of entry into force of this Agreement, with Article 10.6.

2. Article 10.3, Article 10.4, Article 10.5, Article 10.6 and Article 10.9 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in Section B of its Schedule to Annex III.

3. A non-conforming measure, set out in a Party's Schedule to Annex I or II as not subject to Article 8.4 (National Treatment), Article 8.5 (Most-Favoured-Nation Treatment), Article 8.11 (Senior Management and Boards of Directors), Article 9.3 (National Treatment) or Article 9.4 (Most-Favoured-Nation Treatment), shall be treated as a non-conforming measure not subject to Article 10.3, Article 10.4 or Article 10.9, as the case may be, to the extent that the measure, sector, subsector or activity set out in the entry is covered by this Chapter.

4. Article 10.3 shall not apply to any measure that falls within an exception to, or derogation from, the obligations which are imposed by:

(a) Article 17.8 (National Treatment); or

(b) Article 3 of the TRIPS Agreement, if the exception or derogation relates to matters not addressed by Chapter 17 (Intellectual Property).

5. Article 10.4 shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations which are imposed by:

(a) Article 17.8 (National Treatment); or

(b) Article 4 of the TRIPS Agreement.

Article 10.11. Exceptions

1. Notwithstanding any other provisions of this Chapter and Agreement except for Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Customs Administration and Trade Facilitation), Chapter 5 (Trade Remedies), Chapter 6 (Sanitary and Phytosanitary Measures) and Chapter 7 (Technical Barriers to Trade), a Party shall not be prevented from adopting or maintaining measures for prudential reasons, (7) including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. If these measures do not conform with the provisions of this Agreement to which this exception applies, they shall not be used as a means of avoiding the Party's commitments or obligations under those provisions.

2. Nothing in this Chapter, Chapter 8 (Investment), Chapter 9 (Cross-Border Trade in Services), Chapter 12 (Telecommunications) including specifically Article 12.23 (Relation to Other Chapters), or Chapter 13 (Electronic Commerce), shall apply to non- discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 8.10 (Performance Requirements) with respect to measures covered by Chapter 8 (Investment), under Article 8.9 (Transfers) or Article 9.12 (Payments and Transfers).

3. Notwithstanding Article 8.9 (Transfers) and Article 9.12 (Payments and Transfers), as incorporated into this Chapter, a

Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non- discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross- border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties or between the Parties and non-Parties where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services as covered by this Chapter.

(7) The Parties understand that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers as well as the safety, and financial and operational integrity of payment and clearing systems,

Article 10.12. Recognition

1. A Party may recognise prudential measures of a non-Party in the application of measures covered by this Chapter.(8) That recognition may be:

(a) accorded autonomously;

(b) achieved through harmonisation or other means; or

(c) based upon an agreement or arrangement with the non-Party.

2. A Party that accords recognition of prudential measures under paragraph 1 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation and, if appropriate, procedures concerning the sharing of information between the Parties.

3. If a Party accords recognition of prudential measures under paragraph 1(c) and the circumstances set out in paragraph 2 exist, that Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

(8) For greater certainty, nothing in Article 10.4 (Most-Favoured-Nation Treatment) shall be construed to tequire a Party to accord recognition to prudential measures of the other Party.

Article 10.13. Transparency and Administration of Certain Measures

1. The Parties recognise that transparent regulations and policies governing the activities of financial institutions and cross-border financial service suppliers are important in facilitating their ability to gain access to and operate in each other's markets. Each Party commits to promote regulatory transparency in financial services.

2. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective and impartial manner.

3. Paragraphs 2, 3 and 4 of Article 25.2 (Publication), shall not apply to regulations of general application relating to the subject matter of this Chapter. Each Party shall, to the extent practicable:

(a) publish in advance any such regulation that it proposes to adopt and the purpose of the regulation; and

(b) provide interested persons and the other Party with a reasonable opportunity to comment on that proposed regulation.

4. At the time that it adopts a final regulation, a Party shall, to the extent practicable, address in writing the substantive comments received from interested persons with respect to the proposed regulation. (9)

5. To the extent practicable, each Party shall allow a reasonable period of time between publication of a final regulation of general application and the date when it enters into effect.

6. Each Party shall ensure that the rules of general application adopted or maintained by a self-regulatory organisation of the Party are promptly published or otherwise made available in a manner that enables interested persons to become acquainted with them.

7. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding measures of general application covered by this Chapter.

8. Each Party's regulatory authorities shall make publicly available the requirements, including any documentation required, for completing an application relating to the supply of financial services.

9. On request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

10. A Party's regulatory authority shall make an administrative decision on a complete application of an investor in a financial institution, a financial institution or a cross-border financial service supplier of the other Party relating to the supply of a financial service, within 120 days and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings have been held and all necessary information has been received. If it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable period of time thereafter.

11. On request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for denial of the application.

(9) For greater certainty, a Party may address those comments collectively on an official government website.

Article 10.14. Self-regulatory Organisations

If a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organisation in order to provide a financial service in or into its territory, it shall ensure that the self-regulatory organisation observes the obligations contained in Article 10.3 and Article 10.4.

Article 10.15. Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant financial institutions of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.

Article 10.16. Expedited Availability of Insurance Services

The Parties recognise the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers. These procedures may include: allowing introduction of products unless those products are disapproved within a reasonable period of time; not requiring product approval or authorisation of insurance lines for insurance other than insurance sold to individuals or compulsory insurance; or not imposing limitations on the number or frequency of product introductions. If a Party maintains regulatory product approval procedures, that Party shall endeavour to maintain or improve those procedures.

Article 10.17. Performance of Back-office Functions

1. The Parties recognise that the performance of the back-office functions of a financial institution in its territory by the head office or an affiliate of the financial institution, or by an unrelated service supplier, either inside or outside its territory, is important to the effective management and efficient operation of that financial institution. While a Party may require financial institutions to ensure compliance with any domestic requirements applicable to those functions, they recognise the importance of avoiding the imposition of arbitrary requirements on the performance of those functions.

2. For greater certainty, nothing in paragraph 1 prevents a Party from requiring a financial institution in its territory to retain certain functions.

Article 10.18. Consultations

1. A Party may request, in writing, consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request to hold consultations.

2. With regard to matters relating to existing non-conforming measures maintained by a Party at a regional level of government as referred to in Article 10.10.1(a)(i):

(a) a Party may request information on any non-conforming measure at the regional level of government of the other Party. Each Party shall establish a contact point to respond to those requests and to facilitate the exchange of information regarding the operation of measures covered by those requests.

(b) if a Party considers that a non-conforming measure applied by a regional level of government of the other Party creates a material impediment to trade or investment by a financial institution, an investor, investments in a financial institution or a cross-border financial service supplier, the Party may request consultations with regard to that measure. The Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate.

3. Consultations under this Article shall include officials of the authorities specified in Annex 10-B.

4. For greater certainty, nothing in this Article shall be construed to require a Party to derogate from its law regarding sharing of information between financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties, or to require a regulatory authority to take any action that would interfere with specific regulatory, supervisory, administrative or enforcement matters.

Article 10.19. Dispute Settlement

1. Chapter 27 (Dispute Settlement) shall apply as modified by this Article to the settlement of disputes arising under this Chapter.

2. Ifa Party claims that a dispute arises under this Chapter, Article 27.9 (Composition of Panels) shall apply, except that:

(a) if the Parties agree, each panellist shall meet the qualifications in paragraph 3; and

(b) in any other case:

(i) each Party shall select panellists that meet the qualifications set out in either paragraph 3 or Article 27.10.1 (Qualifications of Panellists); and

(ii) if the responding Party invokes Article 10.11, the chair of the panel shall meet the qualifications set out in paragraph 3, unless the Parties otherwise agree.

3. In addition to the requirements set out in Article 27.10.1(b) to (d) (Qualifications of Panellists), panellists in disputes arising under this Chapter shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

5. If a Party seeks to suspend benefits in the financial services sector, a panel that reconvenes to make a determination on the proposed suspension of benefits, in accordance with Article 27.18.5 (Non-Implementation — Compensation and Suspension of Benefits), shall seek the views of financial services experts, as necessary.

Article 10.20. Portfolio Management

1. A Party shall allow a financial institution organised in the territory of the other Party to provide the following services to a collective investment scheme located in its territory (10):

(a) investment advice; and

(b) portfolio management services, excluding:

(i) trustee services; and

(ii) custodial services and execution services that are not related to managing a collective investment scheme.

2. Paragraph 1 is subject to Article 10.6.3. 3. For the purposes of paragraph 1, collective investment scheme means:

(a) For Australia, a "managed investment scheme" as defined under section 9 of the Corporations Act 2001 (Cth), other than a managed investment scheme operated in contravention of subsection 601ED (5) of the Corporations Act 2001 (Cth), or an

entity that:

(ii) carries on a business of investment in securities, interests in land, or other investments; and

(ii) in the course of carrying on that business, invests funds subscribed, whether directly or indirectly, after an offer or invitation to the public (within the meaning of section 82 of the Corporations Act 2001 (Cth)) made on terms that the funds subscribed would be invested;

(b) For Peru:

(i) mutual funds for investments and securities, pursuant to Legislative Decree N° 861 (Texto Unico Ordenado de la Ley de Mercado de Valores aprobado mediante Decreto Supremo N° 093-2002-EF); or

(ii) investment funds, pursuant to Legislative Decree N° 862 (Decreto Legislativo N° 862, Ley de Fondos de Inversién y sus Sociedades Administradoras).

(10) For greater certainty, a Party may require a collective investment scheme or a person of a Party involved in the operation of the scheme located in the Party's territory to retain ultimate responsibility for the management of the collective investment scheme.

Article 10.21. Transfer of Information

Each Party shall allow a financial institution of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing if such processing is required in the institution's ordinary course of business. Nothing in this Chapter restricts the right of a Party to adopt or maintain measures to:

(a) protect personal data, personal privacy and the confidentiality of individual records and accounts; or

(b) require a financial institution to obtain prior authorisation from the relevant regulator to designate a particular enterprise as a recipient of such information, based on prudential considerations, (11)

provided that this right is not used as a means of avoiding the Party's commitments or obligations under this Chapter.

(11) For greater certainty, this requirement is without prejudice to other means of prudential regulation.

Article 10.22. Transparency Considerations

In developing a new regulation of general application to which this Chapter applies, a Party may consider, in a manner consistent with its laws and regulations, comments regarding how the proposed regulation may affect the operations of financial institutions, including financial institutions of the Party or the other Party. These comments may include:

(a) submissions to a Party by the other Party regarding its regulatory measures that are related to the objectives of the proposed regulation; or

(b) submissions to a Party by interested persons, including the other Party or financial institutions of the other Party, with regard to the potential effects of the proposed regulation.

ANNEX 10-A. Cross-border trade

Australia

Insurance and insurance-related services

1. Article 10.6.1 shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 10.1, with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(Ii) goods in international transit;

(b) reinsurance and retrocession;

(c) consultancy, risk assessment, actuarial and claim settlement services; and

(d) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of "financial service" in Article 10.1, of insurance of risks related to services listed in subparagraphs (a) and (b) of this paragraph.

Banking and other financial services (excluding insurance)

2. Article 10.6.1 shall apply only with respect to the provision and transfer of financial information, and financial data processing and related software as referred to in subparagraph (0) of the definition of "financial service" in Article 10.1 subject to prior authorisation from the relevant regulator as required; and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services, as referred to in subparagraph (p) of the definition of "financial service" in Article 10.1.

Peru

Insurance and insurance-related services

1. Article 10.6.1 shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 10.1, with respect to:

(a) insurance of risks related to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising there from; and

(Ii) goods in international transit;

(b) reinsurance and retrocession;

(c) consultancy, actuarial, risk assessment and claim settlement services; and

(d) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of "financial service" in Article 10.1, of insurance of risks relating to services listed in subparagraphs (a) and (b) in this paragraph.

Banking and other financial services (excluding insurance)

2. Article 10.6.1 shall apply only with respect to the provision and transfer of financial information, and financial data processing and related software as referred to in subparagraph (o) of the definition of "financial service" in Article 10.1(12), subject to prior authorisation from the relevant regulator, as required, and advisory and other auxiliary financial services (13), excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of "financial service" in Article 10.1 (Definitions). (14)

(12) The Parties understand that, if the financial information or financial data processing referred to in paragraph 2 of this Annex involves personal data, the treatment of such personal data shall be in accordance with Peru's law regulating the protection of such data and Article 10.23.

(13) The Parties understand that advisory and other auxiliary financial services do not include those services referred to in subparagraphs (e) through (0) of the definition of "financial service" in Article 10.1.

(14) The Parties understand that a trading platform, whether electronic or physical, does not fall within the tange of services specified in this paragraph.

ANNEX 10-B. Authorities responsible for financial services

The authorities for each Party responsible for financial services are:

(a) for Australia, the Treasury and the Department of Foreign Affairs and Trade;

(b) for Peru, the Ministry of Economy and Finance (Ministerio de Economia y Finanzas), in coordination with financial regulators.

Chapter 11. Temporary Entry for Business Persons

Article 11.1. Definitions

For the purposes of this Chapter:

business person means a national of a Party who is engaged in trade in goods, the supply of services or the conduct of investment activities;

immigration formality means a visa, permit, pass or other document or electronic authority granting temporary entry;

immigration measure means any measure affecting the entry and stay of foreign nationals; and

temporary entry means entry into the territory of a Party by a business person of the other Party who does not intend to establish permanent residence.

Article 11.2. Scope

1. This Chapter shall apply to measures that affect the temporary entry of business persons of a Party into the territory of the other Party under any of the categories referred to in Annex 11-A.

2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of the other Party, nor shall it apply to measures regarding citizenship, nationality, residence or employment on a permanent basis.

3. Nothing in this Agreement 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 those measures are not applied in a manner as to nullify or impair the benefits accruing to the other Party under this Chapter.

4. The sole fact that a Party requires business persons of the other Party to obtain an immigration formality shall not be regarded as nullifying or impairing the benefits accruing to the other Party under this Chapter.

Article 11.3. Application Procedures

1. Each Party shall, as expeditiously as possible, process complete applications for immigration formalities, including further immigration formality requests or extensions, and inform the applicant of the decision including, if approved, the period of stay and other conditions.

2. At the request of an applicant, a Party that has received a completed application for an immigration formality shall endeavour to promptly provide the applicant with information concerning the status of the application.

3. Each Party shall ensure that fees charged by its competent authorities for the processing of an application for an immigration formality are reasonable.

4. If the competent authorities of a Party require additional information from the applicant in order to process the application, they shall, without undue delay, endeavour to notify the applicant.

Article 11.4. Grant of Temporary Entry

1. Each Party shall set out in Annex 11-A the commitments it makes with regard to temporary entry of business persons, which shall specify the conditions and limitations (1) for entry and temporary stay, including length of stay, for each category of business persons specified by that Party.

2. A Party shall grant temporary entry or extension of temporary stay to business persons of the other Party to the extent provided for in those commitments made pursuant to paragraph 1, provided that those business persons:

(a) follow the granting Party's prescribed application procedures for the relevant immigration formality; and

(b) meet all relevant eligibility requirements for temporary entry or extension of temporary stay.

3. The sole fact that a Party grants temporary entry to a business person of the other Party pursuant to this Chapter shall not be construed to exempt that business person from meeting any applicable licensing or other requirements (2), including any mandatory codes of conduct, to practise a profession or otherwise engage in business activities.

4. A Party may refuse to issue an immigration formality to a business person of the other Party if the temporary entry of that person might affect adversely:

(a) the settlement of any labour dispute that is in progress at the place or intended place of employment; or

(b) the employment of any natural person who is involved in such dispute.

5. When a Party refuses pursuant to paragraph 4 to issue an immigration formality, it shall inform the applicant accordingly.

(1) For greater certainty, conditions and limitations include any numerical quotas or labour market testing requirement, which neither Party may impose unless specified in Annex 11-A.

(2) For greater certainty, this includes adhering to workplace standards.

Article 11.5. Provision of Information

1. Further to Article 25.2 (Publication) and Article 25.5 (Provision of Information), each Party shall:

(a) promptly publish online if possible or otherwise make publicly available, information on:

(i) current requirements for temporary entry under this Chapter, including explanatory material and relevant forms and documents that will enable interested persons of the other Party to become acquainted with those requirements; and

(ii) the typical timeframe within which an application for an immigration formality is processed; and

(b) establish or maintain appropriate mechanisms to respond to enquiries from interested persons regarding measures relating to temporary entry covered by this Chapter.

2. The information referred to in subparagraph 1(a) shall include, where applicable, the following information:

(a) types of visa, permit or any similar authorisation regarding entry and temporary stay;

(b) documentation required and conditions to be met; and

(c) method of filing an application and options on where to file, such as consular offices or online.

Article 11.6. Committee on Temporary Entry for Business Persons

The Parties hereby establish a Committee on Temporary Entry for Business Persons, which shall:

(a) meet on request of the Joint Commission to consider any matter arising under this Chapter; and

(b) consider opportunities for the Parties to further facilitate temporary entry of business persons, including through the development of activities undertaken pursuant to Article 11.7.

Article 11.7. Cooperation

The Parties shall consider undertaking mutually agreed cooperation activities, subject to available resources, including by sharing experiences with regulations and the implementation of programmes and technology related to border security, including those related to the use of biometric technology, advanced passenger information systems, frequent passenger programmes and security in travel documents.

Article 11.8. Relation to other Chapters

1. Except for this Chapter, Chapter 1 (Initial Provisions and General Definitions), Chapter 26 (Administrative and Institutional

Provisions), Chapter 27 (Dispute Settlement), Chapter 29 (Final Provisions), Article 25.2 (Publication) and Article 25.5 (Provision of Information), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

2. Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.

Article 11.9. Dispute Settlement

1. Neither Party shall have recourse to dispute settlement under Chapter 27 (Dispute Settlement) regarding a refusal to grant temporary entry unless:

(a) the matter involves a pattern of practice; and

(b) the business persons affected have exhausted all available administrative remedies regarding the particular matter.

2. The remedies referred to in paragraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the other Party within a reasonable period of time after the date of the institution of proceedings for the remedy, including any proceedings for review or appeal, and the failure to issue such a determination is not attributable to delays caused by the business persons concerned.

ANNEX 11-A. Schedule of australia

The following sets out Australia's commitments in accordance with Article 11.4 in respect of the temporary entry of business persons.

Description of Category	**Conditions and Limitations (including length of stay)**
A. Business Visitors	
Definition: **Business Visitors** comprise: (a) business persons seeking to travel to Australia for business purposes, including for investment purposes, whose remuneration and financial support for the duration of the visit must be derived from sources outside Australia and who must not engage in making direct sales to the general public or in supplying goods or services themselves; and (b) service sellers, being business persons who are not based in Australia and whose remuneration and financial support for the duration of the visit must be derived from sources outside Australia, and who are sales representatives of a service supplying enterprise, seeking temporary entry for the purpose of negotiating for the sale of services or entering into agreements to sell services for that service supplier.	Entry is for periods of stay up to a maximum of three months. Entry is for an initial stay of six months and up to a maximum of 12 months.
B. Installers and Servicers	
Definition: A business person of Peru who is an **Installer** or **Servicer** of machinery or equipment, where such installation or servicing by the supplying enterprise is a condition of purchase under contract of the	Entry is for periods of stay up to a maximum of three months.

said machinery or equipment, and who must not perform services which are not related to the installation or servicing activity which is the subject of the contract.	
C. Intra-Corporate Transferees	
In accordance with, and subject to, Australia's laws and regulations, Australia shall, upon application, grant the right of temporary entry, movement and work to the accompanying spouse or dependants of a business person that is granted temporary entry or an extension of temporary stay under these commitments.	
Definition: A business person of Peru employed by an enterprise of Peru established in Australia through a branch, subsidiary or affiliate which is lawfully and actively operating in Australia, who is transferred to fill a position in the branch, subsidiary or affiliate of the enterprise in Australia, and who is: (a) an executive or a senior manager, who is a business person responsible for the entire or a substantial part of the operations of the enterprise in Australia, receiving general supervision or direction principally from higher-level executives, the board of directors or stockholders of the enterprise, including directing the enterprise or a department or subdivision of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the enterprise; or (b) a specialist, who is a business person with advanced trade, technical or professional skills and experience who is assessed as having the necessary qualifications, or alternative credentials accepted as meeting Australia's domestic standards for the relevant occupation, and who must have been employed by the employer for not less than two years immediately preceding the date of the application for temporary entry.	Temporary entry of such business persons is subject to employer sponsorship. Full details of employer sponsorship requirements, including the list of eligible occupations for sponsorship, are available on the website of the Australian government department responsible for immigration matters (as at entry into force, the address of that website was - homeaffairs.gov.au). Sponsorship requirements, including eligible occupations, may change from time to time. Entry for executives and senior managers is for a period of stay up to four years, with the possibility of further stay. Entry for specialists is for a period of stay up to two years, with the possibility of further stay. Temporary entry of spouses and dependants is for the same period as the business persons concerned.
D. Independent Executives	
In accordance with, and subject to, Australia's laws and regulations, Australia shall, upon application, grant the right of temporary entry, movement and work to the accompanying spouse or dependants of a business person that is granted temporary entry or an extension of temporary stay under these	

commitments.	
Definition: A business person of Peru whose work responsibilities match the description set out below and who intend, or are responsible for, the establishment in Australia of a new branch or subsidiary of an enterprise which has its head of operations in the territory of Peru and which has no other representative, branch or subsidiary in Australia. Independent Executives will be responsible for the entire or a substantial part of the enterprise's operations in Australia, receiving general supervision or direction principally from higher level executives, the board of directors or stockholders of the enterprise, including directing the enterprise or a department or subdivision of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the enterprise.	Temporary entry of such business persons is subject to employer sponsorship. Full details of employer sponsorship requirements, including the list of eligible occupations for sponsorship, are available on the website of the Australian government department responsible for immigration matters (as at entry into force, the address of that website was - homeaffairs.gov.au). Sponsorship requirements, including eligible occupations, may change from time to time. Entry is for periods of stay up to a maximum of two years. Temporary entry of spouses and dependants is for the same period as the business persons concerned.
E. Contractual Service Suppliers	
In accordance with, and subject to, Australia's laws and regulations, Australia shall, upon application, grant the right of temporary entry, movement and work to the accompanying spouse or dependants of a business person that is granted temporary entry or an extension of temporary stay under these commitments.	
Definition: Business persons of Peru with trade, technical or professional skills and experience who are assessed as having the necessary qualifications, skills and work experience accepted as meeting the domestic standard in Australia for their nominated occupation, and who are: (a) employees of an enterprise of Peru that has concluded a contract for the supply of a service within Australia and that does not have a commercial presence within Australia; or (b) engaged by an enterprise lawfully and actively operating in Australia in order to supply a service under a contract within Australia.	Temporary entry of such business persons is subject to employer sponsorship. Full details of employer — sponsorship requirements, including the list of eligible occupations for sponsorship, are available on the website of the Australian government department responsible for immigration matters (as at entry into force, the address of that website was - homeaffairs.gov.au). Employer sponsorship requirements, including the list of eligible occupations, may change from time to time. Temporary entry of such businesses persons may be subject to labour market testing requirements. If Australia enters into any agreement with a non-Party after the date of entry into force of this Agreement that provides more favourable treatment with respect to labour market testing for contractual service suppliers of that non-Party, Australia will notify Peru of this development, and the Parties shall then initiate a review, with a view to Australia extending, under this Agreement, treatment no less favourable than that provided under the agreement with the non-Party with respect to labour market testing. The Parties shall commence such a review within three months following the date of entry into force of the international agreement with the non-

	Party and will conduct the review with the aim of concluding it within six months following the same date. Entry is for periods of stay up to two years, with the possibility of further stay. Temporary entry of spouses and dependants is for the same period as the business persons concerned.

ANNEX 11-A. Schedule of peru

The following sets out Peru's commitments in accordance with Article 11.4 in respect of the temporary entry of business persons.

Description of Category	**Conditions and Limitations (including length of stay)**
A. Business Visitors	
Definition: **Business Visitor** means a business person seeking to travel to Peru for business purposes, including for: (a) attending meetings or conferences; (b) performing commercial transactions (1), but not selling goods or providing services to the general public; or (c) undertaking business consultations concerning the establishment, expansion or winding up of an enterprise in Peru. The primary source of income for the proposed business activity is outside Peru, and the business person's principal place of business and the actual place of accrual of profits, at least predominantly, remain outside Peru.	Length of Stay: Up to 183 days.
(1) In the case of financial services activities, this Category only includes financial services personnel of an enterprise located in the other Party, engaging in financial services, where the provision of such financial services does not require the authorisation of the competent authority of Peru or where Peru has explicitly made commitments for such financial services in Annex 10-A.1 (Cross-Border Trade).	
B. Intra-Corporate Transferees	
Definition: **Intra-Corporate Transferee** means a business person employed by an	The labour contract approval by the Labour Administrative Authority implies an evaluation of the following quotas on the hiring of foreigners: (a) foreign natural persons may not represent more than 20 per cent of

enterprise abroad, who is transferred to Peru to supply services as an employee" of the headquarters, subsidiary or affiliate of that enterprise, pursuant to a labour contract approved by the Labour Administrative Authority. For the purposes of this Category, the business person supplies services as: (a) an Executive means a business person within an organisation who primarily directs the management of the organisation, exercises wide latitude in decision-making, and receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the business. (b) a Manager means a business person within an organisation who primarily directs the organisation or a department or sub-division of the organisation, supervises, and controls the work of other supervisory, professional or managerial employees, has the authority to hire and fire or take other personnel actions such as promotion or leave authorisation, and exercises discretionary authority over day-to-day operations. (c) a Specialist means a business person who possesses specialised knowledge of the company's products or services and applies it in international markets, or an advanced level of expertise or knowledge of the company's processes and procedures. A specialist may include, but is not limited to, professionals. In accordance with, and subject to, Peru's laws and regulations, a spouse of an Intra- corporate transferee shall, upon application, be granted temporary entry, provided that the spouse follows Peru's prescribed application procedures for the relevant immigration formality and meets all relevant eligibility requirements for such temporary .	the total number of employees of an enterprise; and (b) their pay may not exceed 30 per cent of the total payroll for wages and salaries of the enterprise. **Length of Stay:** Intra-Corporate Transferees: Up to one year, renewable upon request, for consecutive , to the extent that the conditions which motivated its granting are maintained. Spouses: The length of stay is subject to Peru's laws and regulations.
(2) For greater certainty, the business person transferred shall provide services under a subordinate relationship in Peru.	
(3) For greater certainty, the renewal for consecutive periods of one year can result in a stay of four years or more, to the extent that the conditions that motivated the granting are maintained.	
(4) Such temporary entry does not imply an authorisation to perform the activities allowed under the Category of Intra-Corporate Transferee nor to perform remunerated activities.	
C. Investors	
	Length of Stay: Investors: Up to one year, renewable upon request, for

Definition: **Investor** means a business person seeking to establish or develop an investment in Peru, to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital, established by the immigration legislation. In accordance with, and subject to, Peru's laws and regulations, a spouse of an Investor shall, upon application, be granted temporary entry, provided that the spouse follows Peru's prescribed application procedures for the relevant immigration formality and meets all relevant eligibility requirements for such temporary .	consecutive periods, to the extent that the conditions which motivated its granting are maintained. Spouses: The length of stay is subject to Peru's laws and regulations.
(5) Such temporary entry does not imply an authorisation to perform the activities allowed under the Category of Investor nor to perform remunerated activities.	
D. Professionals	
Definition: **Professional** means a business person seeking to engage, at a professional level, as an independent professional or as a contractual service supplier, in any occupation not included in the following list: (a) occupations related to Health, Education, Social and Community Services; and (b) Judges, Lawyers and Notaries except foreign legal consultants. The Professional is engaged in a specialty occupation requiring: (a) theoretical and practical application of a body of specialised knowledge; and (b) attainment of a post-secondary degree, requiring five years of study, or the equivalent of such a degree, as a minimum for entry into the occupation; and of the appropriate educational and other qualifications relevant to the service to be provided. For the purposes of this Category: **Independent Professional** means a professional who: (a) is a self-employed services supplier who supplies services pursuant a service contract with a person of Peru; and receives his incomes from a person of Peru; and (b) **Contractual Service Supplier** means a professional who: (a) is engaged in the supply of a contracted service as an employee of a juridical person that has no commercial presence in Peru, where the juridical person obtains a service contract from a juridical person of Peru; and (b) is required to receive no remuneration from a juridical person located in Peru. For greater certainty, "contractual service supplier" includes a business person who is an installer or servicer of machinery or equipment, where such installation or servicing by the supplying company is a condition of purchase of the said machinery or equipment. An installer or servicer cannot perform services which are not related to the service activity which is the subject of the contract.	**Length of Stay:** Independent Professionals: up to one year, renewable for consecutive periods, the number of times that it is requested, to the extent that the conditions which motivated its granting are maintained. Contractual Service Suppliers: up to 90 days, renewable for one year.
E. Technicians	
Definition: **Technician** means a business person seeking to engage, at a technical level, as an independent technician or as a contractual service supplier, in any of the following activities: (a) Civil, Electrical, Electronics, Mechanical and Industrial Engineering Technicians; (b) Construction Technicians; (c) Engineering Inspectors, Testers and Regulatory Officers; (d) supervisors in the following: Machinists and Related Occupations; Printing and Related Occupations; Mining and Quarrying; Oil and Gas Drilling and Service; Mineral and Metal Processing; Petroleum, Gas and Chemical Processing and Utilities; Food, Beverage, and Tobacco Processing; Plastic and Rubber	**Length of Stay:**

Products Manufacturing; Forest Products Processing; Textile Processing; (e) contractors and supervisors in the following: Electrical Trades and Telecommunications Occupations; Pipefitting Trades; Metal Forming, Shaping and Erecting Trades; Carpentry Trades; Mechanic Trades; Heavy Construction Equipment Crews; Mining and Extraction Equipment Personnel; Other Construction Trades, Installers, Repairers and Servicers; (f) Electricians; (g) Plumbers; (h) Industrial Instrument Technicians and Mechanics; (i) Aircraft Instrument, Electrical, and Avionics Mechanics, Technicians, and Inspectors; (j) Oil and Gas Well Drillers, Servicers and Testers; (k) Graphic Designers and Illustrators; (l) Interior Designers; (m) Chefs; (n) Computer and Information Systems Technicians; (o) Industrial Designers; (p) Drafting Technologists and Technicians; (q) Land Survey Technologists and Technicians; (r) Technical occupations in Geomatics and Meteorology; (s) Architectural Technologists and Technicians; (t) International Purchasing and Selling Agents. The Technician is engaged in a specialty occupation requiring: (a) theoretical and practical application of a body of specialised knowledge; and (b) attainment of a post-secondary degree, requiring three years of study, or the equivalent of such a degree, as a minimum for entry into the occupation; and of the appropriate educational and other qualifications relevant to the service to be provided. For the purposes of this Category: **Independent Technician** means a technician who: (a) is a self-employed services supplier who supplies services pursuant a service contract with a person of Peru; and receives his income from a person of Peru; and (b) **Contractual Service Supplier** means a technician who: (a) is engaged in the supply of a service, as an employee of a juridical person that has no commercial presence in Peru, where the juridical person obtains a service contract from a juridical person of Peru; and (b) _ is required to receive no remuneration from a juridical person located in Peru. For greater certainty, “contractual service supplier” includes a business person who is an installer or servicer of machinery or equipment, where such installation or servicing by the supplying company is a condition of purchase of the said machinery or equipment. An installer or servicer cannot perform services which are not related to the service activity which is the subject of the contract.	Independent Technicians: up to one year, renewable upon request, for consecutive periods, to the extent that the conditions which motivated its granting are maintained. Contractual Service Suppliers: up to 90 days, renewable for one year.

Chapter 12. Telecommunications

Article 12.1. Definitions

For the purposes of this Chapter:

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

end-user means a final consumer of or subscriber to a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;

enterprise means an enterprise as defined in Article 1.3 (General Definitions) and a branch of an enterprise;

essential facilities means facilities of a public telecommunications network or service that:

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

(b) cannot feasibly be economically or technically substituted in order to supply a service;

interconnection means linking with suppliers providing public telecommunications services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

i**nternational mobile roaming service** means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications services that enables end-users to use their home mobile handset or other device for voice, data or messaging services while outside the territory in which the end-user's home public telecommunications network is located;

leased circuit means a telecommunications facility between two or more designated points that is set aside for the dedicated use of, or availability to, a user;

licence means any authorisation that a Party may require of a person, in accordance with its laws and regulations, in order

for that person to offer a telecommunications service, including concessions, permits or registrations;

major supplier means a supplier of public telecommunications services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of:

(a) control over essential facilities; or

(b) use of its position in the market;

network element means a facility or equipment used in supplying a public telecommunications service, including features, functions and capabilities provided by means of that facility or equipment;

non-discriminatory means treatment no less favourable than that accorded to any other user of like public telecommunications services in like circumstances, including with respect to timeliness;

number portability means the ability of end-users of public telecommunications services to retain, at the same location, the same telephone numbers when switching between the same category of suppliers of public telecommunications services;

physical co-location means physical access to and control over space in order to install, maintain or repair equipment, at premises owned or controlled and used by a major supplier to provide public telecommunications services;

public telecommunications network means telecommunications infrastructure used to provide public telecommunications services between defined network termination points;

public telecommunications service means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. These services may include telephone and data transmission typically involving transmission of customer-supplied information between two or more defined points without any end-to-end change in the form or content of the customer's information;

reference interconnection offer means an interconnection offer extended by a major supplier and filed with, approved by or determined by a telecommunications regulatory body, that sufficiently details the terms, rates and conditions for interconnection so that a supplier of public telecommunications services that is willing to accept it may obtain interconnection with the major supplier on that basis, without having to engage in negotiations with the major supplier concerned;

telecommunications means the transmission and reception of signals by any electromagnetic means, including by photonic means;

telecommunications regulatory body means a body or bodies responsible for the regulation of telecommunications;

user means a service consumer or a service supplier; and

virtual co-location means an arrangement whereby a requesting supplier that seeks co-location may specify equipment to be used in the premises of a major supplier but does not obtain physical access to those premises and allows the major supplier to install, maintain and repair that equipment.

Article 12.2. Scope

1. This Chapter shall apply to:

(a) any measure relating to access to and use of public telecommunications services;

(b) any measure relating to obligations regarding suppliers of public telecommunications services; and

(c) any other measure relating to telecommunications services.

2. This Chapter shall not apply to any measure relating to broadcast or cable distribution of radio or television programming, except that:

(a) Article 12.4 shall apply with respect to a cable or broadcast service supplier's access to and use of public telecommunications services; and

(b) Article 12.21 shall apply to any technical measure to the extent that the measure also affects public telecommunications services.

3. Nothing in this Chapter shall be construed to:

(a) require a Party, or require a Party to compel any enterprise, to establish, construct, acquire, lease, operate or provide a telecommunications network or service not offered to the public generally; (1)

(b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network; or

(c) prevent a Party from prohibiting a person who operates a private network from using its private network to supply a public telecommunications network or service to third persons.

4. Annex 12-A includes additional provisions relating to the scope of this Chapter.

(1) For greater certainty, nothing in this Chapter shall be construed to require a Party to authorise an enterprise of the other Party to establish, construct, acquire, lease, operate or supply public telecommunications services, unless otherwise provided for in this Agreement.

Article 12.3. Approaches to Regulation

1. The Parties recognise the value of competitive markets to deliver a wide choice in the supply of telecommunications services and to enhance consumer welfare, and that economic regulation may not be needed if there is effective competition or if a service is new to a market. Accordingly, the Parties recognise that regulatory needs and approaches differ market by market, and that each Party may determine how to implement its obligations under this Chapter.

2. In this respect, the Parties recognise that a Party may:

(a) engage in direct regulation either in anticipation of an issue that the Party expects may arise or to resolve an issue that has already arisen in the market;

(b) rely on the role of market forces, particularly with respect to market segments that are, or are likely to be, competitive or that have low barriers to entry, such as services provided by telecommunications suppliers that do not own network facilities; or

(c) use any other appropriate means that benefit the long-term interest of end-users.

Article 12.4. Access to and Use of Public Telecommunications Services (2)

1. Each Party shall ensure that any enterprise of the other Party has access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions.

2. Each Party shall ensure that any enterprise of the other Party is permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications network;

(b) provide services to individual or multiple end-users over leased or owned circuits;

(c) connect leased or owned circuits with public telecommunications networks and services or with circuits leased or owned by another enterprise;

(d) perform switching, signalling, processing and conversion functions; and (e) use operating protocols of their choice.

3. Each Party shall ensure that an enterprise of the other Party may use public telecommunications services for the movement of information in its territory or across its borders, including for intra-corporate communications, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.

4. Notwithstanding paragraph 3, a Party may take measures that are necessary to ensure the security and confidentiality of messages and to protect the privacy of personal data of end-users of public telecommunications networks or services, provided that those measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

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

(a) safeguard the public service responsibilities of suppliers of public telecommunications networks and services, in particular their ability to make their networks or services generally available to the public; or

(b) protect the technical integrity of public telecommunications networks or services.

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

(a) a requirement to use a specified technical interface, including an interface protocol, for connection with those networks or services;

(b) a requirement, when necessary, for the interoperability of those networks and services;

(c) type approval of terminal or other equipment that interfaces with the network and technical requirements relating to the attachment of that equipment to those networks; and

(d) a licensing, permit, registration or notification procedure which, if adopted or maintained, is transparent and provides for the processing of applicationsfiled thereunder in accordance with a Party's laws or regulations.

(2) For greater certainty, this Article does not prohibit any Party from requiring an enterprise to obtain a licence to supply any public telecommunications service within its territory.

Article 12.5. Obligations Relating to Suppliers of Public Telecommunications Services

Interconnection (3)

1. Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly within the same territory, interconnection with suppliers of public telecommunications services of the other Party.

2. Each Party shall provide its telecommunications regulatory body with the authority to require interconnection at reasonable rates.

3. In carrying out paragraph 1, each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services obtained as a result of interconnection arrangements and that those suppliers only use that information for the purpose of providing these services.

Number Portability

4. Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability without impairment to quality and reliability, on a timely basis, and on reasonable and non-discriminatory terms and conditions.

Access to Numbers

5. Each Party shall ensure that suppliers of public telecommunications services of the other Party established in its territory are afforded access to telephone numbers on a non-discriminatory basis.

(3) For greater certainty, the term "interconnection", as used in this Chapter, does not include access to unbundled network elements.

Article 12.6. International Mobile Roaming

1. The Parties shall endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services that can help promote the growth of trade among the Parties and enhance consumer welfare.

2. A Party may choose to take steps to enhance transparency and competition with respect to international mobile roaming rates and technological alternatives to roaming services, such as:

(a) ensuring that information regarding retail rates is easily accessible to consumers; and

(b) minimising impediments to the use of technological alternatives to roaming, whereby consumers when visiting the territory of a Party from the territory of the other Party can access telecommunications services using the device of their

choice.

3. The Parties recognise that a Party, when it has the authority to do so, may choose to adopt or maintain measures affecting rates for wholesale international roaming services with a view to ensuring that those rates are reasonable. If a Party considers it appropriate, it may cooperate on and implement mechanisms with the other Party to facilitate the implementation of those measures, including by entering into arrangements with that Party.

4. If a Party (the first Party) chooses to regulate rates or conditions for wholesale international mobile roaming services, it shall ensure that a supplier of public telecommunications services of the other Party (the second Party) has access to the regulated rates or conditions for wholesale international mobile roaming services for its customers roaming in the territory of the first Party in circumstances in which: (4)

(a) the second Party has entered into an arrangement with the first Party to reciprocally regulate rates or conditions for wholesale international mobile roaming services for suppliers of the two Parties; (5) or

(b) in the absence of an arrangement of the type referred to in subparagraph (a), the supplier of public telecommunications services of the second Party, of its own accord:

(i) makes available to suppliers of public telecommunications services of the first Party wholesale international mobile roaming services at rates or conditions that are reasonably comparable to the regulated rates or conditions;(6) and

(ii) meets any additional requirements (7) that the first Party imposes with respect to the availability of the regulated rates or conditions.

The first Party may require suppliers of the second Party to fully utilise commercial negotiations to reach agreement on the terms for accessing such rates or conditions.

5. A Party that ensures access to regulated rates or conditions for wholesale international mobile roaming services in accordance with paragraph 4 shall be deemed to be in compliance with its obligations under Article 9.4 (Most-Favoured-Nation Treatment), Article 12.4.1, and Article 12.7 with respect to international mobile roaming services.

6. Each Party shall ensure that:

(a) suppliers of public telecommunications services in its territory, or

(b) its telecommunications regulatory body, make publicly available retail rates for international mobile roaming services, for voice, data and text messages.

7. Nothing in this Article shall require a Party to regulate rates or conditions for international mobile roaming services.

(4) For greater certainty, neither Party shall, solely on the basis of any obligations owed to it by the first Party under a most-favoured-nation provision, or under a telecommunications-specific non-discrimination provision, in any existing international trade agreement, seek or obtain for its suppliers the access to regulated rates or conditions for wholesale international mobile roaming services that is provided under this Article.

(5) For greater certainty, access under this subparagraph to the rates or conditions regulated by the first Party shall be available to a supplier of the second Party only if such regulated rates or conditions are reasonably comparable to those reciprocally regulated under the arrangement referred to in this subparagraph. The telecommunications regulatory body of the first Party shall, in the case of disagreement, determine whether the rates or conditions are reasonably comparable.

(6) For the purposes of this subparagraph, rates or conditions that are reasonably comparable means rates or conditions agreed to be such by the relevant suppliers or, in the case of disagreement, determined to be such by the telecommunications regulatory body of the first Party.

(7) For greater certainty, such additional requirements may include, for example, that the rates provided to the supplier of the second Party reflect the reasonable cost of supplying international mobile roaming services by a supplier of the first Party to a supplier of the second Party, as determined through the methodology of the first Party.

Article 12.7. Treatment by Major Suppliers of Public Telecommunications Services

Each Party shall ensure that a major supplier in its territory accords suppliers of public telecommunications services of the other Party treatment no less favourable than that major supplier accords in like circumstances to its subsidiaries, its affiliates or non- affiliated service suppliers regarding:

(a) the availability, provisioning, rates or quality of like public telecommunications services; and

(b) the availability of technical interfaces necessary for interconnection.

Article 12.8. Competitive Safeguards

1. Each Party shall maintain appropriate measures for the purpose of preventing suppliers of public telecommunications services that, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.

2. The anti-competitive practices referred to in paragraph 1 include in particular:

(a) engaging in anti-competitive cross-subsidisation;

(b) using information obtained from competitors with anti-competitive results; and

(c) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information that are necessary for them to provide services.

Article 12.9. Resale

1. Neither Party shall prohibit the resale of any public telecommunications service.

2. Each Party shall ensure that a major supplier in its territory:

(a) offers for resale, at reasonable rates (8), to suppliers of public telecommunications services of the other Party, public telecommunications services that the major supplier provides at retail to end-users; and

(b) does not impose unreasonable or discriminatory conditions or limitations on the resale of those services.

3. Each Party may determine, in accordance with its laws and regulations, which public telecommunications services must be offered for resale by major suppliers pursuant to paragraph 2, based on the need to promote competition or to benefit the long-term interests of end-users.

4. If a Party does not require that a major supplier offer a specific public telecommunications service for resale, it nonetheless shall allow service suppliers to request that the service be offered for resale consistent with paragraph 2, without prejudice to the Party's decision on the request.

(8) For the purposes of this Article, each Party may determine reasonable rates through any methodology it considers appropriate.

Article 12.10. Unbundling of Network Elements by Major Suppliers

Each Party shall provide its telecommunications regulatory body or another appropriate body with the authority to require a major supplier in its territory to offer to public telecommunications service suppliers access to network elements on an unbundled basis on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory and transparent for the supply of public telecommunications services. Each Party may determine the network elements required to be made available in its territory, and the suppliers that may obtain those elements, in accordance with its laws and regulations.

Article 12.11. Interconnection with Major Suppliers

General Terms and Conditions

1. Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications services of the other Party:

(a) at any technically feasible point in the major supplier's network;

(b) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;

(c) of a quality no less favourable than that provided by the major supplier for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;

(d) in a timely manner, on terms and conditions (including technical standards and specifications), and at cost-oriented rates, that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers do not have to pay for network components or facilities that they do not require for the service to be provided; and

(e) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

Options for Interconnecting with Major Suppliers

2. Each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications services of the other Party with the opportunity to interconnect their facilities and equipment with those of the major supplier through at least one of the following options:

(a) a reference interconnection offer or another standard interconnection offer containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications services; (9)

(b) the terms and conditions of an interconnection agreement that is in effect; or

(c) the terms and conditions set by a Party's telecommunications regulatory body or other competent body.

3. In addition to the options provided in paragraph 2, each Party shall ensure that suppliers of public telecommunications services of the other Party have the opportunity to interconnect their facilities and equipment with those of the major supplier through the negotiation of a new interconnection agreement.

Public Availability of Interconnection Offers and Agreements

4. Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.

5. Each Party shall provide means for suppliers of the other Party to obtain the rates, terms and conditions necessary for interconnection offered by a major supplier. Those means include, at a minimum, ensuring:

(a) the public availability of interconnection agreements that are in effect between a major supplier in its territory and other suppliers of public telecommunications services in its territory;

(b) the public availability of rates, terms and conditions for interconnection with a major supplier set by the telecommunications regulatory body or other competent body; or

(c) the public availability of a reference interconnection offer or another standard interconnection offer as provided for under paragraph 2(a).

(9) For greater certainty, for the purposes of this Article, a standard interconnection offer shall be consistent with the definition of a reference interconnection offer except that such an offer does not need to be filed with, or approved by, a telecommunications regulatory body.

Article 12.12. Provisioning and Pricing of Leased Circuits Services by Major Suppliers

1. Each Party shall ensure that a major supplier in its territory provides to service suppliers of the other Party leased circuits services that are public telecommunications services in a reasonable period of time on terms and conditions, and at rates, that are reasonable and non-discriminatory, and based on a generally available offer.

2. Further to paragraph 1, each Party shall provide its telecommunications regulatory body or other appropriate bodies the authority to require a major supplier in its territory to offer leased circuits services that are public telecommunications services to service suppliers of the other Party at capacity-based and cost-oriented prices.

Article 12.13. Co-location by Major Suppliers

1. Subject to paragraphs 2 and 3, each Party shall ensure that a major supplier in its territory provides to suppliers of public

telecommunications services of the other Party in the Party's territory physical co-location of equipment necessary for interconnection or access to unbundled network elements based on a generally available offer, on a timely basis, and on terms and conditions and at cost-oriented rates, that are reasonable and non-discriminatory.

2. Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that a major supplier in its territory provides an alternative solution, such as facilitating virtual co-location, based on a generally available offer, on a timely basis, and on terms and conditions and at cost-oriented rates, that are reasonable and non-discriminatory.

3. A Party may determine, in accordance with its laws and regulations, which premises owned or controlled by major suppliers in its territory are subject to paragraphs 1 and 2. When the Party makes this determination, it shall take into account factors such as the state of competition in the market where co-location is required, whether those premises can be substituted in an economically or technically feasible manner in order to provide a competing service, or other specified public interest factors.

4. If a Party does not require that a major supplier offer co-location at certain premises, it nonetheless shall allow suppliers to request that those premises be offered for co-location consistent with paragraph 1, without prejudice to the Party's decision on such a request.

Article 12.14. Access to Poles, Ducts, Conduits and Rights-of-way Owned or Controlled by Major Suppliers

1. Each Party shall ensure that a major supplier in its territory provides access to poles, ducts, conduits, and rights-of-way or any other structures as determined by the Party, owned or controlled by the major supplier, to suppliers of public telecommunications services of the other Party in the Party's territory on a timely basis, on terms and conditions and at rates, that are reasonable, non-discriminatory and transparent, subject to technical feasibility.

2. A Party may determine, in accordance with its laws and regulations, the poles, ducts, conduits, rights-of-way or any other structures to which it requires major suppliers in its territory to provide access in accordance with paragraph 1. When the Party makes this determination, it shall take into account factors such as the competitive effect of lack of such access, whether such structures can be substituted in an economically or technically feasible manner in order to provide a competing service, or other specified public interest factors.

Article 12.15. Independent Regulatory Bodies and Government Ownership

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. With a view to ensuring the independence and impartiality of telecommunications regulatory bodies, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest (10) or maintain an operating or management role in any supplier of public telecommunications services.

2. Each Party shall ensure that the regulatory decisions and procedures of its telecommunications regulatory body or other competent authority related to provisions contained in this Chapter are impartial with respect to all market participants.

3. Neither Party shall accord more favourable treatment to a supplier of telecommunications services in its territory than that accorded to a like service supplier of the other Party on the basis that the supplier receiving more favourable treatment is owned by the national government of the Party.

(10) This paragraph shall not be construed to prohibit a government entity of a Party other than the telecommunications regulatory body from owning equity in a supplier of public telecommunications services.

Article 12.16. Universal Service

Each Party has the right to define the kind of universal service obligation it wishes to maintain. Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory and competitively neutral manner, and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

Article 12.17. Licensing Process

1. If a Party requires a supplier of public telecommunications services to have a licence, the Party shall ensure the public availability of:

(a) all the licensing criteria and procedures that it applies;

(b) the period that it normally requires to reach a decision concerning an application for a licence; and

(c) the terms and conditions of all licences in effect. 2. Each Party shall ensure that, on request, an applicant receives the reasons for the: (a) denial of a licence; (b) imposition of supplier-specific conditions on a licence; (c) revocation of a licence; or

(d) refusal to renew a licence.

Article 12.18. Allocation and Use of Scarce Resources

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers and rights-of-way, in an objective, timely, transparent and non-discriminatory manner.

2. Each Party shall make publicly available the current state of frequency bands:

(a) allocated to specific services

(b) assigned to service suppliers to provide access to end-users,

but retains the right not to provide detailed identification of frequencies that are allocated or assigned for specific government uses.

3. For greater certainty, a Party's measures allocating and assigning spectrum and managing frequency are not per se inconsistent with Article 9.5 (Market Access) either as it applies to cross-border trade in services or through the operation of Article 9.2.2 (Scope) to an investor or covered investment of the other Party. Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that may have the effect of limiting the number of suppliers of public telecommunications services, provided that the Party does so in a manner that is consistent with other provisions of this Agreement. This includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

4. When making a spectrum allocation for commercial telecommunications services, each Party shall endeavour to rely on an open and transparent process that considers the public interest, including the promotion of competition. Each Party shall endeavour to rely generally on market-based approaches in assigning spectrum for terrestrial commercial telecommunications services. To this end, each Party shall have the authority to use mechanisms such as auctions, if appropriate, to assign spectrum for commercial use.

Article 12.19. Enforcement

Each Party shall provide its telecommunications regulatory body or other relevant body with the authority to enforce the Party's measures relating to the obligations set out in Article 12.4, Article 12.5, Article 12.7, Article 12.8, Article 12.9, Article 12.10, Article 12.11, Article 12.12, Article 12.13 and Article 12.14, That authority (11) shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension or revocation of licences.

(11) For greater certainty, such authority may include the ability to seek such sanctions from administrative or judicial bodies, in accordance with a Party's laws and regulations.

Article 12.20. Resolution of Telecommunications Disputes

1. Further to Article 25.3 (Administrative Proceedings) and Article 25.4 (Review and Appeal), each Party shall ensure that:

Recourse

(a) enterprises have recourse to a telecommunications regulatory body or other relevant body of the Party to resolve disputes regarding the Party's measures relating to matters set out in Article 12.4, Article 12.5, Article 12.6, Article 12.7, Article 12.8, Article 12.9, Article 12.10, Article 12.11, Article 12.12, Article 12.13 and Article 12.14;

(a) enterprises have recourse to a telecommunications regulatory body or other relevant body of the Party to resolve disputes regarding the Party's measures relating to matters set out in Article 12.4, Article 12.5, Article 12.6, Article 12.7, Article 12.8, Article 12.9, Article 12.10, Article 12.11, Article 12.12, Article 12.13 and Article 12.14;

(b) if a telecommunications regulatory body declines to initiate any action on a request to resolve a dispute, it shall, upon request, provide a written explanation for its decision within a reasonable period of time;

(c) suppliers of public telecommunications services of the other Party that have requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable and publicly specified period of time after the supplier requests interconnection, by its telecommunications regulatory body (12) to resolve disputes regarding the terms, conditions and rates for interconnection with that major supplier; and

Reconsideration (13)

(d) any enterprise whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may appeal to or petition the body or other relevant body to reconsider that determination or decision. Neither Party shall permit the making of an application for reconsideration to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless the regulatory or other relevant body issues an order that the determination or decision not be enforced while the proceeding is pending.

A Party may limit the circumstances under which reconsideration is available, in accordance with its laws and regulations.

Judicial Review

2. Neither Party shall permit the making of an application for judicial review to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless the judicial body issues an order that the determination or decision not be enforced while the proceeding is pending.

(12) With respect to Australia, such review is available through judicial bodies.

(13) With respect to Peru, enterprises may not petition for reconsideration of rulings of general application, as defined in Article 25.1 (Definitions), unless provided for under its laws and regulations. For Australia, paragraph 1(d) does not apply.

Article 12.21. Transparency

1. Further to Article 25.2.2 (Publication), each Party shall ensure that when its telecommunications regulatory body seeks input (14) for a proposal for a regulation, that body shall:

(a) make the proposal public or otherwise available to any interested persons;

(b) include an explanation of the purpose of and reasons for the proposal;

(c) provide interested persons with adequate public notice of the ability to comment and reasonable opportunity for such comment;

(d) to the extent practicable, make publicly available all relevant comments filed with it; and

(e) respond to all significant and relevant issues raised in comments filed, in the course of issuance of the final regulation. (15)

2. Further to Article 25.2.1 (Publication), each Party shall ensure that its measures relating to public telecommunications services are made publicly available, including:

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

(b) specifications of technical interfaces;

(c) conditions for attaching terminal or other equipment to the public telecommunications network;

(d) licensing, permit, registration or notification requirements, if any;

(e) general procedures relating to resolution of telecommunications disputes provided for in Article 12.20; and

(f) any measures of the telecommunications regulatory body if the government delegates to other bodies the responsibility for preparing, amending and adopting standards-related measures affecting access and use.

(14) For greater certainty, seeking input does not include internal governmental deliberations.

(15) For greater certainty, a Party may consolidate its responses to the comments received from interested persons.

Article 12.22. Flexibility In the Choice of Technology

1. Neither Party shall prevent suppliers of public telecommunications services from choosing the technologies they wish to use to supply their services, subject to requirements necessary to satisfy legitimate public policy interests, provided that any measure restricting that choice is not prepared, adopted or applied in a manner that creates unnecessary obstacles to trade. For greater certainty, a Party adopting those measures shall do so consistent with Article 12.21.

2. When a Party finances the development of advanced networks, including broadband networks, it may make its financing conditional on the use of technologies that meet its specific public policy interests.

Article 12.23. Relation to other Chapters

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

Article 12.24. Relation to International Organisations

The Parties recognise the importance of international standards for global compatibility and interoperability of telecommunications networks and services and undertake to promote those standards through the work of relevant international organisations.

ANNEX 12-A. Rural telephone suppliers — peru

1. With respect to Peru:

(a) a rural operator shall not be considered a major supplier;

(b) Article 12.5.4 shall not apply to rural operators; and

(b) to be read in conjunction with any other relevant provisions in this Agreement.

2. For the purposes of this Annex:

(a) rural area means a population centre:

(i) that is not included within urban areas, with a population of less than 3,000 inhabitants, a low population density and a lack of basic services; or

(ii) with a teledensity rate of less than two fixed lines per 100 inhabitants; and

(b) rural operator means a rural telephone company that has at least 80 per cent of its total fixed subscriber lines in operation in rural areas.

Chapter 13. Electronic Commerce

Article 13.1. Definitions

For the purposes of this Chapter:

computing facilities means computer servers and storage devices for processing or storing information for commercial use;

covered person (1) means:

(a) a covered investment as defined in Article 8.1 (Definitions);

(b) an investor of a Party as defined in Article 8.1 (Definitions), but does not include an investor in a financial institution; or

(c) a service supplier of a Party as defined in Article 9.1 (Definitions),

but does not include a "financial institution" or a "cross-border financial service supplier of a Party" as defined in Article 10.1 (Definitions);

digital product means a computer program, text, video, image, sound recording or other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically;(2) (3)

electronic authentication means the process or act of verifying the identity of a party to an electronic communication or transaction and ensuring the integrity of an electronic communication;

electronic transmission or **transmitted electronically** means a transmission made using any electromagnetic means, including by photonic means;

personal information means any information, including data, about an identified or identifiable natural person;

trade administration documents means forms issued or controlled by a Party that must be completed by or for an importer or exporter in connection with the import or export of goods; and

unsolicited commercial electronic message means an electronic message which is sent for commercial or marketing purposes to an electronic address, without the consent of the recipient or despite the explicit rejection of the recipient, through an Internet access service supplier or, to the extent provided for under the laws and regulations of a Party, other telecommunications service.

(1) For Australia, a covered person does not include a credit reporting body.

(2) For greater certainty, digital product does not include a digitised representation of a financial instrument, including money.

(3) The definition of digital product should not be understood to reflect a Party's view on whether trade in digital products through electronic transmission should be categorised as trade in services or trade in goods.

Article 13.2. Scope and General Provisions

1. The Parties recognise the economic growth and opportunities provided by electronic commerce and the importance of frameworks that promote consumer confidence in electronic commerce and of avoiding unnecessary barriers to its use and development.

2. This Chapter shall apply to measures adopted or maintained by a Party that affect trade by electronic means.

3. This Chapter shall not apply to:

(a) government procurement; or

(b) information held or processed by or on behalf of a Party, or measures related to such information, including measures related to its collection.

4. For greater certainty, measures affecting the supply of a service delivered or performed electronically are subject to the relevant obligations contained in Chapter 8 (Investment), Chapter 9 (Cross-Border Trade in Services) and Chapter 10 (Financial Services), including any exceptions or non-conforming measures set out in this Agreement that are applicable to those obligations.

5. For greater certainty, the obligations contained in Article 13.4, Article 13.11, Article 13.12 and Article 13.16 are:

(a) subject to the relevant provisions, exceptions and non-conforming measures of Chapter 8 (Investment), Chapter 9 (Cross-Border Trade in Services) and Chapter 10 (Financial Services); and

(b) to be read in conjunction with any other relevant provisions in this Agreement.

6. The obligations contained in Article 13.4, Article 13.11 and Article 13.12 shall not apply to the non-conforming aspects of measures adopted or maintained in accordance with Article 8.12 (Non-Conforming Measures), Article 9.7 (Non-Conforming Measures) or Article 10.10 (Non-Conforming Measures).

Article 13.3. Customs Duties

1. Neither Party shall impose customs duties on electronic transmissions, including content transmitted electronically, between a person of a Party and a person of the other Party.

2. For greater certainty, paragraph 1 shall not preclude a Party from imposing internal taxes, fees or other charges on content transmitted electronically, provided that such taxes, fees or charges are imposed in a manner consistent with this Agreement.

Article 13.4. Non-discriminatory Treatment of Digital Products

1. Neither Party shall accord less favourable treatment to digital products created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of the other Party, or to digital products of which the author, performer, producer, developer or owner is a person of the other Party, than it accords to other like digital products. (4)

2. Paragraph 1 shall not apply to the extent of any inconsistency with the rights and obligations in Chapter 17 (Intellectual Property).

3. This Article shall not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

4. This Article shall not apply to broadcasting.

(4) For greater certainty, to the extent that a digital product of a non-Party is a "like digital product", it will qualify as an "other like digital product" for the purposes of this paragraph.

Article 13.5. Domestic Electronic Transactions Framework

1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the UNCITRAL Model Law on Electronic Commerce 1996 or the United Nations Convention on the Use of Electronic Communications in International Contracts, done at New York, November 23, 2005.

2. Each Party shall endeavour to:

(a) avoid any unnecessary regulatory burden on electronic transactions; and

(b) facilitate input by interested persons in the development of its legal framework for electronic transactions.

Article 13.6. Electronic Authentication and Electronic Signatures

1. Except in circumstances otherwise provided for under its law, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.

2. Neither Party shall adopt or maintain measures for electronic authentication that would:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction; or

(b) prevent parties to an electronic transaction from having the opportunity to establish before judicial or administrative authorities that their transaction complies with any legal requirements with respect to authentication.

3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of authentication meets certain performance standards or is certified by an authority accredited in accordance with its law.

4. The Parties shall encourage the use of interoperable electronic authentication.

Article 13.7. Online Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective measures to protect consumers from fraudulent and deceptive commercial activities as referred to in Article 15.6.2 (Consumer Protection) when they engage in electronic commerce.

2. Each Party shall adopt or maintain consumer protection laws to proscribe fraudulent and deceptive commercial activities that cause harm or potential harm to consumers engaged in online commercial activities.

3. The Parties recognise the importance of cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to cross-border electronic commerce in order to enhance consumer welfare. To this end, the Parties affirm that the cooperation sought under Article 15.6.5 and Article 15.6.6 (Consumer Protection) includes cooperation with respect to online commercial activities.

Article 13.8. Personal Information Protection

1. The Parties recognise the economic and social benefits of protecting the personal information of users of electronic commerce and the contribution that this makes to enhancing consumer confidence in electronic commerce.

2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of electronic commerce. In the development of its legal framework for the protection of personal information, each Party should take into account principles and guidelines of relevant international bodies.

3. Each Party shall endeavour to adopt non-discriminatory practices in protecting users of electronic commerce from personal information protection violations occurring within its jurisdiction.

4. Each Party should publish information on the personal information protections it provides to users of electronic commerce, including how:

(a) individuals can pursue remedies; and

(b) business can comply with any legal requirements.

5. Recognising that the Parties may take different legal approaches to protecting personal information, each Party should encourage the development of mechanisms to promote compatibility between these different legal approaches. These mechanisms may include the recognition of regulatory outcomes, whether accorded autonomously or by mutual arrangement, or broader international frameworks. To this end, the Parties shall endeavour to exchange information on any such mechanisms applied in their jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility between them.

Article 13.9. Paperless Trading

Each Party shall endeavour to:

(a) make trade administration documents available to the public in electronic form; and

(b) accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.

Article 13.10. Principles on Access to and Use of the Internet for Electronic Commerce

Subject to applicable policies, laws and regulations, the Parties recognise the benefits of consumers in their territories having the ability to:

(a) access and use services and applications of a consumer's choice available on the Internet, subject to reasonable network management;

(b) connect the end-user devices of a consumer's choice to the Internet, provided that such devices do not harm the network; and

(c) access information on the network management practices of a consumet's Internet access service supplier.

Article 13.11. Cross-border Transfer of Information by Electronic Means

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.

2. Each Party shall allow the cross-border transfer of information by electronic means, including personal information, when this activity is for the conduct of the business of a covered person.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

Article 13.12. Location of Computing Facilities

1. The Parties recognise that each Party may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.

2. Neither Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

Article 13.13. Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:

(a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages;

(b) require the consent, as specified according to the laws and regulations of each Party, of recipients to receive commercial electronic messages; or

(c) otherwise provide for the minimisation of unsolicited commercial electronic messages.

2. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraph 1.

3. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

Article 13.14. Cooperation

Recognising the global nature of electronic commerce, the Parties shall endeavour to:

(a) work together to assist SMEs to overcome obstacles to its use;

(b) exchange information and share experiences on regulations, policies, enforcement and compliance regarding electronic commerce, including:

(i) personal information protection;

(ii) online consumer protection, including means for consumer redress and building consumer confidence;

(iii) unsolicited commercial electronic messages;

(iv) security in electronic communications;

(v) authentication; and

(vi) e-government;

(c) encourage the development of competitive markets in electronic commerce for enhancing consumer choice and supporting the growth of SMEs;

(d) participate actively in regional and multilateral fora to promote the development of electronic commerce; and

(e) encourage the private sector to develop methods of self-regulation that foster electronic commerce, including codes of conduct, model contracts, guidelines and enforcement mechanisms.

Article 13.15. Cooperation on Cybersecurity Matters

The Parties recognise the importance of:

(a) building and maintaining the capabilities of their national entities responsible for computer security incident response; and

(b) using existing collaboration mechanisms to cooperate to identify and mitigate malicious intrusions or dissemination of malicious code that affect the electronic networks of the Parties.

Article 13.16. Source Code

1. Neither Party shall require the transfer of, or access to, source code of software owned by a person of the other Party, as a condition for the import, distribution, sale or use of such software, or of products containing such software, in its territory.

2. For the purposes of this Article, software subject to paragraph 1 is limited to mass- market software or products containing such software and does not include software used for critical infrastructure.

3. Nothing in this Article shall preclude:

(a) the inclusion or implementation of terms and conditions related to the provision of source code in commercially negotiated contracts; or

(b) a Party from requiring the modification of source code of software necessary for that software to comply with laws or regulations which are not inconsistent with this Agreement.

4. This Article shall not be construed to affect requirements that relate to patent applications or granted patents, including any orders made by a judicial authority in relation to patent disputes, subject to safeguards against unauthorised disclosure under the law or practice of a Party.

Chapter 14. Government Procurement

Article 14.1. Definitions

For the purposes of this Chapter:

build-operate-transfer contract and public works concession contract means a contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plants, buildings, facilities or other government-owned works and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants to the supplier, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for the use of those works for the duration of the contract;

commercial goods or services means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non- governmental buyers for non-governmental purposes;

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

limited tendering means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

multi-use list means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list and that the procuring entity intends to use more than once;

notice of intended procurement means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender or both;

offset means any condition or undertaking that requires the use of domestic content, a domestic supplier, the licensing of technology, technology transfer, investment, counter- trade or similar action to encourage local development or to improve a Party's balance of payments accounts;

open tendering means a procurement method whereby all interested suppliers may submit a tender;

procuring entity means an entity listed in Annex 14-A;

publish means to disseminate information through paper or electronic means that is distributed widely and is readily accessible to the general public;

qualified supplier means a supplier that a procuring entity recognises as having satisfied the conditions for participation;

selective tendering means a procurement method whereby the procuring entity invites only qualified suppliers to submit a tender;

services include construction services, unless otherwise specified;

supplier means a person or group of persons that provides or could provide a good or service to a procuring entity; and

technical specification means a tendering requirement that: (a) sets out the characteristics of:

(i) goods to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production; or

(ii) services to be procured, or the processes or methods for their provision, including any applicable administrative provisions; or

(b) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

Article 14.2. Scope

Application of Chapter

1. This Chapter shall apply to any measure regarding covered procurement.

2. For the purposes of this Chapter, covered procurement means government procurement:

(a) of a good, service or any combination thereof as specified in each Party's Schedule to Annex 14-A;

(b) by any contractual means, including: purchase; rental or lease, with or without an option to buy; build-operate-transfer contracts and public works concessions contracts;

(c) for which the value, as estimated in accordance with paragraphs 8 and 9, equals or exceeds the relevant threshold specified in a Party's Schedule to Annex 14-A, at the time of publication of a notice of intended procurement;

(d) by a procuring entity; and

(e) that is not otherwise excluded from coverage under this Agreement.

Activities Not Covered

3. Unless otherwise provided in a Party's Schedule to Annex 14-A, this Chapter shall not apply to:

(a) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;

(b) non-contractual agreements or any form of assistance that a Party, including its procuring entities, provides, including cooperative agreements, grants, loans, equity infusions, guarantees, subsidies, fiscal incentives and sponsorship arrangements;

(c) the procurement or acquisition of: fiscal agency or depository services; liquidation and management services for regulated financial institutions; or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes, derivatives and other securities;

(d) public employment contracts;

(e) procurement:

(i) conducted for the specific purpose of providing international assistance, including development aid;

(ii) funded by an international organisation or foreign or international grants, loans or other assistance to which

procurement procedures or conditions of the international organisation or donor apply. If the procedures or conditions of the international organisation or donor do not restrict the participation of suppliers then the procurement shall be subject to Article 14.4.1; or

(iii) conducted under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; and

(f) procurement of a good or service outside the territory of the Party of the procuring entity, for consumption outside the territory of that Party.

Schedules

4. Each Party shall specify the following information in its Schedule to Annex 14-A:

(a) in Section A, the central government entities whose procurement is covered by this Chapter;

(b) in Section B, the sub-central government entities whose procurement is covered by this Chapter;

(c) in Section C, other entities whose procurement is covered by this Chapter; (d) in Section D, the goods covered by this Chapter;

(e) in Section E, the services, other than construction services, covered by this Chapter;

(f) in Section F, the construction services covered by this Chapter;

(g) in Section G, any General Notes;

(h) in Section H, the applicable Threshold Adjustment Formula; and

(i) in Section I, the publication information required under Article 14.5.2.

Compliance

5. Each Party shall ensure that its procuring entities comply with this Chapter in conducting covered procurements.

6. No procuring entity shall prepare or design a procurement, or otherwise structure or divide a procurement into separate procurements in any stage of the procurement, or use a particular method to estimate the value of a procurement, in order to avoid the obligations of this Chapter.

7. Nothing in this Chapter shall be construed to prevent a Party, including its procuring entities, from developing new procurement policies, procedures or contractual means, provided that they are not inconsistent with this Chapter.

Valuation

8. In estimating the value of a procurement for the purposes of ascertaining whether it is a covered procurement, a procuring entity shall include the estimated maximum total value of the procurement over its entire duration, taking into account:

(a) all forms of remuneration, including any premium, fee, commission, interest or other revenue stream that may be provided for under the contract;

(b) the value of any option clause; and

(c) any contract awarded at the same time or over a given period to one or more suppliers under the same procurement.

9. If the total estimated maximum value of a procurement over its entire duration is not known, the procurement shall be deemed a covered procurement, unless otherwise excluded under this Agreement.

Article 14.3. Exceptions

1. Subject to the requirement that the measure is not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail, or a disguised restriction on international trade between the Parties, nothing in this Chapter shall be construed to prevent a Party, including its procuring entities, from adopting or maintaining a measure:

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

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

(c) necessary to protect intellectual property; or

(d) relating to the good or service of a person with disabilities, of philanthropic or not-for-profit institutions, or of prison labour.

2. The Parties understand that subparagraph 1(b) includes environmental measures necessary to protect human, animal or plant life or health.

Article 14.4. General Principles

National Treatment and Non-Discrimination

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party, treatment no less favourable than the treatment that the Party, including its procuring entities, accords to domestic goods, services and suppliers.

2. With respect to any measure regarding covered procurement, neither Party, including its procuring entities, shall:

(a) treat a locally established supplier less favourably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or

(b) discriminate against a locally established supplier on the basis that the good or service offered by that supplier for a particular procurement is a good or service of the other Party.

3. All orders under contracts awarded for covered procurement shall be subject to paragraphs 1 and 2 of this Article.

Procurement Methods

4. A procuring entity shall use an open tendering procedure for covered procurement unless Article 14.8 or Article 14.9 applies.

Rules of Origin

5. Each Party shall apply to covered procurement of a good the rules of origin that it applies in the normal course of trade to that good.

Offsets

6. With regard to covered procurement, neither Party, including its procuring entities, shall seek, take account of, impose or enforce any offset, at any stage of a procurement.

Measures Not Specific to Procurement

7. Paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations or formalities, and measures affecting trade in services other than measures governing covered procurement.

Use of Electronic Means

8. The Parties shall seek to provide opportunities for covered procurement to be undertaken through electronic means, including for the publication of procurement information, notices and tender documentation, and for the receipt of tenders.

9. When conducting covered procurement by electronic means, a procuring entity shall:

(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and

(b) establish and maintain mechanisms that ensure the integrity of information provided by suppliers, including requests for participation and tenders.

Article 14.5. Publication of Procurement Information

1. Each Party shall promptly publish any measure of general application relating to covered procurement, and any change or addition to this information.

2. Each Party shall list in Section I of its Schedule to Annex 14-A the paper or electronic means through which the Party publishes the information described in paragraph 1 and the notices required by Article 14.6, Article 14.8.3 and Article 14.14.3.

3. Each Party shall, on request, respond to an inquiry relating to the information referred to in paragraph 1.

Article 14.6. Notices of Intended Procurement

1. For each covered procurement, except in the circumstances described in Article 14.9, a procuring entity shall publish a notice of intended procurement through the appropriate paper or electronic means listed in Annex 14-A. The notices shall remain readily accessible to the public until at least the expiration of the time period for responding to the notice or the deadline for submission of the tender.

2. The notices shall, if accessible by electronic means, be provided free of charge:

(a) for central government entities that are covered under Annex 14-A, through a single point of access; and

(b) for sub-central government entities and other entities covered under Annex 14-A, through links in a single electronic portal.

3. Unless otherwise provided in this Chapter, each notice of intended procurement shall include the following information, unless that information is provided in the tender documentation that is made available free of charge to all interested suppliers at the same time as the notice of intended procurement:

(a) the name of the procuring entity and the address where all documents relating to the procurement may be obtained;

(b) adescription of the procurement;

(c) if applicable, the time-frame for delivery of goods or services or the duration of the contract;

(d) if applicable, the address and any final date for the submission of requests for participation in the procurement;

(e) the address and the final date for the submission of tenders;

(f) the language or languages in which tenders or requests for participation may be submitted, if other than an official language of the Party of the procuring entity;

(g) a list and a brief description of any conditions for participation of suppliers;

(h) if, pursuant to Article 14.8, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, if applicable, any limitation on the number of suppliers that will be permitted to tender; and

(i) an indication that the procurement is covered by this Chapter, unless that indication is publicly available through information published pursuant to Article 14.5.2.

4. For greater certainty, paragraph 3 does not preclude a Party from charging a fee for tender documentation if the notice of intended procurement includes all of the information set out in paragraph 3.

Notice of Planned Procurement

5. Procuring entities are encouraged to publish as early as possible in each fiscal year a notice regarding their future procurement plans (notice of planned procurement), which should include the subject matter of the procurement and the planned date of publication of the notice of intended procurement.

Article 14.7. Conditions for Participation

1. A procuring entity shall limit any conditions for participation in a covered procurement to those conditions that ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to fulfil the requirements of that procurement.

2. In establishing the conditions for participation, a procuring entity:

(a) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a given Party or that the supplier has prior work experience in the territory of that Party; and

(b) may require relevant prior experience if essential to meet the requirements of the procurement.

3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity shall:

(a) evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and

(b) base its evaluation solely on the conditions that the procuring entity has specified in advance in notices or tender documentation.

4. If there is supporting material, a Party, including its procuring entities, may exclude a supplier on grounds such as:

(a) bankruptcy or insolvency;

(b) false declarations;

(c) significant or persistent deficiencies in the performance of any substantive requirement or obligation under a prior contract or contracts;

(d) final judgments in respect of serious crimes or other serious offences;

(e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; or

(f) failure to pay taxes.

Article 14.8. Qualification of Suppliers

Registration Systems and Qualification Procedures

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.

2. Neither Party, including its procuring entities, shall:

(a) adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement; or

(b) use such registration system or qualification procedure to prevent or delay the inclusion of suppliers of the other Party on a list of suppliers or prevent those suppliers from being considered for a particular procurement.

Selective Tendering

3. If a Party's measures authorise the use of selective tendering, and if a procuring entity intends to use selective tendering, the procuring entity shall:

(a) publish a notice of intended procurement that invites suppliers to submit a request for participation in a covered procurement; and

(b) include in the notice of intended procurement the information specified in Article 14.6.3(a), (b), (d), (g), (hb) and (i).

4. The procuring entity shall:

(a) publish the notice sufficiently in advance of the procurement to allow interested suppliers to request participation in the procurement;

(b) provide, by the commencement of the time period for tendering, at least the information in Article 14.6.3(c), (e) and (f) to the qualified suppliers that it notifies as specified in Article 14.12.3(b); and

(c) allow all qualified suppliers to submit a tender, unless the procuring entity stated in the notice of intended procurement a limitation on the number of suppliers that will be permitted to tender and the criteria or justification for selecting the limited number of suppliers.

5. If the tender documentation is not made publicly available from the date of publication of the notice referred to in

paragraph 3, the procuring entity shall ensure that the tender documentation is made available at the same time to all the qualified suppliers selected in accordance with paragraph 4(c).

Multi-Use Lists

6. A Party, including its procuring entities, may establish or maintain a multi-use list provided that it publishes annually, or otherwise makes continuously available by electronic means, a notice inviting interested suppliers to apply for inclusion on the list. The notice shall include:

(a) a description of the goods and services, or categories thereof, for which the list may be used;

(b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity or other government agency will use to verify a supplier's satisfaction of those conditions;

(c) the name and address of the procuring entity or other government agency and other information necessary to contact the procuring entity and to obtain all relevant documents relating to the list;

(d) the period of validity of the list and the means for its renewal or termination or, if the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list;

(e) the deadline for submission of applications for inclusion on the list, if applicable; and

(f) an indication that the list may be used for procurement covered by this Chapter, unless that indication is publicly available through information published pursuant to Article 14.5.2.

7. A Party, including its procuring entities, that establishes or maintains a multi-use list, shall include on the list, within a reasonable period of time, all suppliers that satisfy the conditions for participation set out in the notice referred to in paragraph 6.

Information on Procuring Entity Decisions

8. A procuring entity or other entity of a Party shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion on a multi-use list of the decision with respect to the request or application.

9. If a procuring entity or other entity of a Party rejects a supplier's request for participation or application for inclusion on a multi-use list, ceases to recognise a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and on request of the supplier, promptly provide the supplier with a written explanation of the reason for its decision.

10. The Parties agree to delay the application of the requirements contained under Article 14.8 d) and (f) of this Chapter for a period of 3 years from the date of entry into force of this Agreement.

Article 14.9. Limited Tendering

1. Provided that it does not use this provision for the purpose of avoiding competition between suppliers, to protect domestic suppliers or in a manner that discriminates against suppliers of the other Party, a procuring entity may use limited tendering.

2. If a procuring entity uses limited tendering, it may choose, according to the nature of the procurement, not to apply Article 14.6, Article 14.7, Article 14.8, Article 14.10, Article 14.11, Article 14.12 or Article 14.13. A procuring entity may use limited tendering only under the following circumstances:

(a) if, in response to a prior notice, invitation to participate or invitation to tender:

(i) no tenders were submitted or no suppliers requested participation;

(ii) no tenders were submitted that conform to the essential requirements in the tender documentation;

(iii) no suppliers satisfied the conditions for participation; or

(iv) the tenders submitted were collusive,

provided that the procuring entity does not substantially modify the essential requirements set out in the notices or tender documentation;

(b) if the good or service can be supplied only by a particular supplier and no reasonable alternative or substitute good or

service exists for any of the following reasons:

(i) the requirement is for a work of art;

(ii) the protection of patents, copyrights or other exclusive rights; or

(iii) due to an absence of competition for technical reasons;

(c) for additional deliveries by the original supplier or its authorised agents, of goods or services that were not included in the initial procurement, if a change of supplier for such additional goods or services:

(i) cannot be made for technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement, or due to conditions under original supplier warranties; and

(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(d) for a good purchased on a commodity market or exchange;

(e) if a procuring entity procures a prototype or a first good or service that is intended for limited trial or that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a prototype or a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the prototype or the first good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs. Subsequent procurements of these newly developed goods or services, however, shall be subject to this Chapter;

(f) if additional construction services that were not included in the initial contract but that were within the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein. However, the total value of contracts awarded for additional construction services may not exceed 50 per cent of the value of the initial contract;

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy or receivership, but not for routine purchases from regular suppliers;

(h) if a contract is awarded to the winner of a design contest, provided that:

(i) the contest has been organised in a manner that is consistent with this Chapter; and

(ii) the contest is judged by an independent jury with a view to award a design contract to the winner; or

(i) in so far as is strictly necessary if, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the good or service could not be obtained in time by means of open or selective tendering.

3. For each contract awarded in accordance with paragraph 2, a procuring entity shall prepare a report in writing, or maintain a record, that includes the name of the procuring entity, the value and kind of good or service procured, and a statement that indicates the circumstances and conditions described in paragraph 2 that justified the use of limited tendering.

Article 14.10. Technical Specifications

1. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or effect of creating an unnecessary obstacle to trade between the Parties.

2. In prescribing the technical specifications for the good or service being procured, a procuring entity shall, if appropriate:

(a) set out the technical specifications in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specifications on international standards, if these exist; or otherwise, on national technical regulations, recognised national standards or building codes.

3. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or

intelligible way of describing the procurement requirements and provided that, in these cases, the procuring entity includes words such as "or equivalent" in the tender documentation.

4. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

5. For greater certainty, a procuring entity may conduct market research in developing specifications for a particular procurement.

6. For greater certainty, this Article is not intended to preclude a procuring entity from preparing, adopting or applying technical specifications to promote the conservation of natural resources or the protection of the environment.

7. For greater certainty, this Chapter is not intended to preclude a Party, or its procuring entities, from preparing, adopting or applying technical specifications required to protect sensitive government information, including specifications that may affect or limit the storage, hosting or processing of such information outside the territory of the Party.

Article 14.11. Tender Documentation

1. A procuring entity shall promptly make available or provide on request to any interested supplier tender documentation that includes all information necessary to permit the supplier to prepare and submit a responsive tender. Unless already provided in the notice of intended procurement, that tender documentation shall include a complete description of:

(a) the procurement, including the nature, scope and, if known, the quantity of the good or service to be procured or, if the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity certification, plans, drawings or instructional materials;

(b) any conditions for participation, including any financial guarantees, information and documents that suppliers are required to submit;

(c) all criteria to be considered in the awarding of the contract and the relative importance of those criteria;

(d) if there will be a public opening of tenders, the date, time and place for the opening;

(e) any other terms or conditions relevant to the evaluation of tenders; and (f) any date for delivery of a good or supply of a service.

2. In establishing any date for the delivery of a good or the supply of a service being procured, a procuring entity shall take into account factors such as the complexity of the procurement.

3. A procuring entity shall promptly reply to any reasonable request for relevant information by an interested or participating supplier, provided that the information does not give that supplier an advantage over other suppliers.

Modifications

4. If, prior to the award of a contract, a procuring entity modifies the evaluation criteria or requirements set out in a notice of intended procurement or tender documentation provided to a participating supplier, or amends or re-issues a notice or tender documentation, it shall publish or provide those modifications, or the amended or re- issued notice or tender documentation:

(a) to all suppliers that are participating in the procurement at the time of the modification, amendment or re-issuance, if those suppliers are known to the procuring entity, and in all other cases, in the same manner as the original information was made available; and

(b) in adequate time to allow those suppliers to modify and re-submit their initial tender, if appropriate.

Article 14.12. Time Periods

General

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for a supplier to obtain the tender documentation and to prepare and submit a request for participation and a responsive tender, taking into account factors such as:

(a) the nature and complexity of the procurement; and

(b) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points if electronic means are not used.

Deadlines

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of a request for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. If a state of urgency duly substantiated by the procuring entity renders this time period impracticable, the time period may be reduced to no less than 10 days.

3. Except as provided in paragraphs 4 and 5, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

(a) in the case of open tendering, the notice of intended procurement is published; or

(b) in the case of selective tendering, the procuring entity notifies the suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

4. A procuring entity may reduce the time period for tendering set out in paragraph 3 by five days for each one of the following circumstances:

(a) the notice of intended procurement is published by electronic means;

(b) the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and

(c) the procuring entity accepts tenders by electronic means.

5. A procuring entity may reduce the time period for tendering set out in paragraph 3 to no less than 10 days if:

(a) the procuring entity has published a notice of planned procurement under Article 14.6 at least 40 days and no more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:

(i) a description of the procurement;

(ii) the approximate final dates for the submission of tenders or requests for participation;

(iii) the address from which documents relating to the procurement may be obtained; and

(iv) as much of the information that is required for the notice of intended procurement as is available;

(b) a state of urgency duly substantiated by the procuring entity renders impracticable the time period for tendering set out in paragraph 3; or

(c) the procuring entity procures commercial goods or services.

6. The use of paragraph 4, in conjunction with paragraph 5, shall in no case result in the reduction of the time periods for tendering set out in paragraph 3 to less than 10 days.

7. A procuring entity shall require all interested or participating suppliers to submit requests for participation or tenders in accordance with a common deadline. These time periods, and any extension of these time periods, shall be the same for all interested or participating suppliers.

Article 14.13. Treatment of Tenders and Awarding of Contracts

Treatment of Tenders

1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process and the confidentiality of tenders.

2. If a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

Awarding of Contracts

3. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notice and tender documentation and be submitted by a supplier who satisfies the conditions for participation.

4. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the procuring entity has determined to be fully capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notice and tender documentation, submits:

(a) the most advantageous tender; or

(b) if price is the sole criterion, the lowest price.

5. A procuring entity shall not use options, cancel a covered procurement, or modify or terminate awarded contracts in order to avoid the obligations of this Chapter.

Article 14.14. Post-award Information Information Provided to Suppliers

1. A procuring entity shall promptly inform suppliers that have submitted a tender of the contract award decision. The procuring entity may do so in writing or through the prompt publication of the notice in paragraph 3, provided that the notice includes the date of award. If a supplier has requested the information in writing, the procuring entity shall provide it in writing.

2. Subject to Article 14.15, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the procuring entity did not select the unsuccessful supplier's tender or an explanation of the relative advantages of the successful supplier's tender. Publication of Award Information

3. A procuring entity shall, promptly after the award of a contract for a covered procurement, publish in an officially designated publication a notice containing at least the following information:

(a) a description of the good or service procured;

(b) the name and address of the procuring entity;

(c) the name and address of the successful supplier;

(d) the value of the contract award;

(e) the date of award or the contract date; and

(f) the procurement method used. Maintenance of Records

4. A procuring entity shall maintain the documentation, records and reports relating to tendering procedures and contract awards for covered procurement, including the records and reports provided for in Article 14.9.3, for at least three years after the award of a contract.

Article 14.15. Disclosure of Information Provision of Information to Parties

1. Upon request of the other Party, a Party shall provide promptly information sufficient to demonstrate whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including, if applicable, information on the characteristics and relative advantages of the successful tender, without disclosing confidential information. The Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the agreement of, the Party that provided the information.

Non-Disclosure of Information

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not, except to the extent required by law or with the written authorisation of the supplier that provided the information, disclose information that would prejudice legitimate commercial interests of a particular supplier or that might prejudice fair competition between suppliers.

3. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities and review bodies, to disclose confidential information if that disclosure:

(a) would impede law enforcement;

(b) might prejudice fair competition between suppliers;

(c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or

(d) would otherwise be contrary to the public interest.

Article 14.16. Ensuring Integrity In Procurement Practices

Each Party shall ensure that criminal or administrative measures exist to address corruption in its government procurement. These measures may include procedures to render ineligible for participation in the Party's procurements, either indefinitely or for a stated period of time, suppliers that the Party has determined to have engaged in fraudulent or other illegal actions in relation to government procurement in the Party's territory. Each Party shall also ensure that it has in place policies and procedures to eliminate to the extent possible or manage any potential conflict of interest on the part of those engaged in or having influence over a procurement.

Article 14.17. Domestic Review

1. In the event of a complaint by a supplier of a Party that there has been:

(a) a breach of this Chapter; or

(b) if the supplier does not have a right to directly challenge a breach of this Chapter under the law of a Party, a failure of a procuring entity to comply with the Party's measures implementing this Chapter,

in the context of a covered procurement in which the supplier has or had an interest, the Party of the procuring entity shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord timely and impartial consideration to any such complaint and ensure that the making of any such complaint is not prejudicial to the supplier's participation in ongoing or future procurement or right to seek corrective measures under administrative or judicial review procedures.

2. Each Party shall maintain at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review, in a non-discriminatory, timely, transparent and effective manner, complaints that a supplier of the other Party submits, in accordance with the laws and regulations of the Party of the procuring entity, relating to a covered procurement.

3. Each Party shall make information on complaint mechanisms generally available.

4. If the Revised Agreement on Government Procurement, set out in Annex 4 to the WTO Agreement (Revised GPA) enters into force for Australia, the present Article shall be deemed to be amended at that time so as to conform to the provisions of Article XVII (Domestic Review Procedures) of the Revised GPA.

Article 14.18. Modifications and Rectifications of Annex 14-a

1. A Party shall notify the other Party in writing of any proposed modification or rectification (modification) to its Schedule to Annex 14-A. A Party shall provide compensatory adjustments for a change in coverage if necessary to maintain a level of coverage comparable to the coverage that existed prior to the modification. The Party may include the offer of compensatory adjustment in its notice.

2. A Party is not required to provide compensatory adjustments to the other Party if the proposed modification concerns one of the following:

(a) aprocuring entity over which the Party has effectively eliminated its control or influence in respect of covered procurement by that procuring entity; or

(b) rectifications of a purely formal nature and minor modifications to its Schedule to Annex 14-A, such as:

(i) changes in the name of a procuring entity;

(ii) the merger of one or more procuring entities listed in its Schedule;

(iii) the separation of a procuring entity listed in its Schedule into two or more procuring entities that are all added to the

procuring entities listed in the same Section of the Annex; and

(iv) changes in website references,

and the other Party does not object under paragraph 3 on the basis that the proposed modification does not concern subparagraph (a) or subparagraph (b).

3. Proposed modifications shall become effective provided the other Party does not object in writing within 30 days after the date of notification.

4. When the Parties do not agree on a proposed modification, including a modification regarding a procuring entity on the basis that government control or influence over the entity's covered procurement has been effectively eliminated, the objecting Party may request additional information including information on the nature of any government control or influence with a view to clarifying and reaching agreement on the proposed modification. The Parties shall make every attempt to resolve the objection through consultations.

5. The Joint Commission shall modify Annex 14-A to reflect any agreed modification.

Article 14.19. Facilitation of Participation by Smes

1. The Parties recognise the important contribution that SMEs can make to economic growth and employment and the importance of facilitating the participation of SMEs in government procurement.

2. The Parties also recognise the contribution of business alliances between suppliers of each Party in developing the capability of SMEs in government procurement.

3. If a Party maintains a measure that provides preferential treatment for SMEs, the Party shall ensure that the measure, including the criteria for eligibility, is transparent.

Article 14.20. Cooperation

1. The Parties recognise the importance of cooperation with a view to achieving a better understanding of their respective government procurement systems, as well as better access to their respective markets, in particular for SMEs suppliers.

2. The Parties shall endeavour to cooperate in matters such as:

(a) facilitating participation by suppliers in government procurement, in particular, with respect to SMEs;

(b) exchanging experiences and information, such as regulatory frameworks, best practices and statistics; and

(c) developing and expanding the use of electronic means in government procurement systems.

Article 14.21. Contact Points on Government Procurement

Each Party shall designate and notify a contact point on Government Procurement. The contact points shall facilitate the Parties' efforts to address matters related to the implementation and operation of this Chapter, such as:

(a) cooperation between the Parties, as provided for in Article 14.20;

(b) facilitation of participation by SMEs in covered procurement, as provided for in Article 14.19;

(c) consideration of further negotiations; and

(d) identifying and addressing any problems or other issues that may arise.

Chapter 15. Competition Policy

Article 15.1. Competition Law and Authorities and Anticompetitive Business Conduct

1. Each Party shall adopt or maintain competition laws that proscribe anticompetitive business conduct, with the objective of promoting economic efficiency and consumer welfare, and shall take appropriate action with respect to that conduct. These laws should take into account the APEC Principles to Enhance Competition and Regulatory Reform, done at Auckland, September 13, 1999.

2. Each Party shall endeavour to apply its competition laws to all commercial activities in its territory. (1) However, each Party may provide for certain exemptions from the application of its competition laws provided that those exemptions are transparent and are based on public policy or public interest grounds.

3. Each Party shall maintain an authority or authorities responsible for the enforcement of its competition laws (national competition authorities). Each Party shall provide that it is the enforcement policy of that authority or authorities to act in accordance with the objectives set out in paragraph 1 and not to discriminate on the basis of nationality.

(1) For greater certainty, nothing in paragraph 2 shall be construed to preclude a Party from applying its competition laws to commercial activities outside its borders that have anticompetitive effects within its jurisdiction.

Article 15.2. Procedural Fairness In Competition Law Enforcement

1. Each Party shall ensure that before it imposes a sanction or remedy against a person for violating its competition laws, it affords that person:

(a) information about the national competition authority's competition concerns;

(b) a reasonable opportunity to be represented by counsel; and

(c) a reasonable opportunity to be heard and present evidence in their defence, except that a Party may provide for the person to be heard and present evidence within a reasonable time after it imposes an interim sanction or remedy,

in particular, each Party shall afford that person a reasonable opportunity to present evidence or testimony in its defence, including: if applicable, to offer the analysis of a properly qualified expert, to cross-examine any testifying witness; and to review and rebut the evidence introduced in the enforcement proceeding (2).

2. Each Party shall adopt or maintain written procedures pursuant to which its competition law investigations are conducted. If these investigations are not subject to definitive deadlines, each Party's national competition authorities shall endeavour to conduct their investigations within a reasonable time frame.

3. Each Party shall adopt or maintain rules of procedure and evidence that apply to enforcement proceedings concerning alleged violations of its competition laws and the determination of sanctions and remedies thereunder. These rules shall include procedures for introducing evidence, including expert evidence if applicable, and shall apply equally to all parties to a proceeding.

4. Each Party shall provide a person that is subject to the imposition of a sanction or remedy for violation of its competition laws with the opportunity to seek review of the sanction or remedy, including review of alleged substantive or procedural errors, in a court or other independent tribunal established under that Party's laws.

5. If a Party's national competition authority issues a public notice that reveals the existence of a pending or ongoing investigation, that authority shall avoid implying in that notice that the person referred to in that notice has engaged in the alleged conduct or violated the Party's competition laws.

6. If a Party's national competition authority alleges a violation of its competition laws, that authority shall be responsible for establishing the legal and factual basis for the alleged violation in an enforcement proceeding. (3)

7. Each Party shall provide for the protection of business confidential information, and other information treated as confidential under its law, obtained by its national competition authorities during the investigative process. If a Party's national competition authority uses or intends to use that information in an enforcement proceeding, the Party shall, if it is permissible under its law and as appropriate, provide a procedure to allow the person under investigation timely access to information that is necessary to prepare an adequate defence to the national competition authority's allegations.

8. Each Party shall ensure that its national competition authorities afford a person under investigation for possible violation of the competition laws of that Party reasonable opportunity to consult with those competition authorities with respect to significant legal, factual or procedural issues that arise during the investigation.

(2) For the purposes of this Article, "enforcement proceeding" means a judicial or administrative proceeding following an investigation into the alleged violation of the competition laws.

(3) Nothing in this paragraph shall prevent a Party from requiring that a person against whom such an allegation is made be responsible for establishing certain elements in defence of the allegation.

Article 15.3. Private Rights of Action

1. For the purposes of this Article, "private right of action" means the right of a person to seek redress, including injunctive, monetary or other remedies, from a court or other independent tribunal for injury to that person's business or property caused by a violation of competition laws, either independently or following a finding of violation by a national competition authority.

2. Recognising that a private right of action is an important supplement to the public enforcement of competition laws, each Party should adopt or maintain laws or other measures that provide an independent private right of action.

3. If a Party does not adopt or maintain laws or other measures that provide an independent private right of action, the Party shall adopt or maintain laws or other measures that provide a right that allows a person:

(a) to request that the national competition authority initiate an investigation into an alleged violation of national competition laws; and

(b) to seek redress from a court or other independent tribunal following a finding of violation by the national competition authority.

4. Each Party shall ensure that a right provided pursuant to paragraph 2 or 3 is available to persons of the other Party on terms that are no less favourable than those available to its own persons.

5. A Party may establish reasonable criteria for the exercise of any rights it creates or maintains in accordance with this Article.

Article 15.4. Cooperation

1. The Parties recognise the importance of cooperation and coordination between their respective national competition authorities to foster effective competition law enforcement in the free trade area. Accordingly, the Parties shall cooperate:

(a) in the area of competition policy by exchanging information on the development of competition policy; and

(b) onissues of competition law enforcement, as appropriate, including through notification, consultation and the exchange of information.

2. A Party's national competition authorities may consider entering into a cooperation arrangement or agreement with the competition authorities of the other Party that sets out mutually agreed terms of cooperation.

3. The Parties agree to cooperate in a manner compatible with their respective laws, regulations and important interests, and within their reasonably available resources.

Article 15.5. Technical Cooperation

Recognising that the Parties can benefit by sharing their diverse experience in developing, applying and enforcing competition law and in developing and implementing competition policies, the Parties shall consider undertaking mutually agreed technical cooperation activities, subject to available resources, including:

(a) providing advice or training on relevant issues, including through the exchange of officials;

(b) exchanging information and experiences on competition advocacy, including ways to promote a culture of competition; and

(c) assisting the other Party as it implements a new national competition law.

Article 15.6. Consumer Protection

1. The Parties recognise the importance of consumer protection policy and enforcement to creating efficient and competitive markets and enhancing consumer welfare in the free trade area.

2. For the purposes of this Article, fraudulent and deceptive commercial activities refers to those fraudulent and deceptive commercial practices that cause actual harm to consumers, or that pose an imminent threat of such harm if not prevented, for example:

(a) a practice of making misrepresentations of material fact, including implied factual misrepresentations, that cause significant detriment to the economic interests of misled consumers;

(b) apractice of failing to deliver products or provide services to consumers after the consumers are charged; or

(c) a practice of charging or debiting consumers' financial, telephone or other accounts without authorisation.

3. Each Party shall adopt or maintain consumer protection laws or other laws or regulations that proscribe fraudulent and deceptive commercial activities. (4)

4. The Parties recognise that fraudulent and deceptive commercial activities increasingly transcend national borders and that cooperation and coordination between the Parties is desirable to effectively address these activities.

5. Accordingly, the Parties shall promote, as appropriate, cooperation and coordination on matters of mutual interest related to fraudulent and deceptive commercial activities, including in the enforcement of their consumer protection laws.

6. The Parties shall endeavour to cooperate and coordinate on the matters set out in this Article through the relevant national public bodies or officials responsible for consumer protection policy, laws or enforcement, as determined by each Party and compatible with their respective laws, regulations and important interests and within their reasonably available resources.

(4) For greater certainty, the laws or regulations a Party adopts or maintains to proscribe these activities can be civil or criminal in nature.

Article 15.7. Transparency

1. The Parties recognise the value of making their competition enforcement policies as transparent as possible.

2. Recognising the value of the APEC Competition Law and Policy Database in enhancing the transparency of competition laws, policies and enforcement activities, each Party shall endeavour to maintain and update its information on that database.

3. On request of the other Party, a Party shall make available to the requesting Party public information concerning:

(a) its competition law enforcement policies and practices; and

(b) exemptions and immunities to its competition laws, provided that the request specifies the particular good or service and market of concern and includes information explaining how the exemption or immunity may hinder trade or investment between the Parties.

4. Each Party shall ensure that a final decision finding a violation of its competition laws is made in writing and sets out, in non-criminal matters, findings of fact and the reasoning, including legal and, if applicable, economic analysis, on which the decision is based.

5. Each Party shall further ensure that a final decision referred to in paragraph 4 and any order implementing that decision are published, or if publication is not practicable, are otherwise made available to the public in a manner that enables interested persons and the other Party to become acquainted with them. Each Party shall ensure that the version of the decision or order that is made available to the public does not include confidential information that is protected from public disclosure by its law.

Article 15.8. Consultations

In order to foster understanding between the Parties, or to address specific matters that arise under this Chapter, on request of the other Party, a Party shall enter into consultations. In its request, the requesting Party shall indicate, if relevant, how the matter affects trade or investment between the Parties. The Party addressed shall accord full and sympathetic consideration to the concerns of the requesting Party.

Article 15.9. Non-application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 27 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 16. State-owned Enterprises and Designated Monopolies

Article 16.1. Definitions

For the purposes of this Chapter:

Arrangement means the Arrangement on Officially Supported Export Credits, developed within the framework of the Organization for Economic Co-operation and Development (OECD), or a successor undertaking, whether developed within or outside of the OECD framework, that has been adopted by at least 12 original WTO Members that were Participants to the Arrangement as of 1 January 1979;

commercial activities means activities which an enterprise undertakes with an orientation toward profit-making (1) and which result in the production of a good or supply of a service that will be sold to a consumer in the relevant market in quantities and at prices determined by the enterprise (2);

commercial considerations means price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, or other factors that would normally be taken into account in the commercial decisions of a privately owned enterprise in the relevant business or industry;

designate means to establish, designate or authorise a monopoly, or to expand the scope of a monopoly to cover an additional good or service;

designated monopoly means a privately owned monopoly that is designated after the date of entry into force of this Agreement and any government monopoly that a Party designates or has designated;

government monopoly means a monopoly that is owned, or controlled through ownership interests, by a Party or by another government monopoly;

independent pension fund means an enterprise that is owned, or controlled through ownership interests, by a Party that:

(a) is engaged exclusively in the following activities:

(i) administering or providing a plan for pension, retirement, social security, disability, death or employee benefits, or any combination thereof solely for the benefit of natural persons who are contributors to such a plan and their beneficiaries; or

(i) investing the assets of these plans;

(b) has a fiduciary duty to the natural persons referred to in subparagraph (a)(i); and

(c) is free from investment direction from the government of the Party; (3) market means the geographical and commercial market for a good or service;

monopoly means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of the grant;

non-commercial assistance (4) means assistance to a state-owned enterprise by virtue of that state-owned enterprise's government ownership or control, where:

(a) "assistance" means:

(i) direct transfers of funds or potential direct transfers of funds or liabilities, such as:

(A) grants or debt forgiveness;

(B) loans, loan guarantees or other types of financing on terms more favourable than those commercially available to that enterprise; or

(C) equity capital inconsistent with the usual investment practice, including for the provision of risk capital, of private investors; or

(ii) goods or services other than general infrastructure on terms more favourable than those commercially available to that

enterprise;

(b) "by virtue of that state-owned enterprise's government ownership or control" (5) means that the Party or any of the Party's state enterprises or state-owned enterprises:

(i) explicitly limits access to the assistance to the Party's state-owned enterprises;

(ii) provides assistance which is predominately used by the Party's state- owned enterprises;

(iii) provides a disproportionately large amount of the assistance to the Party's state-owned enterprises; or

(iv) otherwise favours the Party's state-owned enterprises through the use of its discretion in the provision of assistance;

public service mandate means a government mandate pursuant to which a state-owned enterprise makes available a service, directly or indirectly, to the general public in its territory; (6)

sovereign wealth fund means an enterprise owned, or controlled through ownership interests, by a Party that:

(a) serves solely as a special purpose investment fund or arrangement (7) for asset management, investment, and related activities, using financial assets of a Party; and

(b) is a Member of the International Forum of Sovereign Wealth Funds or endorses the Generally Accepted Principles and Practices ("Santiago Principles") issued by the International Working Group of Sovereign Wealth Funds, October 2008, or such other principles and practices as may be agreed to by the Parties,

and includes any special purpose vehicles established solely for such activities described in subparagraph (a) wholly owned by the enterprise, or wholly owned by the Party but managed by the enterprise; and

state-owned enterprise means an enterprise that is principally engaged in commercial activities in which a Party:

(a) directly owns more than 50 per cent of the share capital;

(b) controls, through ownership interests, the exercise of more than 50 per cent of the voting rights; or

(c) holds the power to appoint a majority of members of the board of directors or any other equivalent management body.

(1) For greater certainty, activities undertaken by an enterprise which operates on a not-for-profit basis or on a cost-recovery basis are not activities undertaken with an orientation toward profit-making.

(2) For greater certainty, measures of general application to the relevant market shall not be construed as the determination by a Party of pricing, production, or supply decisions of an enterprise.

(3) Investment direction from the government of a Party: (a) does not include general guidance with respect to risk management and asset allocation that is not inconsistent with usual investment practices; and (b) is not demonstrated, alone, by the presence of government officials on the enterprise's board of directors or investment panel.

(4) For greater certainty, non-commercial assistance does not include: (a) intra-group transactions within a corporate group including state-owned enterprises, for example, between the parent and subsidiaries of the group, or among the group's subsidiaries, when normal business practices require reporting the financial position of the group excluding these intra-group transactions; (b) other transactions between state-owned enterprises that are consistent with the usual practices of privately owned enterprises in arm's length transactions; or (c) a Party's transfer of funds, collected from contributors to a plan for pension, retirement, social security, disability, death or employee benefits, or any combination thereof, to an independent pension fund for investment on behalf of the contributors and their beneficiaries.

(5) In determining whether the assistance is provided "by virtue of that state-owned enterprise's government ownership or control", account shall be taken of the extent of diversification of economic activities within the territory of the Party, as well as of the length of time during which the non-commercial assistance programme has been in operation.

(6) For greater certainty, a service to the general public includes: (a) the distribution of goods; and (b) the supply of general infrastructure

services.

(7) For greater certainty, the Parties understand that the word "arrangement" as an alternative to "fund" allows for a flexible interpretation of the legal arrangement through which the assets can be invested.

Article 16.2. Scope (8)

1. This Chapter shall apply with respect to the activities of state-owned enterprises and designated monopolies of a Party that affect trade or investment between Parties within the free trade area. (9)

2. Nothing in this Chapter shall prevent a central bank or monetary authority of a Party from performing regulatory or supervisory activities or conducting monetary and related credit policy and exchange rate policy.

3. Nothing in this Chapter shall prevent a financial regulatory body of a Party, including a non-governmental body, such as a securities or futures exchange or market, clearing agency, or other organisation or association, from exercising regulatory or supervisory authority over financial services suppliers.

4. Nothing in this Chapter shall prevent a Party, or one of its state enterprises or state-owned enterprises from undertaking activities for the purpose of the resolution of a failing or failed financial institution or any other failing or failed enterprise principally engaged in the supply of financial services.

5. This Chapter shall not apply with respect to a sovereign wealth fund of a Party, except:

(a) Article 16.6.1 and Article 16.6.3 shall apply with respect to a Party's indirect provision of non-commercial assistance through a sovereign wealth fund; and

(b) Article 16.6.2 shall apply with respect to a sovereign wealth fund's provision of non-commercial assistance.

6. This Chapter shall not apply with respect to:

(a) an independent pension fund of a Party; or

(b) an enterprise owned or controlled by an independent pension fund of a Party, except:

(i) Article 16.6.1 and Article 16.6.3 shall apply with respect to a Party's direct or indirect provision of non-commercial assistance to an enterprise owned or controlled by an independent pension fund; and

(ii) Article 16.6.1 and Article 16.6.3 shall apply with respect to a Party's indirect provision of non-commercial assistance through an enterprise owned or controlled by an independent pension fund.

7. This Chapter shall not apply to government procurement.

8. Nothing in this Chapter shall prevent a state-owned enterprise of a Party from providing goods or services exclusively to that Party for the purposes of carrying out that Party's governmental functions.

9. Nothing in this Chapter shall be construed to prevent a Party from:

(a) establishing or maintaining a state enterprise or a state-owned enterprise; or

(b) designating a monopoly.

10. Article 16.4, Article 16.6 and Article 16.10 shall not apply to any service supplied in the exercise of governmental authority. (10)

11. Article 16.4.1(b), Article 16.4.1(c), Article 16.4.2(b) and Article 16.4.2(c) shall not apply to the extent that a Party's state-owned enterprise or designated monopoly makes purchases and sales of goods or services pursuant to:

(a) any existing non-conforming measure that the Party maintains, continues, renews or amends in accordance with Article 8.12.1 (Non-Conforming Measures), Article 9.7.1 (Non-Conforming Measures) or Article 10.10.1 (Non-Conforming Measures), as set out in its Schedule to Annex I or in Section A of its Schedule to Annex III; or

(b) any non-conforming measure that the Party adopts or maintains with respect to sectors, subsectors, or activities in accordance with Article 8.12.2 (NonConforming Measures), Article 9.7.2 (Non-Conforming Measures) or Article 10.10.2 (Non-Conforming Measures), as set out in its Schedule to Annex II or in Section B of its Schedule to Annex III.

(8) For the purposes of this Chapter, the terms "financial service supplier", "financial institution" and "financial services" have the same meaning as in Article 10.1 (Definitions).

(9) This Chapter also applies with respect to the activities of state-owned enterprises of a Party that cause adverse effects in the market of a non-Party as provided in Article 16.7.

(10) For the purposes of this paragraph, "a service supplied in the exercise of governmental authority" has the same meaning as in GATS, including the meaning in the Annex on Financial Services where applicable.

Article 16.3 . Delegated Authority

Each Party shall ensure that when its state-owned enterprises, state enterprises and designated monopolies exercise any regulatory, administrative or other governmental authority that the Party has directed or delegated to such entities to carry out, those entities act in a manner that is not inconsistent with that Party's obligations under this Agreement. (11)

(11) Examples of regulatory, administrative or other governmental authority include the power to expropriate, grant licences, approve commercial transactions, or impose quotas, fees or other charges.

Article 16.4. Non-discriminatory Treatment and Commercial Considerations

1. Each Party shall ensure that each of its state-owned enterprises, when engaging in commercial activities:

(a) acts in accordance with commercial considerations in its purchase or sale of a good or service, except to fulfil any terms of its public service mandate that are not inconsistent with subparagraph (c)(ii);

(b) in its purchase of a good or service:

(i) accords to a good or service supplied by an enterprise of the other Party treatment no less favourable than it accords to a like good or a like service supplied by enterprises of the Party, of the other Party or of any non-Party; and

(ii) accords to a good or service supplied by an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to a like good or a like service supplied by enterprises in the relevant market in the Party's territory that are investments of investors of the Party, of the other Party or of any non-Party; and

(c) in its sale of a good or service:

(i) accords to an enterprise of the other Party treatment no less favourable than it accords to enterprises of the Party, of the other Party or of any non-Party; and

(ii) accords to an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to enterprises in the relevant market in the Party's territory that are investments of investors of the Party, of the other Party or of any non-Party. (12)

2. Each Party shall ensure that each of its designated monopolies:

(a) acts in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, except to fulfil any terms of its designation that are not inconsistent with subparagraph (b), (c) or (d);

(b) in its purchase of the monopoly good or service:

(i) accords to a good or service supplied by an enterprise of the other Party treatment no less favourable than it accords to a like good or a like service supplied by enterprises of the Party, of the other Party or of any non-Party; and

(ii) accords to a good or service supplied by an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to a like good or a like service supplied by enterprises in the relevant market in the Party's territory that are investments of investors of the Party, of the other Party or of any non-Party; and

(c) in its sale of the monopoly good or service:

(i) accords to an enterprise of the other Party treatment no less favourable than it accords to enterprises of the Party, of the other Party or of any non-Party; and

(ii) accords to an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to enterprises in the relevant market in the Party's territory that are investments of investors of the Party, of the other Party or of any non-Party; and

(d) does not use its monopoly position to engage in, either directly or indirectly, including through its dealings with its parent, subsidiaries or other entities the Party or the designated monopoly owns, anticompetitive practices in a non-monopolised market in its territory that negatively affect trade or investment between the Parties. (13)

3. Paragraphs 1(b) and 1(c) and paragraphs 2(b) and 2(c) do not preclude a state- owned enterprise or designated monopoly from:

(a) purchasing or selling goods or services on different terms or conditions including those relating to price; or

(b) refusing to purchase or sell goods or services,

provided that such differential treatment or refusal is undertaken in accordance with commercial considerations.

(12) Article 16.4.1 shall not apply with respect to the purchase or sale of shares, stock or other forms of equity by a state-owned enterprise as a means of its equity participation in another enterprise.

(13) For greater certainty, a Party may comply with the requirements of this subparagraph through the enforcement or implementation of its generally applicable national competition laws and regulations, its economic regulatory laws and regulations, or other appropriate measures.

Article 16.5. Courts and Administrative Bodies

1. Each Party shall provide its courts with jurisdiction over civil claims against an enterprise owned or controlled through ownership interests by a foreign government based on a commercial activity carried on in its territory. (14) This shall not be construed to require a Party to provide jurisdiction over such claims if it does not provide jurisdiction over similar claims against enterprises that are not owned or controlled through ownership interests by a foreign government.

2. Each Party shall ensure that any administrative body that the Party establishes or maintains that regulates a state-owned enterprise exercises its regulatory discretion in an impartial manner with respect to enterprises that it regulates, including enterprises that are not state-owned enterprises. (15)

(14) This paragraph shall not be construed to preclude a Party from providing its courts with jurisdiction over claims against enterprises owned or controlled through ownership interests by a foreign government other than those claims referred to in this paragraph.

(15) For greater certainty, the impartiality with which an administrative body exercises its regulatory discretion is to be assessed by reference to a pattern or practice of that administrative body.

Article 16.6. Non-commercial Assistance

1. No Party shall cause (16) adverse effects to the interests of the other Party through the use of non-commercial assistance that it provides, either directly or indirectly (17), to any of its state-owned enterprises with respect to:

(a) the production and sale of a good by the state-owned enterprise;

(b) the supply of a service by the state-owned enterprise from the territory of the Party into the territory of the other Party; or

(c) the supply of a service in the territory of the other Party through an enterprise that is a covered investment in the territory of the other Party.

2. Each Party shall ensure that its state enterprises and state-owned enterprises do not cause adverse effects to the interests of the other Party through the use of non-commercial assistance that the state enterprise or state-owned

enterprise provides to any of its state-owned enterprises with respect to:

(a) the production and sale of a good by the state-owned enterprise;

(b) the supply of a service by the state-owned enterprise from the territory of the Party into the territory of the other Party; or

(c) the supply of a service in the territory of the other Party through an enterprise that is a covered investment in the territory of the other Party.

3. No Party shall cause injury to a domestic industry (18) of the other Party through the use of non-commercial assistance that it provides, either directly or indirectly, to any of its state-owned enterprises that is a covered investment in the territory of the other Party in circumstances where:

(a) the non-commercial assistance is provided with respect to the production and sale of a good by the state-owned enterprise in the territory of the other Party; and

(b) a like good is produced and sold in the territory of the other Party by the domestic industry of the other Party. (19)

4. A service supplied by a state-owned enterprise of a Party within the Party's territory shall be deemed not to cause adverse effects. (20)

(16) For the purposes of paragraphs 1 and 2, it must be demonstrated that the adverse effects claimed have been caused by the non-commercial assistance. Thus, the non-commercial assistance must be examined within the context of other possible causal factors to ensure an appropriate attribution of causality.

(17) For greater certainty, indirect provision includes the situation in which a Party entrusts or directs an enterprise that is not a state-owned enterprise to provide non-commercial assistance.

(18) The term "domestic industry" refers to the domestic producers as a whole of the like good, or to those domestic producers whose collective output of the like good constitutes a major proportion of the total domestic production of the like good, excluding the state-owned enterprise that is a covered investment that has received the non-commercial assistance referred to in this paragraph.

(19) In situations of material retardation of the establishment of a domestic industry, it is understood that a domestic industry may not yet produce and sell the like good. However, in these situations, there must be evidence that a prospective domestic producer has made a substantial commitment to commence production and sales of the like good.

(20) For greater certainty, this paragraph shall not be construed to apply to a service that itself is a form of non-commercial assistance.

Article 16.7. Adverse Effects

1. For the purposes of Article 16.6.1 and Article 16.6.2, adverse effects arise if the effect of the non-commercial assistance is:

(a) that the production and sale of a good by a Party's state-owned enterprise that has received the non-commercial assistance displaces or impedes from the Party's market imports of a like good of the other Party or sales of a like good produced by an enterprise that is a covered investment in the territory of the Party;

(b) that the production and sale of a good by a Party's state-owned enterprise that has received the non-commercial assistance displaces or impedes from:

(i) the market of the other Party sales of a like good produced by an enterprise that is a covered investment in the territory of the other Party; or

(ii) the market of a non-Party imports of a like good of the other Party;

(c) a significant price undercutting by a good produced by a Party's state-owned enterprise that has received the non-commercial assistance and sold by the enterprise in:

(i) the market of a Party as compared with the price in the same market of imports of a like good of the other Party or a like good that is produced by an enterprise that is a covered investment in the territory of the Party, or significant price suppression, price depression or lost sales in the same market; or

(ii) the market of a non-Party as compared with the price in the same market of imports of a like good of the other Party, or significant price suppression, price depression or lost sales in the same market;

(d) that services supplied by a Party's state-owned enterprise that has received the non-commercial assistance displace or impede from the market of the other Party a like service supplied by a service supplier of the other Party; or

(e) a significant price undercutting by a service supplied in the market of the other Party by a Party's state-owned enterprise that has received the non- commercial assistance as compared with the price in the same market of a like service supplied by a service supplier of the other Party, or significant price suppression, price depression or lost sales in the same market. (21)

2. For the purposes of paragraphs 1(a), 1(b) and 1(d), the displacing or impeding of a good or service includes any case in which it has been demonstrated that there has been a significant change in relative shares of the market to the disadvantage of the like good or like service. "Significant change in relative shares of the market" shall include any of the following situations:

(a) there is a significant increase in the market share of the good or service of the Party's state-owned enterprise;

(b) the market share of the good or service of the Party's state-owned enterprise remains constant in circumstances in which, in the absence of the non- commercial assistance, it would have declined significantly; or

(c) the market share of the good or service of the Party's state-owned enterprise declines, but at a significantly slower rate than would have been the case in the absence of the non-commercial assistance,

the change must manifest itself over an appropriately representative period sufficient to demonstrate clear trends in the development of the market for the good or service concerned, which, in normal circumstances, shall be at least one year.

3. For the purposes of paragraphs 1(c) and 1(e), price undercutting shall include any case in which such price undercutting has been demonstrated through a comparison of the prices of the good or service of the state-owned enterprise with the prices of the like good or service.

4. Comparisons of the prices in paragraph 3 shall be made at the same level of trade and at comparable times, and due account shall be taken for factors affecting price comparability. If a direct comparison of transactions is not possible, the existence of price undercutting may be demonstrated on some other reasonable basis, such as, in the case of goods, a comparison of unit values.

5. Non-commercial assistance that a Party provides:

(a) before the signing of this Agreement; or

(b) within three years after the signing of this Agreement, pursuant to a law that is enacted, or contractual obligation undertaken, prior to the signing of this Agreement,

shall be deemed not to cause adverse effects.

6. For the purposes of Article 16.6.1(b) and Article 16.6.2(b), the initial capitalisation of a state-owned enterprise, or the acquisition by a Party of a controlling interest in an enterprise, that is principally engaged in the supply of services within the territory of the Party, shall be deemed not to cause adverse effects.

(21) The purchase or sale of shares, stock or other forms of equity by a state-owned enterprise that has received non-commercial assistance as a means of its equity participation in another enterprise shall not be construed to give rise to adverse effects as provided for in Article 16.7.1.

Article 16.8. Injury

1. For the purposes of Article 16.6.3, the term "injury" shall be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry. A determination of material injury shall be based on positive evidence and involve an objective examination of the relevant factors, including the volume of production by the covered investment that has received non-commercial assistance, the effect of such production on prices for like goods produced and sold by the domestic industry, and the effect of such production on the

domestic industry producing like goods. (22)

2. With regard to the volume of production by the covered investment that has received non-commercial assistance, consideration shall be given as to whether there has been a significant increase in the volume of production, either in absolute terms or relative to production or consumption in the territory of the Party in which injury is alleged to have occurred. With regard to the effect of the production by the covered investment on prices, consideration shall be given as to whether there has been a significant price undercutting by the goods produced and sold by the covered investment as compared with the price of like goods produced and sold by the domestic industry, or whether the effect of production by the covered investment is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

3. The examination of the impact on the domestic industry of the goods produced and sold by the covered investment that received the non-commercial assistance shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, such as actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilisation of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on government support programmes. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

4. It must be demonstrated that the goods produced and sold by the covered investment are, through the effects (23) of the non-commercial assistance, causing injury within the meaning of this Article. The demonstration of a causal relationship between the goods produced and sold by the covered investment and the injury to the domestic industry shall be based on an examination of all relevant evidence. Any known factors other than the goods produced by the covered investment which at the same time are injuring the domestic industry shall be examined, and the injuries caused by these other factors must not be attributed to the goods produced and sold by the covered investment that has received non-commercial assistance. Factors which may be relevant in this respect include, among other things, the volumes and prices of other like goods in the market in question, contraction in demand or changes in the patterns of consumption, and developments in technology and the export performance and productivity of the domestic industry.

5. A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility and shall be considered with special care. The change in circumstances which would create a situation in which non-commercial assistance to the covered investment would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, there should be consideration of relevant factors (24) and of whether the totality of the factors considered lead to the conclusion that further availability of goods produced by the covered investment is imminent and that, unless protective action is taken, material injury would occur.

(22) The periods for examination of the non-commercial assistance and injury shall be reasonably established and shall end as closely as practical to the date of initiation of the proceeding before the panel.

(23) As set out in paragraphs 2 and 3.

(24) In making a determination regarding the existence of a threat of material injury, a panel pursuant to Chapter 27 (Dispute Settlement) should consider, among other things, such factors as: (a) the nature of the non-commercial assistance in question and the trade effects likely to arise therefrom; (b) a significant rate of increase in sales in the domestic market by the covered investment, indicating a likelihood of substantially increased sales; (c) sufficient freely disposable, or an imminent, substantial increase in, capacity of the covered investment indicating the likelihood of substantially increased production of the good by that covered investment, taking into account the availability of export markets to absorb additional production; (d) whether prices of goods sold by the covered investment will have a significant depressing or suppressing effect on the price of like goods; and (e) inventories of like goods.

Article 16.9. Party-specific Annexes

1. Article 16.4 and Article 16.6 shall not apply with respect to the non-conforming activities of state-owned enterprises or designated monopolies that a Party lists in its Schedule to Annex IV in accordance with the terms of the Party's Schedule.

2. Article 16.4, Article 16.5, Article 16.6 and Article 16.10 shall not apply with respect to a Party's state-owned enterprises or designated monopolies as set out in Annex 16-D.

Article 16.10. Transparency

1. Each Party shall provide to the other Party or otherwise make publicly available on an official website a list of its state-owned enterprises no later than six months after the date of entry into force of this Agreement, and thereafter shall update the list annually.

2. Each Party shall promptly notify the other Party or otherwise make publicly available on an official website the designation of a monopoly or expansion of the scope of an existing monopoly and the terms of its designation.

3. On the written request of the other Party, a Party shall promptly provide the following information concerning a state-owned enterprise or a government monopoly, provided that the request includes an explanation of how the activities of the entity may be affecting trade or investment between the Parties:

(a) the percentage of shares that the Party, its state-owned enterprises or designated monopolies cumulatively own, and the percentage of votes that they cumulatively hold, in the entity;

(b) a description of any special shares or special voting or other rights that the Party, its state-owned enterprises or designated monopolies hold, to the extent these rights are different than the rights attached to the general common shares of the entity;

(c) the government titles of any government official serving as an officer or member of the entity's board of directors;

(d) the entity's annual revenue and total assets over the most recent three year period for which information is available;

(e) any exemptions and immunities from which the entity benefits under the Party's laws and regulations; and

(f) any additional information regarding the entity that is publicly available, including annual financial reports and third-party audits, and that is sought in the written request.

4. On the written request of the other Party, a Party shall promptly provide, in writing, information regarding any policy or programme it has adopted or maintains that provides for non-commercial assistance, provided that the request includes an explanation of how the policy or programme affects or could affect trade or investment between the Parties.

5. When a Party provides a response pursuant to paragraph 4, the information it provides shall be sufficiently specific to enable the requesting Party to understand the operation of and evaluate the policy or programme and its effects or potential effects on trade or investment between the Parties. The Party responding to a request shall ensure that the response it provides contains the following information:

(a) the form of the non-commercial assistance provided under the policy or programme, for example, grant or loan;

(b) the names of the government agencies, state-owned enterprises, or state enterprises providing the non-commercial assistance and the names of the state-owned enterprises that have received or are eligible to receive the non- commercial assistance;

(c) the legal basis and policy objective of the policy or programme providing for the non-commercial assistance;

(d) with respect to goods, the amount per unit of the non-commercial assistance or, in cases where this is not possible, the total amount or the annual amount budgeted for the non-commercial assistance, indicating, if possible, the average amount per unit in the previous year;

(e) with respect to services, the total amount or the annual amount budgeted for the non-commercial assistance, indicating, if possible, the total amount in the previous year;

(f) with respect to policies or programmes providing for non-commercial assistance in the form of loans or loan guarantees, the amount of the loan or amount of the loan guaranteed, interest rates, and fees charged;

(g) with respect to policies or programmes providing for non-commercial assistance in the form of the provision of goods or services, the prices charged, if any;

(h) with respect to policies or programmes providing for non-commercial assistance in the form of equity capital, the amount invested, the number and adescription of the shares received, and any assessments that were conducted with respect to the underlying investment decision;

(i) duration of the policy or programme or any other time-limits attached to it; and

(j) statistical data permitting an assessment of the effects of the non-commercial assistance on trade or investment between

the Parties.

6. If a Party considers that it has not adopted or does not maintain any policies or programmes referred to in paragraph 4, it shall so inform the requesting Party in writing.

7. If any relevant points in paragraph 5 have not been addressed in the written response, an explanation shall be provided in the written response itself.

8. The Parties recognise that the provision of information under paragraphs 5 and 7 does not prejudge the legal status of the assistance that was the subject of the request under paragraph 4 or the effects of that assistance under this Agreement.

9. When a Party provides written information pursuant to a request under this Article and informs the requesting Party that it considers the information to be confidential, the requesting Party shall not disclose the information without the prior consent of the Party providing the information.

Article 16.11. Technical Cooperation

The Parties shall, where appropriate and subject to available resources, engage in mutually agreed technical cooperation activities, including:

(a) exchanging information regarding Parties' experiences in improving the corporate governance and operation of their state-owned enterprises;

(b) sharing best practices on policy approaches to ensure a level playing field between state-owned and privately owned enterprises, including policies related to competitive neutrality; and

(c) organising international seminars, workshops or any other appropriate forum for sharing technical information and expertise related to the governance and operations of state-owned enterprises.

Article 16.12. Contact Points

Each Party shall designate and notify a contact point on State-Owned Enterprises and Designated Monopolies to facilitate communications between the Parties on any matter covered by this Chapter.

Article 16.13. Exceptions

1. Nothing in Article 16.4 or Article 16.6 shall be construed to:

(a) prevent the adoption or enforcement by any Party of measures to respond temporarily to a national or global economic emergency; or

(b) apply to a state-owned enterprise with respect to which a Party has adopted or enforced measures on a temporary basis in response to a national or global economic emergency, for the duration of that emergency.

2. Article 16.4.1 shall not apply with respect to the supply of financial services by a state-owned enterprise pursuant to a government mandate if that supply of financial services:

(a) supports exports or imports, provided that these services are:

(i) not intended to displace commercial financing; or

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market; (25)

(b) supports private investment outside the territory of the Party, provided that these services are:

(i) not intended to displace commercial financing, or

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market; or

(c) is offered on terms consistent with the Arrangement, provided that it falls within the scope of the Arrangement.

3. The supply of financial services by a state-owned enterprise pursuant to a government mandate shall be deemed not to

give rise to adverse effects under Article 16.6.1(b) or Article 16.6.2(b), or under Article 16.6.1(c) or Article 16.6.2(c) where the Party in which the financial service is supplied requires a local presence in order to supply those services, if that supply of financial services: (26)

(a) supports exports and imports, provided that these services are:

(i) not intended to displace commercial financing; or

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market;

(b) supports private investment outside the territory of the Party, provided that these services are:

(i) not intended to displace commercial financing; or

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market; or

(c) is offered on terms consistent with the Arrangement, provided that it falls within the scope of the Arrangement.

4. Article 16.6 shall not apply with respect to an enterprise located outside the territory of a Party over which a state-owned enterprise of that Party has assumed temporary ownership as a consequence of foreclosure or a similar action in connection with defaulted debt, or payment of an insurance claim by the state-owned enterprise, associated with the supply of the financial services referred to in paragraphs 2 and 3, provided that any support the Party, a state enterprise or state-owned enterprise of the Party, provides to the enterprise during the period of temporary ownership is provided in order to recoup the state-owned enterprise's investment in accordance with a restructuring or liquidation plan that will result in the ultimate divestiture from the enterprise.

5. Article 16.4, Article 16.6 and Article 16.10 shall not apply with respect to a state- owned enterprise or designated monopoly if in any one of the three previous consecutive fiscal years, the annual revenue derived from the commercial activities of the state-owned enterprise or designated monopoly was less than a threshold amount which shall be calculated in accordance with Annex 16-A. (27)

(25) In circumstances where no comparable financial services are offered in the commercial market: (a) for the purposes of paragraphs 2(a)(ii), 2(b)(ii), 3(a)Gi) and 3(b)Gi), the state-owned enterprise may rely as necessary on available evidence to establish a benchmark of the terms on which such services would be offered in the commercial market; and (b) for the purposes of paragraphs 2(a)(i), 2(b)G), 3(a)G@) and 3(b)G), the supply of the financial services shall be deemed not to be intended to displace commercial financing.

(26) For the purposes of this paragraph, in cases where the Party in which the financial service is supplied requires a local presence in order to supply those services, the supply of the financial services identified in this paragraph through an enterprise that is a covered investment shall be deemed to not give rise to adverse effects.

(27) When a Party invokes this exception during consultations under Article 27.5 (Consultations), the consulting Parties should exchange and discuss available evidence concerning the annual revenue of the state-owned enterprise or the designated monopoly derived from the commercial activities during the three previous consecutive fiscal years in an effort to resolve during the consultations period any disagreement regarding the application of this exception.

Article 16.14. Further Negotiations

Within five years of the date of entry into force of this Agreement, the Parties shall conduct further negotiations on extending the application of the disciplines in this Chapter in accordance with Annex 16-C.

Article 16.15. Process for Developing Information

Annex 16-B shall apply in any dispute under Chapter 27 (Dispute Settlement) regarding a Party's conformity with Article 16.4 or Article 16.6.

Chapter 17. Intellectual Property

Section A. General Provisions

Article 17.1. Definitions

For the purposes of this Chapter:

Berne Convention means the Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris, July 24, 1971;

Budapest Treaty means the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977), as amended on September 26, 1980;

Declaration on TRIPS and Public Health means the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2), adopted at Doha on November 14, 2001;

geographical indication means an indication that identifies a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

intellectual property refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement;

Marrakesh Treaty means the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, done at Marrakesh on June 27, 2013;

national means, in respect of the relevant right, a person of a Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 17.7 or the TRIPS Agreement;

Paris Convention means the Paris Convention for the Protection of Industrial Property, as revised at Stockholm, July 14, 1967;

PCT means the Patent Cooperation Treaty, as amended on September 28, 1979;

performance means a performance fixed in a phonogram, unless otherwise specified;

right to authorise or prohibit, with respect to copyright and related rights, refers to exclusive rights;

UPOV 1991 means the International Convention for the Protection of New Varieties of Plants, as revised at Geneva, March 19, 1991;

WCT means the WIPO Copyright Treaty, done at Geneva on December 20, 1996; WIPO means the World Intellectual Property Organization;

work includes, among other things, a cinematographic work, photographic work and computer program; and

WPPT means the WIPO Performances and Phonograms Treaty, done at Geneva on December 20, 1996.

Article 17.2. Objectives

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

Article 17.3. Principles

1. A Party may, in formulating or amending its laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Chapter.

2. Appropriate measures, provided that they are consistent with the provisions of this Chapter, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

Article 17.4. Understandings In Respect of this Chapter

Having regard to the underlying public policy objectives of national systems, the Parties recognise the need to:

(a) promote innovation and creativity;

(b) facilitate the diffusion of information, knowledge, technology, culture and the arts; and

(c) foster competition and open and efficient markets,

through their respective intellectual property systems, while respecting the principles of transparency and due process, and taking into account the interests of relevant stakeholders, including right holders, users and the public.

Article 17.5. Nature and Scope of Obligations

Each Party shall give effect to the provisions of this Chapter. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection or enforcement does not contravene the provisions of this Chapter. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice.

Article 17.6. Understandings Regarding Certain Public Health Measures

The Parties affirm their existing rights and obligations under the TRIPS Agreement, as well as their commitment to the Declaration on TRIPS and Public Health. In particular, the Parties have reached the following understandings regarding this Chapter:

(a) the obligations of this Chapter do not and should not prevent a Party from taking measures to protect public health. Accordingly, while reiterating their commitment to this Chapter, the Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party's right to protect public health and, in particular, to promote access to medicines for all. Each Party has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency;

(b) in recognition of the commitment to access to medicines that are supplied in accordance with the Decision of the WTO General Council of 30 August 2003 on the Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/540) and the WTO General Council Chairman's Statement Accompanying the Decision (JOB(03)/177, WT/GC/M/82), as well as the Decision of the WTO General Council of 6 December 2005 on the Amendment of the TRIPS Agreement, (WT/L/641) and the WTO General Council Chairperson's Statement Accompanying the Decision (JOB(05)/319 and Corr. 1,WT/GC/M/100) (collectively, the "TRIPS/health solution"), this Chapter does not and should not prevent the effective utilisation of the TRIPS/health solution; and

(c) with respect to the aforementioned matters, if any waiver of any provision of the TRIPS Agreement, or any amendment of the TRIPS Agreement, enters into force with respect to the Parties, and a Party's application of a measure in conformity with that waiver or amendment is contrary to the obligations of this Chapter, the Parties shall immediately consult in order to adapt this Chapter as appropriate in the light of the waiver or amendment.

Article 17.7. International Agreements

Each Party affirms that it has ratified or acceded to the following agreements:

(a) PCT;

(b) Paris Convention;

(c) Berne Convention;

(d) Budapest Treaty;

(e) UPOV 1991;

(f) WCT;

(g) WPPT; and

(h) Marrakesh Treaty.

Article 17.8. National Treatment

1. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection (1) of intellectual property rights, subject to the exceptions provided under the TRIPS Agreement and multilateral agreements concluded or administered under the auspices of WIPO to which either Party is a party.

2. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is:

(a) necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter; and

(b) not applied in a manner that would constitute a disguised restriction on trade.

3. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

(1) For the purposes of this paragraph, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter.

Article 17.9. Transparency

1. Further to Article 25.2 (Publication) and Article 17.39, each Party shall endeavour to make available on the Internet its laws, regulations, procedures and administrative rulings of general application concerning the protection and enforcement of intellectual property rights.

2. Each Party shall, subject to its law, make available on the Internet information that it makes public concerning applications for trademarks, geographical indications, designs, patents and plant variety rights. (2)

3. Each Party shall, subject to its law, make available on the Internet information that it makes public concerning registered or granted trademarks, geographical indications, designs, patents and plant variety rights, sufficient to enable the public to become acquainted with those registered or granted rights. (3)

(2) For greater certainty, paragraph 2 does not require a Party to make available on the Internet the entire dossier for the relevant application.

(3) For greater certainty, paragraph 3 does not require a Party to make available on the Internet the entire dossier for the relevant registered or granted intellectual property right.

Article 17.10. Application of Chapter to Existing Subject Matter and Prior Acts

1. Unless otherwise provided, this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement and that is protected on that date in the territory of the Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

2. Neither Party shall be required to restore protection to subject matter that on the date of entry into force of this Agreement has fallen into the public domain in its territory.

3. This Chapter shall not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.

Article 17.11. Exhaustion of Intellectual Property Rights

Each Party shall be free to establish its own regime for the exhaustion of intellectual property rights.

Section B. Cooperation

Article 17.12. Contact Points for Cooperation

Further to Article 20.3 (Contact Points for Cooperation and Capacity Building), each Party may designate and notify under Article 26.5.2 (Contact Points) one or more contact points for the purpose of cooperation under this Section.

Article 17.13. Cooperation Activities and Initiatives

The Parties shall endeavour to cooperate on the subject matter covered by this Chapter such as through appropriate coordination, training and exchange of information between the respective intellectual property offices of the Parties, or other institutions, to be determined by each Party. Cooperation may cover areas such as:

(a) developments in domestic and international intellectual property policy;

(b) intellectual property administration and registration systems;

(c) education and awareness relating to intellectual property;

(d) implementation of multilateral intellectual property agreements, such as those concluded or administered under the auspices of WIPO; and

(e) technical assistance.

Article 17.14. Patent Cooperation and Work Sharing

1. The Parties recognise the importance of improving the quality and efficiency of their respective patent registration systems as well as simplifying and streamlining the procedures and processes of their respective patent offices for the benefit of all users of the patent system and the public as a whole.

2. Further to paragraph 1, the Parties shall endeavour to cooperate between their patent offices to facilitate the sharing and use of their search and examination work. This may include:

(a) making search and examination results available to the patent office of the other Party; (4) and

(b) exchanging information on quality assurance systems and quality standards relating to patent examination.

3. In order to reduce the complexity and cost of obtaining the grant of a patent, the Parties shall endeavour to cooperate to reduce differences in the procedures and processes of their respective patent offices.

(4) The Parties recognise the importance of multilateral efforts to promote the sharing and use of search and examination results, with a view to improving the quality of search and examination processes and to reducing the costs for both applicants and patent offices.

Article 17.15. Plant Varieties

The Parties shall endeavour to cooperate to promote and ensure the protection of plant varieties based on UPOV 1991.

Article 17.16. Cooperation on Genetic Resources and Traditional Knowledge

1. The Parties shall endeavour to cooperate through their respective agencies responsible for intellectual property, or other relevant institutions, to enhance the understanding of issues connected with traditional knowledge associated with genetic resources, and genetic resources. Such cooperation may include information about publicly available patent databases, as well as, upon request Party, the provision of publicly available regarding applications related to genetic resources or traditional knowledge associated with genetic resources.

2. The Parties shall endeavour to pursue quality patent examination, which may include:

(a) that in determining prior art, relevant publicly available documented information related to traditional knowledge associated with genetic resources may be taken into account;

(b) an opportunity for third parties to cite, in writing, to the competent examining authority prior art disclosures that may

have a bearing on patentability, including prior art disclosures related to traditional knowledge associated with genetic resources;

(c) if applicable and appropriate, the use of databases or digital libraries containing traditional knowledge associated with genetic resources; and

(d) cooperation in the training of patent examiners in the examination of patent applications related to genetic resources and traditional knowledge associated with genetic resources, including the determination of prior art.

Article 17.17. Cooperation on Request

Cooperation activities and initiatives undertaken under this Chapter shall be subject to the availability of resources, and on request, and on terms and conditions mutually agreed by the Parties.

Section C. Genetic Resources and Traditional Knowledge

Article 17.18. General Provisions

1. The Parties recognise the relevance of intellectual property systems and traditional knowledge associated with genetic resources to each other, when that traditional knowledge is related to those intellectual property systems.

2. The Parties further affirm their continuing commitment to working towards a multilateral outcome on intellectual property including patent-related aspects of traditional knowledge associated with genetic resources through the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).

3. Subject to each Party's international obligations, each Party may establish appropriate measures to protect genetic resources, traditional knowledge and traditional cultural expressions.

Section D. Trademarks

Article 17.19. Types of Signs Registrable as Trademarks

Neither Party shall require, as a condition of registration, that trademarks be visually perceptible, nor deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound or a scent. A Party may require a concise and accurate description, or graphical representation, or both, as applicable, of the trademark.

Article 17.20. Collective and Certification Marks

Each Party shall provide that trademarks include collective marks and certification marks. Each Party shall also provide that signs that may serve as geographical indications are capable of protection under its trademark system.

Article 17.21. Use of Identical or Similar Signs

Each Party shall provide that the owner of a registered trademark has the exclusive right to prevent third parties that do not have the owner's consent from using, in the course of trade, identical or similar signs, including subsequent geographical indications, (5) for goods or services that are related to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

(5) For greater certainty, the exclusive right in this Article applies to cases of unauthorised use of geographical indications with goods for which the trademark is registered, in cases in which the use of that geographical indication in the course of trade would result in a likelihood of confusion as to the source of the goods.

Article 17.22. Exceptions

A Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that those exceptions take account of the legitimate interest of the owner of the trademark and of third parties.

Article 17.23. Well-known Trademarks

1. Neither Party shall require as a condition for determining that a trademark is well- known that the trademark has been registered in the Party or in another jurisdiction.

2. Article 6bis of the Paris Convention shall apply, mutatis mutandis, to goods or services that are not identical or similar to those identified by a well-known trademark, (6) whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.

(6) In determining whether a trademark is well-known in a Party, that Party need not require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

Section E. Geographical Indications

Article 17.24. Protection of Geographical Indications

1. The Parties recognise that geographical indications may be protected through a trademark or sui generis system or other legal means.

2. Where a Party is considering protecting or recognising a geographical indication, that Party shall:

(a) make its regulations governing filing of such applications, as relevant, readily available to the public;

(b) provide that the grounds for objecting to or refusing an application for protection or recognition of a geographical indication shall include the following (7):

(i) the geographical indication is likely to cause confusion with a trademark that is the subject of a pre-existing good faith pending application or registration in the territory of the Party; and

(ii) the geographical indication is likely to cause confusion with a pre-existing trademark, the rights to which have been acquired in accordance with the Party's law; and

(c) publish geographical indications which have been protected or recognised.

3. The Parties shall exchange information concerning procedural requirements for the protection or recognition of geographical indications under their respective intellectual property systems including, for Australia, procedural requirements with respect to any proposed protection or recognition of Pisco and Pisco Peru.

4. The Parties may, through the contact points referred to Article 17.12, exchange views on issues relating to the protection and recognition of geographical indications, including with respect to any proposed protection and recognition of Pisco and Pisco Peru.

5. The Parties shall review this Article two years after the date of entry into force of this agreement, or before if the Parties otherwise agree, with a view to considering further provisions governing the protection or recognition of geographical indications. The Parties shall undertake a further review two years after the date of the first review. Such reviews shall consider the Parties' interests and sensitivities in seeking the protection or recognition of certain terms including, for Peru, protection or recognition of Pisco and Pisco Peru.

(7) For greater certainty, this provision shall not require a Party to establish in its legislation an objection procedure for the protection or recognition of a geographical indication.

Section F. Patents

Article 17.25. Patentable Subject Matter

1. Each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step and is capable of industrial application.(8)

2. Nothing in this Chapter shall be construed to prevent a Party from excluding inventions from patentability as set out in Articles 27.2 and 27.3 of the TRIPS Agreement.

(8) For the purposes of this Section, a Party may deem the terms "inventive step" and "capable of industrial application" to be synonymous with the terms "non-obvious" and "useful", respectively.

Article 17.26. Exceptions

A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

Article 17.27. Other Use without Authorisation of the Right Holder

The Parties understand that nothing in this Agreement shall limit a Party's rights and obligations pursuant to Article 31 and Article 31 bis of the TRIPS Agreement, and the Annex and Appendix to the Annex to the TRIPS Agreement.

Section G. Copyright and Related Rights

Article 17.28. Definitions

For the purposes of Article 17.29, Article 17.31, Article 17.32, Article 17.33, Article 17.34, Article 17.35 and Article 17.36, the following definitions apply with respect to performers and producers of phonograms:

broadcasting means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also "broadcasting"; transmission of encrypted signals is "broadcasting" if the means for decrypting are provided to the public by the broadcasting organisation or with its consent;

communication to the public of a performance or a phonogram means the transmission to the public by any medium, other than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram;

fixation means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;

performers means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

phonogram means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audio-visual work;

producer of a phonogram means a person that takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds; and

publication of a performance or phonogram means the offering of copies of the performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity.

Article 17.29. Right of Reproduction

Each Party shall provide (9) to authors, performers and producers of phonograms (10) the exclusive right to authorise or prohibit all reproduction of their works, performances or phonograms in any manner or form, including in electronic form.

(9) For greater certainty, the Parties understand that it is a matter for each Party's law to prescribe that works, performances or phonograms in general or any specified categories of works, performances and phonograms are not protected by copyright or related rights unless the work, performance or phonogram has been fixed in some material form.

(10) References to "authors, performers, and producers of phonograms" refer also to any of their successors in interest.

Article 17.30. Right of Communication to the Public

Without prejudice to Article 11(1)(i), Article 11bis(1)G) and (ii), Article 11ter(1)(ii), Article 14(1)(ii), and Article 14bis(1) of the Berne Convention, each Party shall provide to authors the exclusive right to authorise or prohibit the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them. (11)

(11) The Parties understand that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Chapter or the Berne Convention, The Parties further understand that nothing in this Article precludes a Party from applying Article 11bis(2) of the Berne Convention.

Article 17.31. Right of Distribution

Each Party shall provide to authors, performers and producers of phonograms the exclusive right to authorise or prohibit the making available to the public of the original and copies (12) of their works, performances and phonograms through sale or other transfer of ownership.

(12) The expressions "copies" and "original and copies", that are subject to the right of distribution in this Article, refer exclusively to fixed copies that can be put into circulation as tangible objects.

Article 17.32. Related Rights

1. Each Party shall accord the rights provided for in this Chapter with respect to performers and producers of phonograms: to the performers and producers of phonograms that are nationals (13) of the other Party; and to performances or phonograms first published or first fixed (14) in the territory of the other Party. (15) A performance or phonogram shall be considered first published in the territory of a Party if it is published in the territory of that Party within 30 days of its original publication.

2. Each Party shall provide to performers the exclusive right to authorise or prohibit:

(a) the broadcasting and communication to the public of their unfixed performances, unless the performance is already a broadcast performance; and

(b) the fixation of their unfixed performances.

3. Each Party shall provide to performers and producers of phonograms the exclusive right to authorise or prohibit the broadcasting or any communication to the public of their performances or phonograms, by wire or wireless means, (16) (17) and the making available to the public of those performances or phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

4. Notwithstanding paragraph 3 and Article 17.34, the application of the right referred to in paragraph 3 to analog transmissions and non-interactive free over-the-air broadcasts, and exceptions or limitations to this right for those activities, is a matter for each Party's law. (18)

(13) For the purposes of determining criteria for eligibility under this Article, with respect to performers, a Party may treat "nationals" as those who would meet the criteria for eligibility under Article 3 of the WPPT.

(14) For the purposes of this Article, fixation means the finalisation of the master tape or its equivalent.

(15) For greater certainty, in this paragraph with respect to performances or phonograms first published or first fixed in the territory of a Party, a Party may apply the criterion of publication, or alternatively, the criterion of fixation, or both. For greater certainty, consistent with Article 17.8, each Party shall accord to performances and phonograms first published or first fixed in the territory of the other Party treatment no less favourable than it accords to performances or phonograms first published or first fixed in its own territory.

(16) With respect to broadcasting and communication to the public, a Party may satisfy the obligation by applying Article 15(1) and Article 15(4) of the WPPT and may also apply Article 15(2) of the WPPT, provided that it is done in a manner consistent with that Party's obligations under Article 17.8.

(17) For greater certainty, the obligation under this paragraph does not include broadcasting or communication to the public, by wire or wireless means, of the sounds or representations of sounds fixed in a phonogram that are incorporated in a cinematographic or other audio-visual work.

(18) For the purposes of this paragraph the Parties understand that a Party may provide for the retransmission of non-interactive, free over-the-air broadcasts, provided that these retransmissions are lawfully permitted by that Party's government communications authority; any entity engaging in these retransmissions complies with the relevant rules, orders or regulations of that authority; and these retransmissions do not include those delivered and accessed over the Internet. For greater certainty this footnote does not limit a Party's ability to avail itself of this paragraph.

Article 17.33. Application of Article 18 of the Berne Convention and Article 14.6 of the Trips Agreement

Each Party shall apply Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement, mutatis mutandis, to works, performances and phonograms, and the rights in and protections afforded to that subject matter as required by this Section.

Article 17.34. Limitations and Exceptions

1. With respect to this Section, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.

2. This Article does not reduce or extend the scope of applicability of the limitations and exceptions permitted by the TRIPS Agreement, the Berne Convention, the WCT or the WPPT.

Article 17.35. Balance In Copyright and Related Rights Systems

Each Party shall endeavour to achieve an appropriate balance in its copyright and related rights system, among other things by means of limitations or exceptions that are consistent with Article 17.34, giving due consideration to legitimate purposes such as, but not limited to: criticism; comment; news reporting; teaching, research, and other similar purposes; and facilitating access to published works for persons who are blind, visually impaired or otherwise print disabled.

Article 17.36. Collective Management

The Parties recognise the important role of collective management societies for copyright and related rights in collecting and distributing royalties based on practices that are fair, efficient, transparent and accountable, which may include appropriate record keeping and reporting mechanisms.

Section H. Enforcement

Article 17.37. General Obligations

1. Each Party shall ensure that enforcement procedures as specified in this Section are available so as to permit effective action against any act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies that constitute a deterrent to future infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Each Party shall ensure that its procedures concerning the enforcement of intellectual property rights are fair and equitable. These procedures shall not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays.

3. This Section does not create any obligation:

(a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement

of law in general, nor does it affect the capacity of each Party to enforce its law in general; or

(b) with respect to the distribution of resources as between the enforcement of intellectual property rights and the enforcement of law in general.

4. In implementing the provisions of this Section in its intellectual property system, each Party shall take into account the need for proportionality between the seriousness of the infringement of the intellectual property right and the applicable remedies and penalties, as well as the interests of third parties.

Article 17.38. Presumptions

In civil, criminal and, if applicable, administrative proceedings involving copyright or related rights, each Party shall provide for a presumption'? that, in the absence of proof to the contrary:

4. In implementing the provisions of this Section in its intellectual property system, each Party shall take into account the need for proportionality between the seriousness of the infringement of the intellectual property right and the applicable remedies and penalties, as well as the interests of third parties.

Article 17.38. Presumptions

In civil, criminal and, if applicable, administrative proceedings involving copyright or related rights, each Party shall provide for a presumption (19) that, in the absence of proof to the contrary:

(a) the person whose name is indicated in the usual manner (20) as the author, performer or producer of the work, performance or phonogram, or if applicable the publisher, is the designated right holder in that work, performance or phonogram; and

(b) the copyright or related right subsists in such subject matter.

(19) A Party may also provide that these presumptions are rebuttable presumptions that may be rebutted by evidence to the contrary.

(20) For greater certainty, a Party may establish the means by which it shall determine what constitutes the "usual manner".

Article 17.39. Enforcement Practices with Respect to Intellectual Property Rights

Each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights:

(a) are in writing and state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based; and

(b) are published (21) or, if publication is not practicable, otherwise made available to the public in the national language of the Party in such a manner as to enable interested persons and Parties to become acquainted with them.

(21) For greater certainty, a Party may satisfy the requirement for publication by making the decision or ruling available to the public on the Internet.

Article 17.40. Civil Procedures and Remedies

1. Each Party shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right covered in this Chapter. (22)

2. Each Party shall provide that its judicial authorities have the authority to order injunctive relief that conforms to Article 44 of the TRIPS Agreement, including to prevent goods that involve the infringement of an intellectual property right under the law of the Party providing that relief from entering into the channels of commerce.

3. Each Party shall provide (23) (24) that, in civil judicial proceedings, its judicial authorities have the authority at least to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered

because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

4. In determining the amount of damages under paragraph 3, each Party's judicial authorities shall have the authority to consider, among other things, any legitimate measure of value the right holder submits.

5. At least in cases of copyright or related rights infringement and trademark counterfeiting, each Party shall provide that, in civil judicial proceedings, its judicial authorities have the authority to order the infringer, at least in cases described in paragraph 3, to pay the right holder the infringer's profits that are attributable to the infringement (25).

6. Each Party shall provide that its judicial authorities, if appropriate, have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of at least copyright or related rights, patents and trademarks, that the prevailing party be awarded payment by the losing party of court costs or fees and appropriate attorney's fees, or any other expenses as provided for under the Party's law.

7. Each Party shall provide that in civil judicial proceedings:

(a) at least with respect to pirated copyright goods and counterfeit trademark goods, its judicial authorities have the authority, at the right holder's request, to order that the infringing goods be destroyed, except in exceptional circumstances, without compensation of any sort;

(b) its judicial authorities have the authority to order that materials and implements that have been used in the manufacture or creation of the infringing goods be, without undue delay and without compensation of any sort, destroyed or disposed of outside the channels of commerce in such a manner as to minimise the risk of further infringement; and

(c) in regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed is not sufficient, other than in exceptional circumstances, to permit the release of goods into the channels of commerce.

(22) For the purposes of this Article, the term "right holders" shall include those federations and associations that have the legal standing and authority to assert such rights.

(23) For greater certainty, there is no obligation for a Party to provide for the possibility of any of the remedies in paragraphs 3 and 5 to be ordered in parallel.

(24) Australia may also provide that the right holder may not be entitled to any of the remedies set out in paragraphs 3 and 5 if there is a finding of non-use of a trademark.

(25) A Party may comply with this paragraph through presuming those profits to be the damages referred to in paragraph 3.

Article 17.41. Provisional Measures

1. Each Party's authorities shall act on a request for relief in respect of an intellectual property right inaudita altera parte expeditiously in accordance with that Party's judicial rules.

2. Each Party shall provide that its judicial authorities have the authority to require the applicant for a provisional measure in respect of an intellectual property right to provide any reasonably available evidence in order to satisfy the judicial authority, with a sufficient degree of certainty, that the applicant's right is being infringed or that the infringement is imminent, and to order the applicant to provide security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to those procedures.

3. Incivil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities have the authority to order the seizure or other taking into custody of suspected infringing goods, materials and implements relevant to the infringement, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.

Article 17.42. Special Requirements Related to Border Measures

1. Each Party shall provide for applications to suspend the release of, or to detain, any suspected counterfeit or confusingly

similar trademark or pirated copyright goods that are imported into the territory of the Party (26).

2. Each Party shall provide that any right holder initiating procedures for its competent authorities (27) to suspend release of suspected counterfeit or confusingly similar trademark or pirated copyright goods into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the law of the Party providing the procedures, there is prima facie an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspect goods reasonably recognisable by its competent authorities. The requirement to provide that information shall not unreasonably deter recourse to these procedures.

3. Each Party shall provide that its competent authorities have the authority to require a right holder initiating procedures to suspend the release of suspected counterfeit or confusingly similar trademark or pirated copyright goods, to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance does not unreasonably deter recourse to these procedures. A Party may provide that the security may be in the form of a bond conditioned to hold the defendant harmless from any loss or damage resulting from any suspension of the release of goods in the event the competent authorities determine that the article is not an infringing good.

4. Each Party shall provide that its competent authorities may initiate border measures ex officio with respect to goods under customs control that are:

(a) imported; or

(b) destined for export.

5. Each Party shall adopt or maintain a procedure by which its competent authorities may determine after the initiation of the procedures described in paragraph 1, whether the suspect goods infringe an intellectual property right. If a Party provides administrative procedures for the determination of an infringement, it may also provide its authorities with the authority to impose administrative penalties or sanctions, which may include fines or the seizure of the infringing goods following a determination that the goods are infringing.

(26) For the purposes of this Article: (a) counterfeit trademark goods means any goods, including packaging, bearing without authorisation a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the Party providing the procedures under this Section; and (b) pirated copyright goods means any goods that are copies made without the consent of the tight holder or person duly authorised by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the Party providing the procedures under this Section.

(27) For the purposes of this Article, unless otherwise specified, competent authorities may include the appropriate judicial, administrative or law enforcement authorities under a Party's law.

Article 17.43. Criminal Procedures and Penalties

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale.

2. Each Party shall treat wilful importation or exportation of counterfeit trademark goods or pirated copyright goods on a commercial scale as unlawful activities subject to criminal penalties. (28)

(28) The Parties understand that a Party may comply with its obligation under this paragraph by providing that distribution or sale of counterfeit trademark goods or pirated copyright goods on a commercial scale is an unlawful activity subject to criminal penalties.

Chapter 18. Labour

Article 18.1. Definitions

For the purposes of this Chapter:

labour laws means laws and regulations, (1) or provisions of laws and regulations, of a Party that are directly related to the following internationally recognised labour rights:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour, a prohibition on the worst forms of child labour and other labour protections for children and minors; and

(d) the elimination of discrimination in respect of employment and occupation.

(1) For Australia, "laws and regulations" and "laws or regulations" means Acts of the Commonwealth Parliament, or regulations made by the Governor-General in Council under delegated authority under an Act of the Commonwealth Parliament. For greater certainty this definition provides coverage for substantially all workers

Article 18.2. Statement of Shared Commitments

The Parties affirm their obligations as members of the International Labour Organization (ILO).

Article 18.3. Fundamental Labour Rights

The Parties, in accordance with their obligations as members of the ILO and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998) (ILO Declaration), shall endeavor to adopt and maintain in their labour laws and ptactices thereunder, the principles as stated in the ILO Declaration.

Article 18.4. Application and Enforcement of Labour Laws

1. Neither Party shall fail to effectively enforce its labour laws, including those it adopts or maintains in accordance with Article 18.3, through a sustained or recurring course of action or inaction, in a manner substantially affecting trade or investment between the Parties.

2. Neither Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its labour laws implementing Article 18.3, in a manner substantially affecting trade or investment between the Parties, where the waiver or derogation would be inconsistent with the principles as stated in the ILO Declaration.

Article 18.5. Procedural Guarantees and Public Awareness

1. Each Party shall ensure that persons with a recognised interest in a particular matter under its labour laws have appropriate access to impartial and independent tribunals for the enforcement of the Party's labour laws. Such tribunals may include administrative, quasi-judicial, judicial, or labour tribunals, as provided for in the Party's law.

2. Each Party shall ensure that proceedings before such tribunals for the enforcement of its labour laws are fair, equitable and transparent. To this end, each Party shall ensure that:

(a) such proceedings comply with due process of law;

(b) any hearings in such proceedings are open to the public, except where the administration of justice otherwise requires;

(c) the parties to such proceedings are entitled to support or defend their respective positions including by presenting information or evidence; and

(d) such proceedings do not entail unreasonable charges, or time limits, or unwarranted delays.

3. Each Party shall provide that parties to such proceedings may seek existing remedies to ensure the enforcement of their rights under its labour laws.

4. Each Party shall promote public awareness of its labour laws, including by:

(a) ensuring the availability of public information related to its labour laws and enforcement and compliance procedures; and

(b) encouraging education of the public regarding its labour laws.

Article 18.6. Contact Points

Each Party shall designate a contact point for labour matters in order to facilitate communication between the Parties. Unless otherwise notified, for the purposes of this paragraph, the contact point shall be:

(a) for Australia, the Department of Employment, or its successor; and

(b) for Peru, the Ministry of Labour and Employment Promotion , or its successor.

Article 18.7. Labour Cooperation

1. The Parties recognise that cooperation on labour issues plays an important role in advancing development in the territories of the Parties, enhancing opportunities to improve labour standards and further advancing common commitments regarding labour matters, including the principles embodied in the ILO Declaration and ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, done at Geneva on 17 June, 1999.

2. The Parties may cooperate on labour matters of mutual interest and explore ways to further advance labour standards. Cooperative activities may include work on labour laws and practices in the context of the ILO Declaration, and other matters as mutually agreed between the Parties.

Chapter 19. Environment

Article 19.1. Definitions

For the purposes of this Chapter:

environmental law means a law or regulation of a Party, or provision thereof, including any that implements the Party's obligations under a multilateral environmental agreement, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through:

(a) the prevention, abatement or control of: the release, discharge or emission of pollutants or environmental contaminants or greenhouse gases;

(b) the control of environmentally hazardous or toxic chemicals, substances, materials or wastes, and the dissemination of information related thereto; or

(c) the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas,

but does not include a law or regulation, or provision thereof, directly related to worker safety or health, nor any law or regulation, or provision thereof, the primary purpose of which is managing the subsistence or aboriginal harvesting of natural resources; and

law or regulation means:

(a) for Australia, an Act of the Commonwealth Parliament, or a regulation made by the Governor-General in Council under delegated authority under an Act of the Commonwealth Parliament, that is enforceable at the central level of government; and

(b) for Peru, a law of Congress, Legislative Decree, Decree or Resolution promulgated by the central level of government to implement a law of Congress that is enforceable by action of the central level of government.

Article 19.2. Objectives

1. The objectives of this Chapter are to promote mutually supportive trade and environmental policies; promote high levels of environmental protection and effective enforcement of environmental laws; and enhance capacities of the Parties to address trade-related environmental issues, including through cooperation.

2. The Parties further recognise that it is inappropriate to establish or use their environmental laws or other measures in a

manner which would constitute a disguised restriction on trade or investment between the Parties.

Article 19.3. General Commitments

1. The Parties recognise the importance of mutually supportive trade and environmental policies and practices to improving environmental protection in the furtherance of sustainable development.

2. The Parties recognise the sovereign right of each Party to establish its own levels of domestic environmental protection and its own environmental priorities, and to establish, adopt or modify its environmental laws and policies accordingly.

3. Without prejudice to paragraph 2, each Party recognises that it is inappropriate to encourage trade or investment by weakening or reducing the protection afforded in their respective environmental laws.

4. Each Party shall strive to ensure that its environmental laws and policies encourage high levels of environmental protection and continue to improve its respective levels of environmental protection.

5. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of the other Party.

Article 19.4. Multilateral Environmental Agreements

1. The Parties recognise that multilateral environmental agreements to which they are party play an important role, globally and domestically, in protection of the environment and that their respective implementation of these agreements is critical to achieving the environmental objectives of these agreements. Accordingly, each Party affirms its commitment to implement the multilateral environmental agreements to which it is party.

2. The Parties emphasise the need to enhance the mutual supportiveness between trade and environmental laws and policies, through dialogue between the Parties on trade and environmental issues of mutual interest, particularly with respect to multilateral environmental agreements and international trade agreements to which both Parties are party.

3. The Parties recognise the importance of conservation and sustainable use of biological diversity, and their key role in achieving sustainable development.

Accordingly, each Party shall promote and encourage the conservation and sustainable use of biological diversity, in accordance with its law or policy and international agreements to which they are party. (1)

4. The Parties further recognise (2) that they require, through and in accordance with national measures: prior informed consent to access such genetic resources and, where such access is granted, the establishment of mutually agreed terms, including with respect to sharing of benefits from the use of such genetic resources, between users and providers.

5. The Parties also acknowledge that access to traditional knowledge associated with genetic resources from providers, as well as the equitable sharing of benefits that may result from the utilisation of that traditional knowledge, may be addressed through contracts that reflect mutually agreed terms between users and providers.

6. Parties shall cooperate to address matters of mutual interest related to trade and biodiversity in accordance with relevant international obligations and with their laws and policies.

7. The Parties acknowledge that climate change requires collective action, and recognise the importance of implementation of their respective commitments under the multilateral agreements to which they are party. (3) Recognising that each Party's actions should reflect domestic circumstances and capabilities, the Parties shall, as appropriate, cooperate to address matters of joint or common interest.

8. The Parties affirm the importance of combating the illegal trade in wild fauna and flora. Accordingly, each Party shall adopt, maintain and implement laws, regulations and any other measures to fulfil its obligations under the multilateral environmental agreements to which they are party. (4)

(1) For greater certainty, for each Party, this provision pertains to obligations under the Convention on Biological Diversity, done at Rio de Janeiro on 5 June, 1992, and obligations within its related legal instruments, to which it is Party.

(2) The Parties understand that the requirements established in this paragraph apply to the extent required by each Party's legislation for access to genetic resources for commercial or potentially commercial purposes, and, to the extent required by each Party's legislation, for non-

commercial purposes.

(3) For greater certainty, for each Party, this provision relates to obligations under the United Nations Framework Convention on Climate Change done at New York on 9 May, 1992, and obligations within its related legal instruments, to which it is party.

(4) For greater certainty, for each Party, this provision relates to obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington D.C. on 3 March, 1973, to which it is Party.

Article 19.5. Environmental Consultations

1. Each Party shall designate and notify a contact point on Environment, to facilitate communications between the Parties on any matter covered by this Chapter.

2. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the contact point of the other Party. Consultations shall commence promptly after a Party delivers a request for consultations to the contact point of the other Party. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.

Article 19.6. Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 27 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 20. Cooperation and Capacity Building

Article 20.1. General Provisions

1. The Parties shall establish a framework for cooperation and capacity building activities and shall undertake and strengthen these activities to assist in implementing this Agreement and enhancing its benefits, with the intention of accelerating economic growth and sustainable development.

2. The Parties recognise that cooperation and capacity building activities may be undertaken between the Parties, on a mutually agreed basis, and shall seek to complement and build on existing agreements or arrangements between them.

3. The Parties also recognise that the involvement of the private sector is important in these activities, and that SMEs may require assistance in participating in global markets.

Article 20.2. Areas of Cooperation and Capacity Building

1. The Parties may undertake and strengthen cooperation and capacity building activities to assist in:

(a) implementing the provisions of this Agreement;

(b) education, human capital development, culture and gender equality;

(c) innovation, technology, research and development;

(d) mining and energy;

(e) water management and sanitation;

(f) tourism and gastronomy;

(g) protection of vulnerable groups, including women, children, people with disabilities and indigenous people; and

(h) disaster risk management.

3. The Parties recognise that technology and innovation provide added value to cooperation and capacity building activities, and may be incorporated into cooperation and capacity building activities under this Article.

4. Cooperation and capacity building activities may include, but should not be limited to: dialogues, workshops, seminars, conferences, collaborative programmes and projects; technical assistance to promote and facilitate capacity building and training; the sharing of best practices on policies and procedures; the exchange of experts, information and technology; and the encouragement of private sector cooperation.

Article 20.3. Contact Points for Cooperation and Capacity Building

1. Each Party shall designate and notify a contact point on Cooperation and Capacity Building to facilitate communications between the Parties on any matter covered by this Chapter.

2. A Party may make a request for cooperation and capacity building activities related to this Agreement to the other Party through the contact points.

Article 20.4. Committee on Cooperation and Capacity Building

1. The Parties hereby establish a Committee on Cooperation and Capacity Building (Committee), composed of government representatives of each Party.

2. The Committee shall:

(a) discuss and consider issues or proposals for future cooperation and capacity building activities;

(b) initiate and undertake collaboration, as appropriate, to enhance donor coordination and facilitate public-private partnerships in cooperation and capacity building activities;

(c) invite, as appropriate, international donor institutions, private sector entities, non-governmental organisations, academic sector or other relevant institutions, to assist in the development and implementation of cooperation and capacity building activities;

(d) establish ad hoc working groups, as appropriate, which may include government representatives, non-government representatives or both;

(e) coordinate with any other subsidiary bodies established under this Agreement as appropriate, in support of the development and implementation of cooperation and capacity building activities;

(f) review the implementation or operation of this Chapter; and

(g) engage in other activities as the Parties may decide.

3. The Committee shall meet within one year of the date of entry into force of this Agreement, and thereafter as necessary.

4. The Committee shall produce an agreed record of their meetings, including decisions and next steps and, as appropriate, report to the Joint Commission.

Article 20.5. Resources

1. The implementation of cooperation and capacity building activities under this Chapter shall be subject to the availability of funds and resources of each Party and the applicable laws and regulations of each Party.

2. The Parties shall bear the costs of cooperation and capacity building activities under this Chapter, in an equitable manner to be mutually agreed by the Parties.

Article 20.6. Non-application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 27 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 21. Competitiveness and Business Facilitation

Article 21.1. Definitions

For the purposes of this Chapter:

supply chain means a cross-border network of enterprises operating together as an integrated system to design, develop, produce, market, distribute, transport, and deliver products and services to customers.

Article 21.2. Activities and Contact Points on Competitiveness and Business Facilitation

1. The Parties recognise that, in order to enhance the domestic, regional and global competitiveness of their economies, and to promote economic integration and development within the free trade area, their business environments must be responsive to market developments.

2. Each Party shall designate and notify a contact point on Competitiveness and Business Facilitation to facilitate communications between the Parties on any matter covered by this Chapter.

3. The contact points shall facilitate:

(a) discussion of effective approaches and develop information sharing activities to support efforts to establish a competitive environment that is conducive to the establishment of businesses, facilitates trade and investment between the Parties, and promotes economic integration and development within the free trade area;

(b) exploration of ways to take advantage of the trade and investment opportunities that this Agreement creates;

(c) identification and discussion of measures affecting, as well as best practices and experiences relevant to, the development and strengthening of supply chains;

(d) provision of advice and recommendations to the Joint Commission on ways to further enhance the competitiveness of the Parties' economies, including recommendations identifying ways to promote the development and strengthening of supply chains, aimed at enhancing the participation especially of SMEs;

(e) where appropriate, coordination of meetings between government representatives of each Party to address any matter covered by this Chapter; and

(f) engagement in other activities as the Parties may decide.

3. The Parties may also seek advice from, and consider the work of, appropriate experts, such as international donor institutions, enterprises and non-governmental organisations.

Article 21.3. Non-application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 27 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 22. Development

Article 22.1. General Provisions

1. The Parties affirm their commitment to promote and strengthen an open trade and investment environment that seeks to improve welfare, reduce poverty and inequalities, raise living standards and create new employment opportunities in support of sustainable development.

2. The Parties acknowledge the importance of development in promoting inclusive economic growth, as well as the instrumental role that trade and investment can play in contributing to economic development and prosperity. Inclusive economic growth includes a more broad-based distribution of the benefits of economic growth through the expansion of business and industry, the creation of sustainable livelihood and jobs, and the alleviation of poverty.

3. The Parties acknowledge that economic growth and development contribute to achieving the objectives of this Agreement, and that effective domestic coordination of trade, investment and development policies can contribute to sustainable growth.

4. The Parties recognise the potential for joint development activities by the Parties to reinforce efforts to achieve sustainable development goals.

5. The Parties also recognise that activities carried out under Chapter 20 (Cooperation and Capacity Building) are an important component of joint development activities.

Article 22.2. Promotion of Development

1. The Parties acknowledge the importance of each Party's leadership in implementing development policies, including policies that are designed for its nationals to maximise the use of the opportunities created by this Agreement.

2. The Parties further recognise that transparency, good governance and accountability contribute to the effectiveness of development policies.

Article 22.3. Broad-based Economic Growth

1. The Parties acknowledge that broad-based economic growth reduces poverty, enables sustainable delivery of basic services, and expands opportunities for people to live healthy and productive lives.

2. The Parties recognise that broad-based economic growth promotes peace, stability, democratic institutions, attractive investment opportunities, and effectiveness in addressing national and global challenges.

3. The Parties also recognise that generating and sustaining broad-based economic growth requires sustained high-level commitment by their governments to effectively and efficiently administer public institutions, invest in public infrastructure, welfare, health and education systems, and foster science, technology, innovation and entrepreneurship, and access to economic opportunity.

4. The Parties may enhance broad-based economic growth through policies that take advantage of trade and investment opportunities created by this Agreement in order to contribute to, among other things, sustainable development and the reduction of poverty. These policies may include those related to the promotion of market-based approaches aimed at improving trading conditions and access to finance for vulnerable areas or populations, and SMEs.

Article 22.4. Women and Economic Growth

1. The Parties recognise that enhancing opportunities in their territories for women, including workers and business owners, to participate in the domestic and global economy contributes to economic development. The Parties further recognise the benefit of sharing their diverse experiences in designing, implementing and strengthening programmes to encourage this participation.

2. Accordingly, the Parties shall consider undertaking cooperative activities aimed at enhancing the ability of women, including workers and business owners, to fully access and benefit from the opportunities created by this Agreement. These activities may include providing advice or training, such as through the exchange of officials, and exchanging information and experience on:

(a) programmes aimed at helping women build their skills and capacity, and enhancing their access to markets, science and technology, and financing;

(b) developing women's leadership networks; and

(c) identifying best practices related to workplace flexibility.

Article 22.5. Education, Science and Technology, Research and Innovation

1. The Parties recognise that the promotion and development of education, science and technology, research and innovation can play an important role in accelerating growth, enhancing competitiveness, creating jobs, and expanding trade and investment among the Parties.

2. The Parties further recognise that policies related to education, science and technology, research and innovation can help the Parties maximise the benefits derived from this Agreement. Accordingly, each Party may encourage the design of policies in these areas that take into consideration trade and investment opportunities arising from this Agreement, in order to further increase those benefits. Those policies may include initiatives with the private sector, including those aimed at developing relevant expertise and managerial skills, and enhancing enterprises' ability to transform innovations into competitive products and start-up businesses.

Article 22.6. Joint Development Activities

1. The Parties recognise that joint activities by the Parties to promote maximisation of the development benefits derived

from this Agreement can reinforce national development strategies, including, where appropriate, through work with bilateral partners, private companies, academic institutions and non-governmental organisations.

2. Ona mutually agreed basis, the Parties shall endeavour to facilitate joint activities so that the benefits derived from this Agreement might more effectively advance each Party's development goals. These joint activities may include:

(a) discussion by the Parties to promote, where appropriate, alignment of Parties' development assistance and finance programmes with national development priorities;

(b) consideration of ways to expand engagement in science, technology and research to foster the application of innovative uses of science and technology, promote development and build capacity;

(c) facilitation of public and private sector partnerships that enable private enterprises, including SMEs, to bring their expertise and resources to cooperative ventures with government agencies in support of development goals; and

(d) involvement of the private sector, including philanthropic organisations and businesses, and non-governmental organisations in activities to support development.

Article 22.7. Contact Points on Development

1. Each Party shall designate and notify a contact point on Development to facilitate communications between the Parties on any matter covered by this Chapter.

2. The contact points shall facilitate:

(a) the exchange of information on the Parties' experiences regarding the formulation and implementation of national policies intended to derive the greatest possible benefits from this Agreement;

(b) the discussion of any proposals for future joint development activities in support of development policies related to trade and investment;

(c) the invitation, as appropriate, of international donor institutions, private sector entities, non-governmental organisations or other relevant institutions to assist in the development and implementation of joint development activities;

(d) the consideration of issues associated with the implementation and operation of this Chapter, with a view towards considering ways the Chapter may enhance the development benefits of this Agreement;

(e) where appropriate, the coordination of meetings between government representatives of each Party to address any matter covered by this Chapter; and

(f) other functions as the Parties may decide in respect of maximising the development benefits derived from this Agreement;

Article 22.8. Relation to other Chapters

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

Article 22.9. Non-application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 27 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 23. Small and Medium-sized Enterprises

Article 23.1. General Provisions

1. The Parties acknowledge the importance of promoting an environment that facilitates and supports the development, growth and competitiveness of SMEs, recognising their participation in domestic markets as well as in international trade, and their contribution in achieving inclusive economic growth, sustainable development and enhanced productivity.

2. The Parties recognise the importance of current initiatives, efforts and work on SMEs developed under the aegis of the OECD, WTO, APEC and any other relevant fora, and in taking into account their findings and recommendations, where

appropriate.

3. The Parties also recognise the relevance of:

(a) working cooperatively to achieve progress in reducing barriers to SMEs' access to international markets;

(b) considering the needs of SMEs when formulating new legislation, regulation and product standards; and

(c) assessing the effects of globalisation on SMEs and, in particular, examining issues related to SMEs' access to financing and to support for innovation.

Article 23.3. Information Sharing

1. Each Party shall establish or maintain its own publicly accessible website containing information regarding this Agreement, including:

(a) the text of this Agreement, including all Annexes, tariff schedules and product specific rules of origin;

(b) asummary of this Agreement; and (c) information designed for SMEs that contains:

(i) a description of the provisions in this Agreement that the Party considers to be relevant to SMEs; and

(ii) any additional information that the Party considers useful for SMEs interested in benefitting from the opportunities provided by this Agreement.

2. Each Party shall include in its website links to:

(a) the equivalent website of the other Party; and

(b) the websites of its government agencies and other appropriate entities that provide information the Party considers useful to any person interested in trading, investing or doing business in that Party's territory.

3. Subject to each Party's laws and regulations, the information described in paragraph 2(b) may include:

(a) customs regulations and procedures;

(b) regulations and procedures concerning intellectual property rights;

(c) technical regulations, standards, and sanitary and phytosanitary measures relating to importation and exportation;

(d) foreign investment regulations;

(e) business registration procedures;

(f)employment regulations; and

(g) taxation information.

4. Each Party shall regularly review the information and links on the website referred to in paragraphs 1 and 2 to ensure that such information and links are up-to- date and accurate.

Article 23.3. Activities and Contact Points on Smes

1. Each Party shall designate and notify a contact point on SMEs, to facilitate communications between the Parties on any matter covered by this Chapter.

2. Where appropriate, the contact points shall facilitate the coordination of meetings between government representatives of each Party to address any matter covered by this Chapter.

3. The Parties shall, to the extent possible:

(a) discuss ways to assist SMEs of the Parties to take advantage of the commercial opportunities under this Agreement, including but not limited to, considering ways to develop mechanisms in order to foster partnerships and the development of productive chains;

(b) exchange and discuss each Party's experiences and best practices in supporting and assisting SME exporters with respect to, among other things, training programmes, trade education, trade finance, identifying commercial partners between the

Parties and establishing good business credentials;

(c) facilitate access to trade promotion networks, business fora, business cooperation instruments, and any other relevant information for SME exporters;

(d) promote seminars, workshops or other activities to inform SMEs of the benefits available to them under this Agreement;

(e) explore opportunities for capacity building to assist each Party in developing and enhancing SME export counselling, assistance and training programmes;

(f) explore opportunities for the development of programmes to assist SMEs to participate and integrate effectively into the global supply chain;

(g) exchange information to assist in monitoring the implementation of this Agreement as it relates to SMEs;

(h) facilitate provision of recommendations to the Joint Commission; and

(i) consider any other matter pertaining to SMEs, including any issues raised by SMEs regarding their ability to benefit from this Agreement.

4. The Parties may seek to collaborate with appropriate experts and international donor organisations in carrying out their programmes and activities.

Article 23.4. Non-application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 27 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 24. Regulatory Coherence

Article 24.1. Definitions

For the purposes of this Chapter:

covered regulatory measure means a regulatory measure determined by each Party to be subject to this Chapter in accordance with Article 24.3; and

regulatory measure means a measure of general application related to any matter covered by this Agreement adopted by regulatory agencies with which compliance is mandatory.

Article 24.2. General Provisions

1. For the purposes of this Chapter, regulatory coherence refers to the use of good regulatory practices in the process of planning, designing, issuing, implementing and reviewing regulatory measures in order to facilitate achievement of domestic and international policy objectives, and in efforts across governments to enhance regulatory cooperation in order to further those objectives and promote international trade and investment, economic growth and employment.

2. The Parties affirm the importance of:

(a) sustaining and enhancing the benefits of this Agreement through regulatory coherence in terms of facilitating increased trade in goods and services and increased investment between the Parties;

(b) each Party's sovereign right to identify its regulatory priorities and establish and implement regulatory measures to address these priorities, at the levels that the Party considers appropriate;

(c) the role that regulation plays in achieving public policy objectives;

(d) taking into account input from interested persons in the development of regulatory measures; and

(e) developing regulatory cooperation and capacity building between the Parties.

Article 24.3. Scope of Covered Regulatory Measures

Each Party shall promptly, and no later than two years after the date of entry into force of this Agreement, determine and

make publicly available the scope of its covered regulatory measures. In determining the scope of covered regulatory measures, each Party should aim to achieve significant coverage.

Article 24.4. Coordination and Review Processes or Mechanisms

1. The Parties recognise that regulatory coherence can be facilitated through domestic mechanisms that increase interagency consultation and coordination associated with processes for developing regulatory measures. Accordingly, each Party shall endeavour to ensure that it has processes or mechanisms to facilitate the effective interagency coordination and review of proposed covered regulatory measures. Each Party should consider establishing and maintaining a national or central coordinating body for this purpose.

2. The Parties recognise that while the processes or mechanisms referred to in paragraph 1 may vaty between them depending on their respective circumstances (including differences in levels of development and political and institutional structures), they should generally have as overarching characteristics the ability to:

(a) review proposed covered regulatory measures to determine the extent to which the development of such measures adheres to good regulatory practices, which may include but are not limited to those set out in Article 24.5 and make recommendations based on that review;

(b) strengthen consultation and coordination among domestic agencies so as to identify potential overlap and duplication and to prevent the creation of inconsistent requirements across agencies;

(c) make recommendations for systemic regulatory improvements; and

(d) publicly report on regulatory measures reviewed, any proposals for systemic regulatory improvements, and any updates on changes to the processes and mechanisms referred to in paragraph 1.

3. Each Party should generally produce documents that include descriptions of those processes or mechanisms and that can be made available to the public.

Article 24.5. Implementation of Core Good Regulatory Practices

1. To assist in designing a measure to best achieve the Party's objective, each Party should generally encourage relevant regulatory agencies, consistent with its laws and regulations, to conduct regulatory impact assessments when developing proposed covered regulatory measures that exceed a threshold of economic impact, or other regulatory impact, where appropriate, as established by the Party. Regulatory impact assessments may encompass a range of procedures to determine possible impacts.

2. Recognising that differences in the Parties' institutional, social, cultural, legal and developmental circumstances may result in specific regulatory approaches, regulatory impact assessments conducted by a Party should, among other things:

(a) assess the need for a regulatory proposal, including a description of the nature and significance of the problem;

(b) examine feasible alternatives, including, to the extent possible and consistent with laws and regulations, their costs and benefits, such as risks involved as well as distributive impacts, recognising that some costs and benefits are difficult to quantify and monetise;

(c) explain the grounds for concluding that the selected alternative achieves the policy objectives in an efficient manner, including, if appropriate, reference to the costs and benefits and the potential for managing risks; and

(d) rely on the best reasonably obtainable existing information including relevant scientific, technical, economic or other information, within the boundaries of the authorities, mandates and resources of the particular regulatory agency.

3. When conducting regulatory impact assessments, a Party may take into consideration the potential impact of the proposed regulation on SMEs.

4. Each Party should ensure that new covered regulatory measures are plainly written and are clear, concise, well organised and easy to understand, recognising that some measures address technical issues and that relevant expertise may be needed to understand and apply them.

5. Subject to its laws and regulations, each Party should ensure that relevant regulatory agencies provide public access to information on new covered regulatory measures and, where practicable, make this information available online.

6. Each Party should review, at intervals it deems appropriate, its covered regulatory measures to determine whether

specific regulatory measures it has implemented should be modified, streamlined, expanded or repealed so as to make the Party's regulatory regime more effective in achieving the Party's policy objectives.

7. Each Party should, in a manner it deems appropriate, and consistent with its laws and regulations, provide annual public notice of any covered regulatory measure that it reasonably expects its regulatory agencies to issue within the following 12-month period.

8. To the extent appropriate and consistent with its laws and regulations, each Party should encourage its relevant regulatory agencies to consider regulatory measures in the other Party, as well as relevant developments in international, regional and other fora when planning covered regulatory measures.

Article 24.6. Contact Points

Each Party shall designate and notify a contact point on Regulatory Coherence to facilitate communications between the Parties on any matter covered by this Chapter.

Article 24.7. Cooperation

1. The Parties shall use their best endeavours to cooperate in order to facilitate the implementation of this Chapter and to maximise the benefits arising from it. Cooperation activities shall take into consideration each Party's needs, and may include:

(a) information exchanges, dialogues or meetings;

(b) information exchanges, dialogues or meetings with interested persons, including with SMEs;

(c) training programmes, seminars and other relevant assistance;

(d) strengthening cooperation and other relevant activities between regulatory agencies; and

(e) other activities that Parties may agree.

2. The Parties further recognise that cooperation by the Parties on regulatory matters can be enhanced through, among other things, ensuring that each Party's regulatory measures are centrally available.

Article 24.8. Relation to other Chapters

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

Article 24.9. Non-application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 27 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 25. Transparency and Anti-corruption

Section A. Definitions

Article 25.1. Definitions

For the purposes of this Chapter:

act or refrain from acting in relation to the performance of official duties includes any use of the public official's position, whether or not within the official's authorised competence;

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within the ambit of that administrative ruling or interpretation and that establishes a norm of conduct, but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of a Party ina specific case; or

(b) aruling that adjudicates with respect to a particular act or practice;

foreign public official means any person holding a legislative, executive, administrative or judicial office of a foreign country, at any level of government, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; and any person exercising a public function for a foreign country, at any level of government, including for a public agency or public enterprise;

official of a public international organisation means an international civil servant or any person who is authorised by a public international organisation to act on its behalf; and public official means:

(a) any person holding a legislative, executive, administrative or judicial office of a Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority;

(b) any other person who performs a public function for a Party, including for a public agency or public enterprise, or provides a public service, as defined under the Party's law and as applied in the pertinent area of that Party's law; or

(c) any other person defined as a public official under a Party's law.

Section B. Transparency

Article 25.2. Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application with respect to any matter covered by this Agreement are promptly published or otherwise made available in a manner that enables interested persons and the other Party to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any measure referred to in paragraph 1 that it proposes to adopt; and

(b) provide interested persons and the other Party with a reasonable opportunity to comment on those proposed measures.

3. To the extent possible, when introducing or changing the laws, regulations or procedures referred to in paragraph 1, each Party shall endeavour to provide a reasonable period between the date when those laws, regulations or procedures, proposed or final in accordance with its legal system, are made publicly available and the date when they enter into force.

4. With respect to a proposed regulation (1) of general application of a Party's central level of government respecting any matter covered by this Agreement that is likely to affect trade or investment between the Parties and that is published in accordance with paragraph 2(a), each Party shall:

(a) publish the proposed regulation in an official journal, or on an official website, preferably online and consolidated into a single portal;

(b) endeavour to publish the proposed regulation:

(i) no less than 60 days in advance of the date on which comments are due; or

(ii) within another period in advance of the date on which comments are due that provides sufficient time for an interested person to evaluate the proposed regulation, and formulate and submit comments;

(c) to the extent possible, include in the publication under subparagraph (a) an explanation of the purpose of, and rationale for, the proposed regulation; and

(d) consider comments received during the comment period, and is encouraged to explain any significant modifications made to the proposed regulation, preferably on an official website or in an online journal.

5. Each Party shall, with respect to a regulation of general application adopted by its central level of government respecting any matter covered by this Agreement that is published in accordance with paragraph 1:

(a) promptly publish the regulation on a single official website or in an official journal of national circulation; and

(b) if appropriate, include with the publication an explanation of the purpose of and rationale for the regulation.

(1) A Party may, consistent with its legal system, comply with its obligations that relate to a proposed regulation in this Article by publishing a policy proposal, discussion document, summary of the regulation or other document that contains sufficient detail to adequately inform

interested persons and the other Party about whether and how their trade or investment interests may be affected.

Article 25.3. Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner all measures of general application with respect to any matter covered by this Agreement, each Party shall ensure in its administrative proceedings applying measures referred to in Article 25.2.1 to a particular person, good or service of the other Party in specific cases that:

(a) whenever possible, a person of the other Party that is directly affected by a proceeding is provided with reasonable notice, in accordance with domestic procedures, of when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issue in question;

(b) a person of the other Party that is directly affected by a proceeding is afforded a reasonable opportunity to present facts and arguments in support of that petson's position prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and

(c) the procedures are in accordance with its law.

Article 25.4. Review and Appeal (2)

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, if warranted, correction of a final administrative action with respect to any matter covered by this Agreement. Those tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, with respect to the tribunals or procedures referred to in paragraph 1, the parties to a proceeding are provided with the right to:

(a) areasonable opportunity to support or defend their respective positions; and

(b) adecision based on the evidence and submissions of record or, where required by its law, the record compiled by the relevant authority.

3. Each Party shall ensure, subject to appeal or further review as provided for in its law, that the decision referred to in paragraph 2(b) shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

(2) For greater certainty, review need not include merits (de novo) review, and may take the form of common law judicial review. The correction of final administrative actions may include a referral back to the body that took that action.

Article 25.5. Provision of Information

1. Ifa Party considers that any proposed or actual measure may materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement, it shall, to the extent possible, inform the other Party of the proposed or actual measure.

2. On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any proposed or actual measure that the requesting Party considers may affect the operation of this Agreement, whether or not the requesting Party has been previously informed of that measure.

3. A Party may convey any request or provide information under this Article to the other Party through its contact points.

4. Any information provided under this Article shall be without prejudice as to whether the measure in question is consistent with this Agreement.

Section C. Anti-corruption

Article 25.6. Scope

1. The Parties affirm their resolve to eliminate bribery and corruption in international trade and investment. Recognising the need to build integrity within both the public and private sectors and that each sector has complementary responsibilities in this regard, the Parties affirm their adherence to the APEC Conduct Principles for Public Officials, July 2007, and encourage observance of the APEC Code of Conduct for Business: Business Integrity and Transparency Principles for the Private Sector, September 2007.

2. The scope of this Section is limited to measures to eliminate bribery and corruption with respect to any matter covered by this Agreement.

3. The Parties recognise that the description of offences adopted or maintained in accordance with this Section, and of the applicable legal defences or legal principles controlling the lawfulness of conduct, is reserved to each Party's law, and that those offences shall be prosecuted and punished in accordance with each Party's law.

Article 25.7. Measures to Combat Corruption

1. Each Party shall adopt or maintain legislative and other measures as may be necessary to establish as criminal offences under its law, in matters that affect international trade or investment, when committed intentionally, by any person subject to its jurisdiction: (3)

(a) the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of his or her official duties;

(b) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of his or her official duties;

(c) the promise, offering or giving to a foreign public official or an official of a public international organisation, directly or indirectly, of an undue advantage,(4) for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business; and

(d) the aiding or abetting, or conspiracy (5) in the commission of any of the offences described in subparagraphs (a) through (c).

2. Each Party shall make the commission of an offence described in paragraph 1 or 5 liable to sanctions that take into account the gravity of that offence.

3. Each Party shall adopt or maintain measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for offences described in paragraph 1 or 5. In particular, each Party shall ensure that legal persons held liable for offences described in paragraph 1 or 5 are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, which include monetary sanctions.

4. Neither Party shall allow a person subject to its jurisdiction to deduct from taxes expenses incurred in connection with the commission of an offence described in paragraph 1.

5. In order to prevent corruption, each Party shall adopt or maintain measures as may be necessary, in accordance with its laws and regulations, regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences described in paragraph 1:

(a) the establishment of off-the-books accounts;

(b) the making of off-the-books or inadequately identified transactions;

(c) the recording of non-existent expenditure;

(d) the entry of liabilities with incorrect identification of their objects;

(e) the use of false documents; and

(f) the intentional destruction of bookkeeping documents earlier than foreseen by the law.

6. Each Party shall consider adopting or maintaining measures to protect, against any unjustified treatment, any person

who, in good faith and on reasonable grounds, reports to the competent authorities any facts concerning offences described in paragraph 1 or 5.

(3) A Party that is not a party to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, including its Annex, done at Paris on November 21, 1997, may satisfy the obligations in subparagraphs (a), (b) and (c) by establishing the criminal offences described in those subparagraphs in respect of "in the exercise of his or her official duties" rather than "in relation to the performance of his or her official duties".

(4) For greater certainty, a Party may provide in its law that it is not an offence if the advantage was permitted or required by the written laws or regulations of a foreign public official's country, including case law. The Parties confirm that they are not endorsing those written laws or regulations.

(5) Parties may satisfy the commitment regarding conspiracy through applicable concepts within their legal systems, including asociacién ilicita.

Article 25.8. Promoting Integrity Among Public Officials

1. To fight corruption in matters that affect trade and investment, each Party should promote, among other things, integrity, honesty and responsibility among its public officials. To this end, each Party shall endeavour, in accordance with the fundamental principles of its legal system, to adopt or maintain:

(a) measures to provide adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption, and the rotation, if appropriate, of those individuals to other positions;

(b) measures to promote transparency in the behaviour of public officials in the exercise of public functions;

(c) appropriate policies and procedures to identify and manage actual or potential conflicts of interest of public officials;

(d) measures that require senior and other appropriate public officials to make declarations to appropriate authorities regarding, among other things, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials; and

(e) measures to facilitate reporting by public officials of acts of corruption to appropriate authorities, if those acts come to their notice in the performance of their functions.

2. Each Party shall endeavour to adopt or maintain codes or standards of conduct for the correct, honourable and proper performance of public functions, and measures providing for disciplinary or other measures, if warranted, against public officials who violate the codes or standards established in accordance with this paragraph.

3. Each Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence described in Article 25.7.1 may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

4. Each Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, adopt or maintain measures to strengthen integrity, and to prevent opportunities for corruption, among members of the judiciary in matters that affect international trade or investment. These measures may include rules with respect to the conduct of members of the judiciary.

Article 25.9. Application and Enforcement of Anti-corruption Laws

1. In accordance with the fundamental principles of its legal system, neither Party shall fail to effectively enforce its laws or other measures adopted or maintained to comply with Article 25.7.1 through a sustained or recurring course of action or inaction, after the date of entry into force of this Agreement for that Party, as an encouragement for trade and investment. (6)

2. Inaccordance with the fundamental principles of its legal system, each Party retains the right for its law enforcement, prosecutorial and judicial authorities to exercise their discretion with respect to the enforcement of its anti-corruption laws. Each Party retains the right to take bona fide decisions with regard to the allocation of its resources.

3. The Parties affirm their commitments under applicable international agreements or arrangements to cooperate with each other, consistent with their respective legal and administrative systems, to enhance the effectiveness of law enforcement actions to combat the offences described in Article 25.7.1.

(6) For greater certainty, the Parties recognise that individual cases or specific discretionary decisions related to the enforcement of anti-corruption laws are subject to each Party's laws, regulations and legal procedures.

Article 25.10. Participation of Private Sector and Society

1. Each Party shall take appropriate measures, within its means and in accordance with fundamental principles of its legal system, to promote the active participation of individuals and groups outside the public sector, such as enterprises, civil society, non-governmental organisations and community-based organisations, in the prevention of and the fight against corruption in matters affecting international trade or investment, and to raise public awareness regarding the existence, causes and gravity of, and the threat posed by, corruption. To this end, a Party may:

(a) undertake public information activities and public education programmes that contribute to non-tolerance of corruption;

(b) adopt or maintain measures to encourage professional associations and other non-governmental organisations, if appropriate, in their efforts to encourage and assist enterprises, in particular SMEs, in developing internal controls, ethics and compliance programmes or measures for preventing and detecting bribery and corruption in international trade and investment;

(c) adopt or maintain measures to encourage company management to make statements in their annual reports or otherwise publicly disclose their internal controls, ethics and compliance programmes or measures, including those that contribute to preventing and detecting bribery and corruption in international trade and investment; and

(d) adopt or maintain measures that respect, promote and protect the freedom to seek, receive, publish and disseminate information concerning corruption.

2. Each Party shall endeavour to encourage private enterprises, taking into account their structure and size, to:

(a) develop and adopt sufficient internal auditing controls to assist in preventing and detecting acts of corruption in matters affecting international trade or investment; and

(b) ensure that their accounts and required financial statements are subject to appropriate auditing and certification procedures.

3. Each Party shall take appropriate measures to ensure that its relevant anti-corruption bodies are known to the public and shall provide access to those bodies, if appropriate, for the reporting, including anonymously, of any incident that may be considered to constitute an offence described in Article 25.7.1.

Article 25.11. Relation to other Agreements

Nothing in this Agreement shall affect the rights and obligations of either Party under any of the following agreements to which it is party:

(a) the United Nations Convention against Corruption, done at New York on October 31, 2003;

(b) the United Nations Convention against Transnational Organized Crime, done at New York on November 15, 2000;

(c) the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, with its Annex, done at Paris on November 21, 1997; or

(d) the Inter-American Convention Against Corruption, done at Caracas on March 29, 1996.

Chapter 26. Administrative and Institutional Provisions

Article 26.1. Establishment of the Joint Commission

The Parties hereby establish a Joint Commission, composed of government representatives of each Party at the level of Ministers or senior officials. Each Party shall be responsible for the composition of its delegation.

Article 26.2. Functions of the Joint Commission

1. The Joint Commission shall:

(a) consider any matter relating to the implementation or operation of this Agreement;

(b) review, within three years of the date of entry into force of this Agreement and at least every five years thereafter, the economic relationship and partnership among the Parties;

(c) consider any proposal to amend or modify this Agreement;

(d) supervise the work of all committees, working groups and any other subsidiary bodies established under this Agreement;

(e) consider ways to further enhance trade and investment between the Parties; and

(f) establish the Rules of Procedure referred to in Article 27.12 (Rules of Procedure for Panels), and, where appropriate, amend those Rules.

2. The Joint Commission may:

(a) establish, refer matters to, or consider matters raised by, any ad hoc or standing committee, working group or any other subsidiary body;

(b) merge or dissolve any committees, working groups or other subsidiary bodies established under this Agreement in order to improve the functioning of this Agreement;

(c) consider and adopt, subject to completion of any necessary legal procedures by each Party, a modification to this Agreement of:

(i) the Schedules to Annex 2-B (Tariff Commitments), by accelerating tariff elimination;

(ii) the rules of origin established in Annex 3-B (Product-Specific Rules of Origin); or

(iii) the lists of entities, covered goods and services, and thresholds contained in each Party's Annex to Chapter 14 (Government Procurement);

(d) develop arrangements for implementing this Agreement;

(e) seek to resolve differences or disputes that may arise regarding the interpretation or application of this Agreement;

(f) issue interpretations of this Agreement;

(g) seek the advice of non-governmental persons or groups on any matter falling within the Joint Commission's functions; and

(h) take any other action as the Parties may agree.

3. Pursuant to paragraph 1(b), the Joint Commission shall review the operation of this Agreement with a view to updating and enhancing this Agreement, through negotiations, as appropriate, to ensure that the disciplines contained in this Agreement remain relevant to the trade and investment issues and challenges confronting the Parties.

4. In conducting a review pursuant to paragraph 3, the Joint Commission shall take into account:

(a) the work of all committees, working groups and any other subsidiary bodies established under this Agreement;

(b) relevant developments in international fora; and

(c) as appropriate, input from non-governmental persons or groups of the Parties.

Article 26.3. Decision-making

The Joint Commission and all subsidiary bodies established under this Agreement shall take all decisions by consensus, except as otherwise provided in this Agreement, or as otherwise decided by the Parties. (1)

(1) For greater certainty, any such decision on alternative decision-making by the Parties shall itself be taken by consensus.

Article 26.4. Rules of Procedure of the Joint Commission

1. The Joint Commission shall meet within one year of the date of entry into force of this Agreement and thereafter as the Parties may decide, including as necessary to fulfil its functions under Article 26.2. Meetings of the Joint Commission shall be chaired successively by each Party.

2. The Party chairing a session of the Joint Commission shall provide any necessary administrative support for such session.

3. Except as otherwise provided in this Agreement, the Joint Commission and any subsidiary body established under this Agreement shall carry out its work through whatever means are appropriate, which may include electronic mail or videoconferencing.

4. The Joint Commission and any subsidiary body established under this Agreement may establish rules of procedures for the conduct of its work.

Article 26.5. Contact Points

1. Each Party shall designate an overall contact point to facilitate communications between the Parties on any matter covered by this Agreement, as well as other contact points as required by this Agreement.

2. Unless otherwise provided in this Agreement, each Party shall notify the other Party in writing of its designated contact points no later than 60 days after the date of entry into force of this Agreement.

Chapter 27. Dispute Settlement

Section A. Dispute Settlement

Article 27.1. Definitions

For the purposes of this Chapter:

complaining Party means a Party that requests the establishment of a panel under Article 27.7.1;

panel means a panel established under Article 27.7;

perishable goods means perishable agricultural and fish goods classified in HS Chapters 1 through 24;

responding Party means a Party that has been complained against under Article 27.7; and

Rules of Procedure means the rules referred to in Article 27.12 and established in accordance with Article 26.2.1(f) (Functions of the Joint Commission).

Article 27.2. Cooperation

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

Article 27.3. Scope

Unless otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply:

(a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement;

(b) when a Party considers that an actual or proposed measure of the other Party is or would be inconsistent with an obligation of this Agreement or that the other Party has otherwise failed to carry out an obligation under this Agreement; or

(c) when a Party considers that a benefit it could reasonably have expected to accrue to it under Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Customs Administration and Trade Facilitation), Chapter 7 (Technical Barriers to Trade), Chapter 9 (Cross-Border Trade in Services) or Chapter 14 (Government Procurement), is being nullified or impaired as a result of the application of a measure of the other

Party that is not inconsistent with this Agreement.

Article 27.4. Choice of Forum

1. If a dispute regarding any matter arises under this Agreement and under another international trade agreement to which the Parties are party, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

2. Once a complaining Party has requested the establishment of, or referred a matter to, a panel or other tribunal under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of other fora.

Article 27.5. Consultations

1. Any Party may request consultations with the other Party, through the contact point designated under Article 26.5.1 (Contact Points), with respect to any matter described in Article 27.3. The Party making the request for consultations shall do so in writing, and shall set out the reasons for the request, including identification of the actual or proposed measure (1) or other matter at issue and an indication of the legal basis for the complaint.

2. The Party to which a request for consultations is made shall, unless the Parties agree otherwise, reply in writing to the request no later than seven days after the date of its receipt of the request. (2)

3. Unless the Parties agree otherwise, they shall enter into consultations no later than:

(a) 15 days after the date of receipt of the request for matters concerning perishable goods; or

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

4. Consultations may be held in person or by any technological means available to the Parties. If the consultations are held in person, they shall be held in the capital of the Party to which the request for consultations was made, unless the Parties agree otherwise.

5. The Parties shall make every attempt to reach a mutually satisfactory resolution of the matter through consultations under this Article. To this end:

(a) each Party shall provide sufficient information to enable a full examination of how the actual or proposed measure might affect the operation or application of this Agreement; and

(b) each Party shall treat any information exchanged in the course of the consultations that is designated as confidential on the same basis as the Party providing the information.

6. In consultations under this Article, a Party may request that the other Party make available personnel of its government agencies or other regulatory bodies who have expertise in the matter at issue.

7. Consultations shall be confidential and without prejudice to the rights of a Party in any other proceedings.

(1) The Parties shall, in the case of a proposed measure, make every effort to make the request for consultation under this provision within 60 days of the date of publication of the proposed measure, without prejudice to the right to make such request at any time.

(2) For greater certainty, if the Party to which a request for consultations is made does not reply within the time period specified in this paragraph, it shall be deemed to have received the request seven days after the date on which the Party making the request for consultations transmitted that request.

Article 27.6. Good Offices, Conciliation and Mediation

1. The Parties may at any time agree to voluntarily undertake an alternative method of dispute resolution, such as good offices, conciliation or mediation.

2. Proceedings that involve good offices, conciliation or mediation shall be confidential and without prejudice to the rights of the Parties in any other proceedings.

3. The Parties may suspend or terminate those proceedings at any time.

4. If the Parties agree, good offices, conciliation or mediation may continue while the dispute proceeds for resolution before a panel established under Article 27.7.

Article 27.7. Establishment of a Panel

1. The Party that requested consultations under Article 27.5.1 may request, by means of a written notice addressed to the responding Party, the establishment of a panel if the Parties fail to resolve the matter within:

(a) a period of 60 days after the date of receipt of the request for consultations under Article 27.5.1;

(b) a period of 30 days after the date of receipt of the request for consultations under Article 27.5.1 in a matter regarding perishable goods; or

(c) any other period as the Parties may agree.

2. The complaining Party shall include in the request to establish a panel an identification of the measure or other matter at issue and a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

3. A panel shall be established upon delivery of the request.

4. Unless the Parties agree otherwise, the panel shall be composed in a manner consistent with this Chapter and the Rules of Procedure.

5. A panel shall not be established to review a proposed measure.

Article 27.8. Terms of Reference

1. Unless the Parties agree otherwise no later than 20 days after the date of delivery of the request for the establishment of a panel, the terms of reference shall be to:

(a) examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of a panel under Article 27.7.1; and

(b) make findings and determinations, and any jointly requested recommendations, together with its reasons therefor, as provided for in Article 27.15.4.

2. If, in its request for the establishment of a panel, a complaining Party claims that a measure nullifies or impairs benefits within the meaning of Article 27.3.1(c), the terms of reference shall so indicate.

Article 27.9. Composition of Panels

1. A panel shall be composed of three members, including a chair.

2. Unless the Parties otherwise agree, each Party shall, within 30 days after the date of receipt of the request for the establishment of a panel, appoint one panellist who may be its national and propose up to three candidates to serve as the chair. The chair shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.

3. The Parties shall agree on and appoint the chair within 45 days after the date of receipt of the request for the establishment of a panel, taking into account the candidates proposed in accordance with paragraph 2. If appropriate, the Parties may jointly consult the panellists appointed in accordance with paragraph 2.

4. If any of the three appointments have not been made within 45 days after the date of receipt of the request for the establishment of a panel, any panellist not yet appointed shall be appointed, on request of either Party, by lot from the list of the candidates proposed in accordance with paragraph 2. The appointment by lot shall be undertaken within seven days after the date of receipt of the request for appointment by lot, unless the Parties otherwise agree. Where more than one panellist, including a chair is to be selected by lot, the chair shall be selected first.

5. The date of the establishment of a panel shall be the date on which the third panellist is appointed.

6. If the Parties agree that a panellist has failed to comply with the code of conduct referred to in Article 27.10.1(d), they may remove the panellist, waive the violation or request the panellist to ameliorate the violation within a specified period of time. If the Parties agree to waive the violation or determine that, after amelioration, the violation has ceased, the panellist may continue to serve.

7. If a panellist appointed in accordance with this Article dies, resigns or becomes unable to act, including as a result of his or her removal in accordance with paragraph 6, a successor panellist shall be appointed in the same manner as prescribed for the appointment of the original panellist and shall have all the powers and duties of the original panellist.

8. Where a panel is reconvened under Article 27.18 or Article 27.19, the reconvened panel shall, where possible, have the same panellists as the original panel. Where this is not possible, a replacement panellist shall be appointed in the same manner as prescribed for the appointment of the original panellist, and shall have all the powers and duties of the original panellist.

Article 27.10. Qualifications of Panellists

1. All panellists 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;

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

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

(d) comply with the code of conduct in the Rules of Procedure.

2. An individual shall not serve as a panellist for a dispute in which that person has participated under Article 27.6.

Article 27.11. Function of Panels

1. A panel's function is to make an objective assessment of the matter before it, which includes an examination of the facts and the applicability of and conformity with this Agreement, and to make the findings, determinations and recommendations as are called for in its terms of reference and necessary for the resolution of the dispute.

2. Unless the Parties agree otherwise, the panel shall perform its functions and conduct its proceedings in a manner consistent with this Chapter and the Rules of Procedure.

3. The panel shall consider this Agreement in accordance with the rules of interpretation under international law as reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, done at Vienna on 23 May, 1969. With respect to any provision of the WTO Agreement that has been incorporated into this Agreement, the panel shall also consider relevant interpretations in reports of panels and the WTO Appellate Body adopted by the WTO Dispute Settlement Body. The findings, determinations and recommendations of the panel shall not add to or diminish the rights and obligations of the Parties under this Agreement.

4. A panel shall take its decisions by consensus, except that, if a panel is unable to reach consensus, it may take its decisions by majority vote.

Article 27.12. Rules of Procedure for Panels

The Rules of Procedure, established under this Agreement in accordance with Article 26.2. 1(f) (Functions of the Joint Commission), shall ensure that:

(a) there is at least one hearing before the panel at which each Party may present views orally;

(b) subject to subparagraph (f), any hearing before the panel shall be open to the public, unless the Parties agree otherwise;

(c) each Party has an opportunity to provide an initial and a rebuttal written submission;

(d) subject to subparagraph (f), each Party shall:

(i) make its best efforts to release to the public its written submissions, written version of an oral statement and written response to a request or question from the panel, if any, as soon as possible after those documents are filed; and

(ii) if not already released, release all these documents by the time the final report of the panel is issued;

(e) the panel shall consider requests from non-governmental entities located in the territory of either Party to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the Parties;

(f) confidential information is protected;

(g) unless the Parties agree otherwise, hearings shall be held in the capital of the responding Party; and

(h) administrative assistance is provided to a panel established under Article 27.7.

Article 27.13. Role of Experts

At the request of either Party, or on its own initiative, a panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties agree and subject to any terms and conditions agreed by the Parties. The Parties shall have an opportunity to comment on any information or advice obtained under this Article.

Article 27.14. Suspension or Termination of Proceedings

1. The panel may suspend its work at any time at the request of the complaining Party for a period not to exceed 12 consecutive months. The panel shall suspend its work at any time if the Parties request it to do so. In the event of a suspension, the time frames set out in this Chapter and in the Rules of Procedure shall be extended by the amount of time that the work was suspended. If the work of the panel is suspended for more than 12 consecutive months, the panel proceedings shall lapse unless the Parties agree otherwise.

2. The panel shall terminate its proceedings if the Parties request it to do so.

Article 27.15. Initial Report

1. The panel shall draft its report without the presence of either Party.

2. The panel shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the Parties, and on any information or advice put before it under Article 27.13. At the joint request of the Parties, the panel may make recommendations for the resolution of the dispute.

3. The panel shall present an initial report to the Parties no later than 150 days after the date of the appointment of the last panellist. In cases of urgency, including those related to perishable goods, the panel shall endeavour to present an initial report to the Parties no later than 120 days after the date of the appointment of the last panellist.

4. The initial report shall contain:

(a) findings of fact;

(b) the determination of the panel as to whether:

(i) the measure at issue is inconsistent with obligations in this Agreement;

(ii) a Party has otherwise failed to carry out its obligations in this Agreement; or

(iii) the measure at issue is causing nullification or impairment within the meaning of Article 27.3.1(c);

(c) any other determination requested in the terms of reference;

(d) recommendations, if the Parties have jointly requested them, for the resolution of the dispute; and

(e) the reasons for the findings and determinations.

5. In exceptional cases, if the panel considers that it cannot release its initial report within the time period specified in paragraph 3, it shall inform the Parties in writing of the reasons for the delay together with an estimate of when it will issue its report. A delay shall not exceed an additional period of 30 days unless the Parties agree otherwise.

6. Panellists may present separate opinions on matters not unanimously agreed.

7. A Party may submit written comments to the panel on its initial report no later than 15 days after the presentation of the initial report or within another period as the Parties may agree.

8. After considering any written comments by the Parties on the initial report, the panel may modify its report and make any further examination it considers appropriate.

Article 27.16. Final Report

1. The panel shall present a final report to the Parties, including any separate opinions on matters not unanimously agreed, no later than 30 days after presentation of the initial report, unless the Parties agree otherwise. After taking any steps to protect confidential information, and no later than 15 days after the presentation of the final report, the Parties shall release the final report to the public.

2. No panel shall, either in its initial report or its final report, disclose which panellists are associated with majority or minority opinions.

Article 27.17. Implementation of Final Report

1. The Parties recognise the importance of prompt compliance with determinations made by panels under Article 27.16 in achieving the aim of the dispute settlement procedures in this Chapter, which is to secure a positive solution to disputes.

2. If in its final report the panel determines that:

(a) the measure at issue is inconsistent with a Party's obligations in this Agreement;

(b) a Party has otherwise failed to carry out its obligations in this Agreement; or

(c) the measure at issue is causing nullification or impairment within the meaning of Article 27.3.1(c),

the responding Party shall, whenever possible, eliminate the non-conformity or the nullification or impairment.

3. Unless the Parties agree otherwise, the responding Party shall have a reasonable period of time in which to eliminate the non-conformity or nullification or impairment if it is not practicable to do so immediately.

4. The Parties shall endeavour to agree on the reasonable period of time. If the Parties fail to agree on the reasonable period of time within a period of 45 days after the presentation of the final report under Article 27.16.1, either Party may, no later than 60 days after the presentation of the final report under Article 27.16.1, refer the matter to the chair to determine the reasonable period of time through arbitration.

5. The chair shall take into consideration as a guideline that the reasonable period of time should not exceed 15 months from the presentation of the final report under Article 27.16.1. However, that time may be shorter or longer, depending upon the particular circumstances.

6. The chair shall determine the reasonable period of time no later than 90 days after the date of referral to the chair under paragraph 4.

7. The Parties may agree to vary the procedures set out in paragraphs 4 through 6 for the determination of the reasonable period of time.

Article 27.18. Non-implementation — Compensation and Suspension of Benefits

1. The responding Party shall, if requested by the complaining Party, enter into negotiations no later than 15 days after receipt of that request, with a view to developing mutually acceptable compensation, if:

(a) the responding Party has notified the complaining Party that it does not intend to eliminate the non-conformity or the nullification or impairment; or

(b) following the expiry of the reasonable period of time established in accordance with Article 27.17, there is disagreement between the Parties as to whether the responding Party has eliminated the non-conformity or the nullification or impairment.

2. A-complaining Party may suspend benefits in accordance with paragraph 3 if the complaining Party and the responding Party have:

(a) been unable to agree on compensation within a period of 30 days after the period for developing compensation has begun; or

(b) agreed on compensation but the complaining Party considers that the responding Party has failed to observe the terms of the agreement.

3. A complaining Party may, at any time after the conditions set out in paragraph 2 are met, provide written notice to the

responding Party that it intends to suspend benefits of equivalent effect. The notice shall specify the level of benefits that the Party proposes to suspend. (3) The complaining Party may begin suspending benefits 30 days after the later of the date on which it provides notice under this paragraph or the date that the panel issues its determination under paragraph 5, as the case may be.

4. Inconsidering what benefits to suspend under paragraph 3, the complaining Party shall apply the following principles and procedures:

(a) it should first seek to suspend benefits in the same subject matter as that in which the panel has determined non-conformity or nullification or impairment to exist;

(b) if it considers that it is not practicable or effective to suspend benefits in the same subject matter, and that the circumstances are serious enough, it may suspend benefits in a different subject matter. In the written notice referred to in paragraph 3, the complaining Party shall indicate the reasons on which its decision to suspend benefits in a different subject matter is based; and

(c) in applying the principles set out in subparagraphs (a) and (b), it shall take into account:

(i) the trade in the good, the supply of the service or other subject matter in which the panel has found the non-conformity or nullification or impairment, and the importance of that trade to the complaining Party;

(ii) that goods, all financial services covered under Chapter 10 (Financial Services), services other than such financial services, and each section in Chapter 17 (Intellectual Property), are each distinct subject matters; and

(iii) the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of benefits.

5. If the responding Party considers that:

(a) the level of benefits proposed to be suspended is manifestly excessive or the complaining Party has failed to follow the principles and procedures set out in paragraph 4; or

(b) it has eliminated the non-conformity or the nullification or impairment that the panel has determined to exist,

it may, within 30 days of the date of delivery of the written notice provided by the complaining Party under paragraph 3, request that the panel be reconvened to consider the matter. The responding Party shall deliver its request in writing to the complaining Party. The panel shall reconvene as soon as possible after the date of delivery of the request and shall present its determination to the Parties no later than 90 days after it reconvenes to review a request under subparagraph (a) or (b), or 120 days after it reconvenes for a request under both subparagraphs (a) and (b). If the panel determines that the level of benefits the complaining Party proposes to suspend is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.

6. Unless the panel has determined that the responding Party has eliminated the non- conformity or the nullification or impairment, the complaining Party may suspend benefits up to the level the panel has determined under paragraph 5 or, if the panel has not determined the level, the level the complaining Party has proposed to suspend under paragraph 3. If the panel determines that the complaining Party has not followed the principles and procedures set out in paragraph 4, the panel shall set out in its determination the extent to which the complaining Party may suspend benefits in which subject matter in order to ensure full compliance with the principles and procedures set out in paragraph 4. The complaining Party may suspend benefits only in a manner consistent with the panel's determination.

7. The complaining Party shall not suspend benefits if, within 30 days after it provides written notice of intent to suspend benefits or, if the panel is reconvened under paragraph 5, within 20 days after the panel provides its determination, the responding Party provides written notice to the complaining Party that it will pay a monetary assessment. The Parties shall begin consultations no later than 10 days after the date on which the responding Party has given notice that it intends to pay a monetary assessment, with a view to reaching agreement on the amount of the assessment. If the Parties are unable to reach an agreement within 30 days after consultations begin and are not engaged in discussions regarding the use of a fund under paragraph 8, the amount of the assessment shall be set at a level, in U.S. dollars, equal to 50 per cent of the level of the benefits the panel has determined under paragraph 5 to be of equivalent effect or, if the panel has not determined the level, 50 per cent of the level that the complaining Party has proposed to suspend under paragraph 3.

8. If amonetary assessment is to be paid to the complaining Party, then it shall be paid in U.S. dollars, or in an equivalent amount of the currency of the responding Party or in another currency agreed to by the Parties in equal, quarterly instalments beginning 60 days after the date on which the responding Party gives notice that it intends to pay an assessment. If the circumstances warrant, the Parties may decide that the responding Party shall pay an assessment into a

fund designated by the Parties for appropriate initiatives to facilitate trade between the Parties, including by further reducing unreasonable trade barriers or by assisting the responding Party to carry out its obligations under this Agreement.

9. At the same time as the payment of its first quarterly instalment is due, the responding Party shall provide to the complaining Party a plan of the steps it intends to take to eliminate the non-conformity or the nullification or impairment.

10. A responding Party may pay a monetary assessment in lieu of suspension of benefits by the complaining Party for a maximum of 12 months from the date on which the responding Party has provided written notice under paragraph 7 unless the complaining Party agrees to an extension.

11. A responding Party that seeks an extension of the period for the payment under paragraph 10 shall make a written request for that extension no later than 30 days before the expiration of the 12 month period. The Parties shall determine the length and terms of any extension, including the amount of the assessment.

12. The complaining Party may suspend the application to the responding Party of benefits in accordance with paragraphs 3, 4 and 6, if:

(a) the responding Party fails to make a payment under paragraph 8 or fails to make the payment under paragraph 13 after electing to do so;

(b) the responding Party fails to provide the plan as required under paragraph 9; or

(c) the monetary assessment period, including any extension, has lapsed and the responding Party has not yet eliminated the non-conformity or the nullification or impairment.

13. If the responding Party notified the complaining Party that it wished to discuss the possible use of a fund and the Parties do not agree on the use of a fund within three months of the date of the responding Party's notice under paragraph 7, and this time period has not been extended by agreement of the Parties, the responding Party may elect to make the monetary assessment payment equal to 50 per cent of the amount determined under paragraph 5 or the level proposed by the complaining Party under paragraph 3 if there has been no determination under paragraph 5. If this election is made, the payment must be made within nine months of the responding Party's notice under paragraph 7 in U.S. dollars, or in an equivalent amount of the currency of the responding Party or in another currency agreed to by the Parties. If the election is not made, the complaining Party may suspend the application of benefits in the amount determined under paragraph 5, or the level proposed by the complaining Party under paragraph 3 if there has been no determination under paragraph 5, at the end of the election period.

14. The complaining Party shall accord sympathetic consideration to the notice provided by the responding Party regarding the possible use of the fund referred to in paragraphs 8 and 13.

15. Compensation, suspension of benefits and the payment of a monetary assessment shall be temporary measures. None of these measures is preferred to full implementation through elimination of the non-conformity or the nullification or impairment. Compensation, suspension of benefits and the payment of a monetary assessment shall only be applied until the responding Party has eliminated the non-conformity or the nullification or impairment, or until a mutually satisfactory solution is reached.

(3) For greater certainty, the phrase "the level of benefits that the Party proposes to suspend" refers to the level of concessions under this Agreement, the suspension of which a complaining Party considers will have an effect equivalent to that of the non-conformity, or nullification or impairment in the sense of Article 27.3.(c), determined to exist by the panel in its final report issued under Article 27.16.1.

Article 27.19. Compliance Review

1. Without prejudice to the procedures in Article 27.18, if a responding Party considers that it has eliminated the non-conformity or the nullification or impairment found by the panel, it may refer the matter to the panel by providing a written notice to the complaining Party. The panel shall issue its report on the matter no later than 90 days after the responding Party provides written notice.

2. Ifthe panel determines that the responding Party has eliminated the non-conformity or the nullification or impairment, the complaining Party shall promptly reinstate any benefits suspended under Article 27.18.

Section B. Domestic Proceedings and Private Commercial Dispute Settlement

Article 27.20. Private Rights

No Party shall provide for a right of action under its law against the other Party on the ground that a measure of the other Party is inconsistent with its obligations under this Agreement, or that the other Party has otherwise failed to carry out its obligations under this Agreement.

Article 27.21. Alternative Dispute Resolution

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is in compliance with the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June, 1958.

Chapter 28. Exceptions and General Provisions

Section A. Exceptions

Article 28.1. General Exceptions

1. For the purposes of Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Customs Administration and Trade Facilitation), Chapter 6 (Sanitary and Phytosanitary Measures), Chapter 7 (Technical Barriers to Trade) and Chapter 16 (State-Owned Enterprises and Designated Monopolies), Article XX of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis. (1)

2. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

3. For the purposes of Chapter 9 (Cross-Border Trade in Services), Chapter 11 (Temporary Entry for Business Persons), Chapter 12 (Telecommunications), Chapter 13 (Electronic Commerce) (2) and Chapter 16 (State-Owned Enterprises and Designated Monopolies), paragraphs (a), (b) and (c) of Article XIV of GATS are incorporated into and made part of this Agreement, mutatis mutandis. (3) The Parties understand that the measures referred to in Article XIV(b) of GATS include environmental measures necessary to protect human, animal or plant life or health.

4. Nothing in this Agreement shall be construed to prevent a Party from taking action, including maintaining or increasing a customs duty, that is authorised by the Dispute Settlement Body of the WTO or is taken as a result of a decision by a dispute settlement panel under a free trade agreement to which both Parties are party.

(1) For the purposes of Chapter 16 (State-Owned Enterprises and Designated Monopolies), Article XX of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis, only with respect to measures of a Party (including the implementation of measures through the activities of a state-owned enterprise or designated monopoly) affecting the purchase, production or sale of goods, or affecting activities the end result of which is the production of goods.

(2) This paragraph is without prejudice to whether a digital product should be classified as a good or service.

(3) For the purposes of Chapter 16 (State-Owned Enterprises and Designated Monopolies), Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, mutatis mutandis, only with respect to measures of a Party (including the implementation of measures through the activities of a state-owned enterprise or designated monopoly) affecting the purchase or supply of services, or affecting activities the end result of which is the supply of services.

Article 28.2. Security Exceptions

Nothing in this Agreement shall be construed to:

(a) 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) preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

Article 28.3. Temporary Safeguard Measures

1. A Party may adopt or maintain restrictive measures with regard to cross-border capital transactions as well as payments or transfers for current account and capital movement transactions:

(a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or

(b) in exceptional cases where movements of capital cause or threaten to cause serious difficulties for macroeconomic management.

2. Restrictive measures referred to in paragraph 1 shall:

(a) not be inconsistent with Article 8.4 (National Treatment), Article 8.5 (Most-Favoured-Nation Treatment), Article 9.3 (National Treatment), Article 9.4 (Most-Favoured-Nation Treatment), Article 10.3 (National Treatment) and Article 10.4 (Most-Favoured-Nation Treatment); (4)

(b) be consistent with the Articles of Agreement of the International Monetary Fund;

(c) not exceed those necessary to deal with the circumstances set out in paragraph 1;

(d) be temporary and be phased out progressively as the situation specified in paragraph 1 improves;

(e) be promptly notified to the other Party; and

(f) avoid unnecessary damages to the commercial, economic and financial interests of the other Party.

3. The Party which has adopted any measures under paragraph 1 shall, on request, commence consultations with the other Party in order to review the restrictions adopted by it.

(4) Without prejudice to the general interpretation of Article 8.4 (National Treatment), Article 8.5 (Most- Favoured-Nation Treatment), Article 9.3 (National Treatment), Article 9.4 (Most-Favoured-Nation Treatment), Article 10.3 (National Treatment) and Article 10.4 (Most-Favoured-Nation Treatment), the fact that a measure adopted or maintained pursuant to paragraph 1 or 2 differentiates between investors on the basis of residency does not necessarily mean that the measure is inconsistent with Article 8.4 (National Treatment), Article 8.5 (Most-Favoured-Nation Treatment), Article 9.3 (National Treatment), Article 9.4 (Most-Favoured-Nation Treatment), Article 10.3 (National Treatment) and Article 10.4 (Most-Favoured- Nation Treatment).

Article 28.4. Taxation Measures

1. For the purposes of this Article:

designated authorities means:

(a) for Australia, the Secretary to the Treasury, or its successor, or an authorised representative of the Secretary; and

(b) for Peru, the General Director of International Economy, Competition and Productivity Affairs (Director General de Asuntos de Economia Internacional, Competencia y Productividad del Ministerio de Economia y Finanzas), ot its successor;

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

taxes and taxation measures include excise duties, but do not include any import or customs duties.

2. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

3. This Agreement shall only grant rights or impose obligations with respect to taxation measures where:

(a) corresponding rights and obligations are also granted or imposed under the WTO Agreement; or

(b) they are granted or imposed under:

(i) Chapter 2 (National Treatment and Market Access for Goods); or

(ii) Article 8.10 (Performance Requirements).

4. Notwithstanding paragraph 3, nothing in the Articles referred to in that paragraph shall apply to:

(a) any non-conforming provision of any existing taxation measure;

(b) the continuation or prompt renewal of any non-conforming provision of any existing taxation measure;

(c) an amendment to any non-conforming provision of any existing taxation measure, provided that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with any of those Articles;

(d) the adoption or enforcement of any new taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes including any taxation measure that differentiates between persons based on their place of residence, provided that the taxation measure does not arbitrarily discriminate between persons, goods or services of the Parties (5); or

(e) a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, a pension trust, pension fund, superannuation fund, or other arrangement to provide pension, superannuation, or similar benefits on a requirement that the Party maintain continuous jurisdiction, regulation, or supervision over such trust, fund, or other arrangement.

5. Article 8.8 (Expropriation and Compensation) shall apply to taxation measures. However, no investor may invoke Article 8.8 (Expropriation and Compensation) as the basis for a claim if it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 8.8 (Expropriation and Compensation) with respect to a taxation measure must first refer to the designated authorities of the Party of the investor and the respondent Party, at the time that it gives its notice of intent under Article 8.20 (Submission of a Claim to Arbitration), the issue of whether that taxation measure is not an expropriation. If the designated authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of the referral, the investor may submit its claim to arbitration under Article 8.20 (Submission of a Claim to Arbitration). A panel established to consider a dispute related to the measure shall accept as binding a determination of the designated authorities of the Parties made under this paragraph.

6. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency relating to a taxation measure between this Agreement and any such tax convention, that convention shall prevail to the extent of the inconsistency.

7. If an issue arises as to whether any inconsistency exists between this Agreement and a tax convention between the Parties, the issue shall be referred to the designated authorities of the Parties. The designated authorities of the Parties shall have six months from the date of referral of the issue to make a determination as to the existence and extent of the inconsistency. If the designated authorities agree, such a period may be extended up to twelve months from the date of referral of the issue. No procedure concerning the measure giving rise to the issue may be initiated under Chapter 27 (Dispute Settlement) or Chapter 8 (Investment) until the expiry of the six month period, or such other period as may have been agreed by the designated authorities pursuant to the previous sentence. A panel established to consider a dispute related to a taxation measure shall accept as binding a determination of the designated authorities of the Parties made under this paragraph.

8. Nothing in this Agreement shall oblige a Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any tax convention by which the Party is bound.

(5) The Parties understand that this paragraph must be interpreted by reference to the footnote to Article XIV(d) of GATS as if the Article was not restricted to services or direct taxes.

Section B. General Provisions

Article 28.5. Disclosure of Information

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

Chapter 29. Final Provisions

Article 29.1. Annexes, Appendices and Footnotes

The Annexes, Appendices and footnotes to this Agreement shall constitute an integral part of this Agreement.

Article 29.2. Amendments

The Parties may agree, in writing, to amend this Agreement. When so agreed and approved in accordance with the applicable legal procedures of each Party, an amendment shall enter into force 60 days after the date on which the Parties exchange written notification certifying that such procedures have been completed, or on such other date after the aforementioned exchange of notifications as the Parties may agree.

Article 29.3. Amendment of the Wto Agreement

In the event of an amendment of the WTO Agreement that amends a provision that the Parties have incorporated into this Agreement, the Parties shall, unless otherwise provided for in this Agreement, consult on whether to amend this Agreement.

Article 29.4. Entry Into Force

This Agreement shall enter into force 60 days after the date on which the Parties exchange written notifications certifying that they have completed their respective applicable legal procedures or on such other date after the aforementioned exchange of notifications as the Parties may agree.

Article 29.5. Termination

Either Party may terminate this Agreement by written notification to the other Party. This Agreement shall terminate six months after the date of such notification, or on such other date as the Parties may agree.

Article 29.6. Authentic Texts

The English and Spanish texts of this Agreement are equally authentic.

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

DONE, at Canberra, this twelfth day of February, two thousand and eighteen, in duplicate, in the English and Spanish languages.

FOR AUSTRALIA

FOR THE REPUBLIC OF PERU

ANNEX I. Explanatory notes

1. The Schedule of a Party to this Annex sets out, pursuant to Article 8.12 (Non-Conforming Measures) and Article 9.7 (Non-Conforming Measures), a Party's existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 8.4 (National Treatment) or Article 9.3 (National Treatment);

(b) Article 8.5 (Most-Favoured-Nation Treatment) or Article 9.4 (Most-Favoured-Nation Treatment);

(c) Article 8.10 (Performance Requirements);

(d) Article 8.11 (Senior Management and Boards of Directors);

(e) Article 9.5 (Market Access); or

(f) Article 9.6 (Local Presence).

2. Each Schedule entry sets out the following elements:

(a) **sector** refers to the sector for which the entry is made;

(b) **sub-sector**, where referenced, refers to the specific subsector for which the entry is made;

(c) **obligations concerned** specifies the obligations referred to in paragraph 1 that, pursuant to Article 8.12.1(a) (Non-Conforming Measures) and Article 9.7.1(a) (Non-Conforming Measures), do not apply to the listed measure(s) as indicated in the introductory note for each Party's Schedule;

(d) **level of government** indicates the level of government maintaining the listed measures;

(e) **measures** identifies the laws, regulations or other measures for which the entry is made. A measure cited in the measures element:

(i) means the measure as amended, continued or renewed as of the date of entry into force of this Agreement; and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(f) **description**, as indicated in the introductory note for each Party's Schedule, either sets out the non-conforming measure or provides a general non-binding description of the measure for which the entry is made.

3. Article 9.6 (Local Presence) and Article 9.3 (National Treatment) are separate disciplines and a measure that is only inconsistent with Article 9.6 (Local Presence) need not be reserved against Article 9.3 (National Treatment).

ANNEX I. Schedule of australia

INTRODUCTORY NOTES

1. **Description** sets out the non-conforming measure for which the entry is made.

2. In accordance with Article 8.12.1 (Non-Conforming Measures) and Article 9.7.1 (Non-Conforming Measures), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the non-conforming measures identified in the **Description** element of that entry.

3. For greater certainty, the Description element of each of Australia's entries in Annex I is to be interpreted in accordance with the relevant cited sources of the non- conforming measures.

Sector: All

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3)Most-Favoured-Nation Treatment (Article 8.5 and Article 9.4)Performance Requirements (Article 8.10)Senior Management and Boards of Directors (Article 8.11)Local Presence (Article 9.6)

Level of Government: Regional

Measures: All existing non-conforming measures at the regional level of government.

Description: Investment and Cross-Border Trade in Services

All existing non-conforming measures at the regional level of government.

Sector: All

Obligations Concerned: National Treatment (Article 8.4)Senior Management and Boards of Directors (Article 8.11)

Level of Government: Central

Measures: Australia's Foreign Investment Framework, which comprises Australia's Foreign Investment Policy, the Foreign Acquisitions and Takeovers Act 1975 (Cth); Foreign Acquisitions and Takeovers Regulation 2015 (Cth); Foreign Acquisitions and Takeovers Fees Imposition Act 2015 (Cth); Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015 (Cth);

Financial Sector (Shareholdings) Act 1998 (Cth); andMinisterial Statements.

Description:

Investment (1)

1. The following investments (2) are subject to approval by the Australian Government and may also require notification (3) to the Australian Government:a proposed investment by a foreign person (4) in an entity or Australian business valued above $A1,134 million* ;a proposed investment by a foreign person in an entity or Australian business valued above $A261 million* relating to a sensitive business (5) or its assets;a proposed direct investment by a foreign government investor (6) of any interest regardless of value;a proposed investment by a foreign person of 5 per cent or more in the media sector, regardless of the value of the investment;a proposed acquisition by a foreign person of an interest in developed commercial land (7) where the value of the interest is more than $A1,134 millionâ , unless the land meets the conditions for the lower developed commercial land threshold of $A57 million* (8).
2. a proposed investment by a foreign person4 in an entity or Australian business valued above $A1,134 million *;
3. a proposed investment by a foreign person in an entity or Australian business valued above $A261 million* relating to a sensitive business (5) or its assets;
4. a proposed direct investment by a foreign government investor (6)of any interest regardless of value;
5. a proposed investment by a foreign person of 5 per cent or more in the media sector, regardless of the value of the investment;
6. a proposed acquisition by a foreign person of an interest in developed commercial land (7) where the value of the interest is more than $A1,134 million* , unless the land meets the conditions for the lower developed commercial land threshold of $A57 million* (8)

Investments may be refused, subject to orders, and/or approved subject to conditions. Foreign persons that do not comply with the foreign investment framework may be subject to civil and criminal penalties.

For greater certainty, where an investment could qualify for the application of one or more of the above screening thresholds, approval and/or notification requirements apply from the lowest applicable threshold.

Separate or additional requirements may apply to measures subject to other Annex I reservations and to sectors, sub-sectors or activities subject to Annex II

2. The acquisition of a stake in an existing financial sector company by a foreign investor, or entry into an arrangement by a foreign investor, that would lead to an unacceptable shareholding situation or to practical control (9) of an existing financial sector company, may be refused, or be subject to certain conditions (10).

Sector: Professional Services

Obligations Concerned: National Treatment (Article 9.3)Most-Favoured-Nation Treatment (Article 9.4)

Level of Government: Central

Measures: Patents Act 1990 (Cth)Patents Regulations 1991 (Cth)

Description: Cross-Border Trade in Services

In order to register to practise in Australia, patent attorneys must have been employed for at least two continuous years, or a total of two years within five continuous years, in Australia or New Zealand, or in both countries, in a position or positions that provided the applicant with required experience in Australia's and New Zealand's patent attorney regime.

Sector: Professional Services

Obligations Concerned: National Treatment (Article 9.3)Most-Favoured-Nation Treatment (Article 9.4)

Level of Government: Central

Measures: Migration Act 1958 (Cth)

Description: Cross-Border Trade in Services

To practise as a migration agent in Australia a person must be an Australian citizen or permanent resident or a citizen of New Zealand with a special category visa.

Sector: Professional Services

Obligations Concerned: Local Presence (Article 9.6)

Level of Government: Central

Measures: Corporations Act 2001 (Cth)

Description: Cross-Border Trade in Services

A person who is not ordinarily resident in Australia may be refused registration as a company auditor or liquidator. At least one partner in a firm providing auditing services must be a registered company auditor who is ordinarily resident in Australia.

Sector: Professional Services

Obligations Concerned: Local Presence (Article 9.6)

Level of Government: Central

Measures: Customs Act 1901 (Cth)

Description: Cross-Border Trade in Services

To act as a customs broker in Australia, service suppliers must supply the service in and from Australia.

Sector: Fishing and Services Incidental to Fishing

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3)

Level of Government: Central

Measures: Fisheries Management Act 1991 (Cth)Foreign Fishing Licences Levy Act 1991 (Cth)

Description: Investment and Cross-Border Trade in Services

Foreign fishing vessels (11) seeking to undertake fishing activity, including any activity in support of or in preparation for any fishing activity or the processing, carrying or transhipment of fish, in the Australian Fishing Zone must be authorised.

Where foreign fishing vessels are authorised they may be subject to a levy.(12)

Sector: Communication Services

Obligations Concerned: National Treatment (Article 8.4) Senior Management and Boards of Directors (Article 8.11)

Level of Government: Central

Measures: Telstra Corporation Act 1991 (Cth)

Description: Investment

Aggregate foreign equity is restricted to no more than 35 per cent of shares of Telstra. Individual or associated group foreign investment is restricted to no more than five per cent of shares.

The Chairperson and a majority of directors of Telstra must be Australian citizens and Telstra is required to maintain its head office, main base of operations and place of incorporation in Australia.

Sector: Health Services

Obligations Concerned: National Treatment (Article 8.4) Senior Management and Boards of Directors (Article 8.11)

Level of Government: Central

Measures: Commonwealth Serum Laboratories Act 1961 (Cth)

Description: Investment

The votes attached to significant foreign shareholdings (13) may not be counted in respect of the appointment, replacement or removal of more than one-third of the directors of Commonwealth Serum Laboratories (CSL) who hold office at a particular time. The head office, principal facilities used by CSL and any CSL subsidiaries used to produce products derived from human plasma collected from blood or plasma donated by individuals in Australia must remain in Australia. Two-thirds

of the directors of the board of CSL and the chairperson of any meeting must be Australian citizens. CSL must not seek incorporation outside of Australia.

Sector: Transport Services

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3)Local Presence (Article 9.6)

Level of Government: Central

Measures: Competition and Consumer Act 2010 (Cth)

Description: Investment and Cross-Border Trade in Services

Every ocean carrier who provides international liner cargo shipping services to or from Australia must, at all times, be represented by a natural person who is resident in Australia.

Only a person (14) affected by a registered conference agreement or by a registered non-conference ocean carrier with substantial market power may apply to the Australian Competition and Consumer Commission to examine whether conference members, and non-conference operators with substantial market power, are hindering other shipping operators from engaging efficiently in the provision of outward liner cargo services to an extent that is reasonable. For greater certainty, matters which are relevant to the determination of "reasonable" include Australia's national interest and the interests of Australian shippers.

Sector: Maritime Transport

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3)Local Presence (Article 9.6)

Level of Government: Central

Measures: Shipping Registration Act 1981 (Cth)Shipping Registration Regulations 1981 (Cth)

Description: Investment and Cross-Border Trade in Services

For a ship to be registered on the Australian Shipping Register it must be majority Australian-owned or on demise charter to Australian-based operators. In the case of small craft, a ship must be wholly owned by or solely operated by Australian residents, Australian nationals or both.

For a trading ship to be registered on the International Shipping Register it must be wholly or majority Australian-owned, on demise charter to Australian-based operators or operated solely by Australian residents, Australian nationals or both. The master or chief mate, and chief engineer or first engineer of the ship must be an Australian national or Australian resident.

A ship on demise charter to an Australian-based operator is a ship on demise charter to:

1. an Australian national or Australian nationals; or
2. in circumstances where there are two or more persons who include an Australian national, where the Australian national is in a position to control the exercise of the rights and powers of the charterers under the charter party.

For the purposes of this entry, an Australian national is an Australian citizen who is ordinarily resident in Australia; or a body corporate that has its principal place of business in Australia.

Sector: Transport Services

Obligations Concerned:

National Treatment (Article 8.4)Senior Management and Boards of Directors (Article 8.11)

Level of Government: Central

Measures: Air Navigation Act 1920 (Cth)Ministerial Statements

Description: Investment

Total foreign ownership of individual Australian international airlines (other than Qantas) is restricted to a maximum of 49 per cent.

Furthermore, it is required that:

1. at least two-thirds of the Board members must be Australian citizens;
2. the Chairperson of the Board must be an Australian citizen;
3. the airline's head office must be in Australia; and
4. the airline's operational base must be in Australia.

Sector: Transport Services

Obligations Concerned: National Treatment (Article 8.4) Senior Management and Boards of Directors (Article 8.11)

Level of Government: Central

Measures: Qantas Sale Act 1992 (Cth)

Description: Investment

Total foreign ownership of Qantas Airways Ltd is restricted to a maximum of 49 per cent. In addition:

1. the head office of Qantas must always be located in Australia;
2. the majority of Qantas' operational facilities must be located in Australia;
3. at all times, at least two-thirds of the directors of Qantas must be Australian citizens;
4. at a meeting of the Board of Directors of Qantas, the director presiding at the meeting (however described) must be an Australian citizen; and
5. Qantas is prohibited from taking any action to become incorporated outside Australia.

(1) For greater certainty, the terms in this entry should be interpreted in accordance with Australia's Foreign Investment Framework as at the date of entry into force of this Agreement.

(2) "Investment" means activities covered by Part II of the Foreign Acquisitions and Takeovers Act 1975 (Cth) or, where applicable, ministerial statements on foreign investment policy. Funding arrangements that include debt instruments having quasi-equity characteristics will be treated as direct foreign investment.

(3) The Foreign Acquisitions and Takeovers Fees Imposition Act 2015 (Cth)and the Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015 (Cth)sets the fees for foreign investment applications and notices. Fees are indexed annually on 1 July.

(4) For the purposes of this entry, the term "foreign person" has the meaning set out in the Foreign Acquisitions and Takeovers Act 1975 (Cth)and Foreign Acquisitions and Takeovers Regulation 2015 (Cth).

(5) The term "sensitive business" has the meaning set out in the Foreign Acquisitions and Takeovers Act 1975 (Cth)and Foreign Acquisitions and Takeovers Regulation 2015 (Cth).

(6) The term "foreign government investor" has the meaning set out in the Foreign Acquisitions and Takeovers Act 1975 (Cth)and Foreign Acquisitions and Takeovers Regulation 2015 (Cth).

(7) The term "developed commercial land" means commercial land that is not vacant within the meaning of the Foreign Acquisitions and Takeovers Act 1975 (Cth)and Foreign Acquisitions and Takeovers Regulation 2015 (Cth).

(8) The conditions for the lower threshold are those set out in Foreign Acquisitions and Takeovers Act 1975 (Cth)and Foreign Acquisitions and Takeovers Regulation 2015 (Cth).

(9) "Unacceptable shareholding situation" and "practical control" as defined in the Financial Sector (Shareholdings) Act 1998 (Cth).

(10) Ministerial statements on foreign investment policy including the Treasurer's Press Release No. 28 of 9 April 1997.

* This is the figure as at 1 January 2018. To be indexed annually on 1 January.

(11) For the purposes of this entry, a "foreign fishing vessel" is one that does not meet the definition of an Australian boat under the Fisheries Management Act 1991 (Cth), that is, an Australian-flagged boat (not owned by a foreign resident) or a boat owned by an Australian resident or corporation and built, and whose operations are based, in Australia.

(12) The levy charged will be in accordance with the Foreign Fishing Licences Levy Act 1991 (Cth) or any amendments thereto.

(13) For the purposes of this entry, "significant foreign shareholding" means a holding of voting shares in CSL in which a foreign person has a relevant interest, if the foreign person has relevant interests in at least five per cent of the voting

shares in CSL.

(14) For the purposes of this entry, sections 10.48 and 10.58 of Part X of the Competition and Consumer Act 2010 (Cth) list the categories of persons to whom this entry will apply.

ANNEX I. Schedule of peru

INTRODUCTORY NOTES

1. Description provides a general non-binding description of the measure for which the entry is made.

2. In accordance with Article 8.12.1 (Non-Conforming Measures) and Article 9.7.1 (Non-Conforming Measures), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the non-conforming aspects of the law, regulation or other measure identified in the **Measures** element of that entry.

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.4)

Level of Government: Central

Measures: Political Constitution of Peru (Constitución Política del Perú) (1993), Article 71 Legislative Decree N° 757, "El Peruano" Official Gazette of November 13, 1991, Framework Law for Private Investment Growth(Ley Marco para el Crecimiento de la Inversión Privada), Article 13

Description: Investment

No foreign national, enterprise constituted under foreign law or enterprise constituted under Peruvian law, and owned in whole or part, directly or indirectly, by foreign nationals may acquire or own, directly or indirectly, by any title, land or water (including mines, forest or energy sources) located within 50 kilometres of the Peruvian border. Exceptions may be authorised by Supreme Decree approved by the Council of Ministers in conformity with law in cases of expressly declared public necessity.

For each case of acquisition or possession within the referred area, the investor shall hand in the corresponding request to the relevant Ministry, pursuant to laws in force. For example, authorisations of this kind have been given in the mining sector.

Sector: Services Related to Fishing

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.3)

Level of Government: Central

Measures: Supreme Decree N° 012-2001-PE, "El Peruano" Official Gazette of March 14, 2001, Regulation of the Fisheries Law (Reglamento de la Ley General de Pesca), Articles 67, 68, 69 and 70

Description: Cross-Border Trade in Services

Before commencing operations, ship owners of foreign-flagged fishing vessels must present an unconditional, irrevocable letter of guarantee with automatic execution and joint liability, which will be valid for no more than 30 calendar days after the expiry of the fishing permit, issued for the benefit and to the satisfaction of the Ministry of Production by a financial, banking or insurance institution recognised by the Superintendency of Banking, Insurance and Private Administrators of Pension Funds (Superintendencia de Banca, Seguros y Administradoras Privadas de Fondos de Pensiones (AFP)). Such letter shall be issued in an amount equal to 25 per cent of the amount that must be paid for fishing rights.

A ship owner of a foreign-flagged fishing vessel that is not of large scale (according to the regulation mentioned above) and that operates in Peruvian jurisdictional waters must have a Satellite Tracking System in its vessel, except for ship owners operating in highly migratory fisheries who are excepted from this obligation by a Ministerial Resolution.

Foreign-flagged fishing vessels with a fishing permit must have on board a scientific technical observer appointed by the Sea Institute of Peru (Instituto del Mar del Perú (IMARPE)). The ship owner must provide accommodation on board for that

representative and a daily stipend, which must be deposited in a special account to be administered by IMARPE.

Ship owners of foreign-flagged fishing vessels that operate in Peruvian jurisdictional waters must hire a minimum of 30 per cent Peruvian crew, subject to applicable domestic legislation.

Sector: Radio and Television Broadcasting Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.4) Local Presence (Article 9.6)

Level of Government: Central

Measures: Law Nº 28278, "El Peruano" Official Gazette of July 16 2004, Radio and Television Law(Ley de Radio y Televisión), Article 24

Description: Investment and Cross-Border Trade in Services

Only Peruvian nationals or juridical persons organised under Peruvian law and domiciled in Peru may be authorised or licensed to offer radio or television broadcast services.

No foreign national may hold an authorisation or a licence directly or through a sole proprietorship.

Sector: Audio-Visual Services

Sub-Sector:

Obligations Concerned: Performance Requirements (Article 8.10)National Treatment (Article 9.3)

Level of Government: Central

Measures: Law Nº 28278, "El Peruano" Official Gazette of July 16, 2004, Radio and Television Law (Ley de Radio y Televisión), Eighth Complementary and Final Provision

Description: Investment and Cross-Border Trade in Services

At least 30 per cent, on average, of the total weekly programs by free-to-air television broadcasters must be produced in Peru and broadcasted between the hours of 05:00 and 24:00.

Sector: Radio Broadcasting Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3)Most-Favoured-Nation Treatment (Article 8.5 and Article 9.4)

Level of Government: Central

Measures: Supreme Decree N° 005-2005-MTC, "El Peruano" Official Gazette of February 15, 2005, Regulation of the Radio and Television Law (Reglamento de la Ley de Radio y Televisión), Article 20

Description: Investment and Cross-Border Trade in Services

If a foreign national is, directly or indirectly, a shareholder, partner, or associate in a juridical person, that juridical person may not hold a broadcasting authorisation in a zone bordering that foreign national's country of origin, except in a case of public necessity authorised by the Council of Ministers.

This restriction does not apply to juridical persons with foreign equity which have two or more current authorisations, as long as they are of the same frequency band.

Sector: All

Sub-Sector:

Obligations Concerned: Senior Management and Boards of Directors (Article 8.11) National Treatment (Article 9.3)Most-Favoured-Nation Treatment (Article 9.4)

Level of Government: Central

Measures: Legislative Decree N° 689, "El Peruano" Official Gazette of November 5, 1991, Law for Foreign Workers Recruitment(Ley para la Contratación de Trabajadores Extranjeros), Articles 1, 3, 4, 5 (modified by Law N° 26196) and 6

Description: Investment and Cross-Border Trade in Services

All employers in Peru, independently of their activity or nationality, shall give preferential treatment to nationals when hiring employees.

Foreign natural persons who are service suppliers and who are employed by a service-supplying enterprise may supply services in Peru under a written and time-limited employment contract, which may not exceed three years. The contract may be subsequently extended for like periods of time. Service-supplying enterprises must show proof of the company's commitment to train national personnel in the same occupation.

Foreign natural persons may not represent more than 20 per cent of the total number of employees of an enterprise, and their pay may not exceed 30 per cent of the total payroll for wages and salaries. These percentages will not apply in the following cases:

1. when the foreign national supplying the service is the spouse, parent, child or sibling of a Peruvian national;
2. when personnel work for a foreign enterprise supplying international land, air and water transport services under a foreign flag and registration;
3. when foreign personnel work in a multinational bank or an enterprise that supplies multinational services, subject to the laws governing specific cases;
4. for a foreign investor, provided that its investment permanently maintains in Peru at least five tax units (Unidad Impositiva Tributaria - UIT)1 during the life of its contract;
5. for artists, athletes or other service suppliers engaged in public performances in Peruvian territory, for a maximum of three months a year;
6. when a foreign national has an immigrant visa;
7. for a foreign national whose country of origin has a labour reciprocity or dual nationality agreement with Peru; and
8. when foreign personnel supply services in Peru under a bilateral or multilateral agreement concluded by the Peruvian Government.

Employers may request waivers for the percentages related to the number of foreign employees and their share of the company's payroll in cases involving:

1. specialised professional or technical personnel;
2. directors or management personnel for a new business activity or reconverted business activity;
3. teachers hired for post-secondary education, or for foreign private elementary and high schools, or for language teaching in local private schools, or for specialised language centres;
4. personnel working for public or private enterprises with contractual agreements with public organisations, institutions or enterprises; and
5. in any other case determined by Supreme Decree pursuant to specialisation, qualification or experience criteria.

Sector: Professional Services

Sub-Sector: Legal services

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3)

Level of Government: Central

Measures: Legislative Decree N° 1049, "El Peruano" Official Gazette of June 26, 2008, Notaries Law (Ley del Notariado), Article 10

Description: Investment and Cross-Border Trade in Services

Only a Peruvian national by birth may supply notary services.

Sector: Professional Services

Sub-Sector: Architectural services

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3)

Level of Government: Central

Measures: Law Nº 14085, "El Peruano" Official Gazette of June 30, 1962, Law establishing the Peruvian Association of Architects(Ley de Creación del Colegio de Arquitectos del Perú)Law Nº 16053, "El Peruano" Official Gazette of February 14, 1966, Professional Practice Law, authorising the Peruvian Associations of Architects and Engineers to supervise Engineering and Architecture professionals of the Nation(Ley del Ejercicio Profesional, Autoriza a los Colegios de Arquitectos e Ingenieros del Perú para supervisar a los profesionales de Ingeniería y Arquitectura de la República), Article 1National Architects Council Agreement (Acuerdo del Consejo Nacional de Arquitectos), approved in Session Nº 04-2009 of 15 December 2009

Description: Investment and Cross-Border Trade in Services

To practice as an architect in Peru, an individual must join the Peruvian Association of Architects (Colegio de Arquitectos del Perú). The enrolment fees are different for Peruvians and foreigners, and subject to review by the Peruvian Association of Architects (Colegio de Arquitectos del Perú).

Also, to obtain temporary registration, non-resident foreign architects must have a contract of association with a Peruvian architect residing in Peru.

Sector: Professional Services

Sub-Sector: Auditing services

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3)Local Presence (Article 9.6)

Level of Government: Central

Measures: Rules of the Association of Public Accountants of Lima (Reglamento Interno del Colegio de Contadores Públicos de Lima), Articles 145 and 146

Description: Investment and Cross-Border Trade in Services

Auditing societies shall be constituted only by public accountants licensed and resident in the country and duly qualified by the Association of Public Accountants of Lima (Colegio de Contadores Públicos de Lima).

Sector: Security Services

Sub-Sector:

Obligations Concerned:

National Treatment (Article 8.4 and Article 9.3)Local Presence (Article 9.6)

Level of Government: Central

Measures: Supreme Decree N° 003-2011-IN, "El Peruano" Official Gazette of March 31, 2011, Regulation of Private Security Services (Reglamento de Servicios de Seguridad Privada), Articles 12, 18, 22, 36, 40, 41, 46, 47 and 48

Description: Investment and Cross-Border Trade in Services

The supply of personal and heritage security services by natural persons is reserved to Peruvian nationals.

Only juridical persons constituted in Peru may apply for an authorisation to supply security services. It must prove its constitution in Peru by a copy of the registration form of the constitution for the enterprise.

Sector: Recreational, Cultural and Sporting Services

Sub-Sector: National artistic audio-visual production services

Obligations Concerned: National Treatment (Article 9.3)

Level of Government: Central

Measures: Law N° 28131, "El Peruano" Official Gazette of December 18, 2003, Law of the Artist and Performer(Ley del Artista, Intérprete y Ejecutante), Articles 23 and 25

Description: Cross-Border Trade in Services

Any domestic artistic audio-visual production must be comprised of at least 80 per cent Peruvian national artists.

Any domestic artistic live performances must be comprised of at least 80 per cent Peruvian national artists.

In any domestic artistic audio-visual production and any domestic artistic live performance, Peruvian national artists shall receive no less than 60 per cent the total payroll for wages and salaries paid to artists.

The same percentages established in the preceding paragraphs shall govern the work of technical personnel involved in artistic activities.

Sector: Recreational, Cultural and Sporting Services

Sub-Sector: Circus services

Obligations Concerned: National Treatment (Article 9.3)

Level of Government: Central

Measures: Law Nº 28131, "El Peruano" Official Gazette of December 18, 2003, Law of the Artist and Performer(Ley del Artista, Intérprete y Ejecutante), Article 26

Description: Cross-Border Trade in Services

A foreign circus may stay in Peru with its original cast for a maximum of 90 days. This period may be extended for the same period of time. If it is extended, the foreign circus will include a minimum of 30 per cent Peruvian nationals as artists and 15 per cent Peruvian nationals as technicians. The same percentages shall apply to the payroll of salaries and wages.

Sector: Commercial Advertising Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.3)

Level of Government: Central

Measures: Law Nº 28131, "El Peruano" Official Gazette of December 18, 2003, Law of the Artist and Performer(Ley del Artista, Intérprete y Ejecutante), Articles 25 and 27.2

Description: Cross-Border Trade in Services

Commercial advertising produced in Peru must have at least 80 per cent Peruvian national artists.

In any commercial advertising produced in Peru, Peruvian national artists shall receive no less than 60 per cent of the total payroll for wages and salaries paid to artists.

The same percentages established in the preceding paragraphs shall govern the work of technical personnel involved in commercial advertising.

Sector: Recreational, Cultural and Sporting Services

Sub-Sector: Bullfighting

Obligations Concerned: National Treatment (Article 9.3)

Level of Government: Central

Measures: Law N° 28131, "El Peruano" Official Gazette of December 18, 2003, Law of the Artist and Performer(Ley del Artista, Intérprete y Ejecutante), Article 28

Description: Cross-Border Trade in Services

At least one bullfighter of Peruvian nationality must participate in any bullfighting fair. At least one apprentice bullfighter of Peruvian nationality must participate in fights involving young bulls.

Sector: Radio and Television Broadcasting Services

Sub-Sector:

Obligations Concerned: Performance Requirements (Article 8.10)National Treatment (Article 9.3)

Level of Government: Central

Measures: Law N° 28131, "El Peruano" Official Gazette of December 18, 2003, Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante), Articles 25 and 45

Description: Investment and Cross-Border Trade in Services

Free to air radio and television broadcast companies must dedicate at least 10 per cent of their daily programming to folklore and national music and to series or programs produced in Peru on Peruvian history, literature, culture or current issues with artists hired in the following percentages:

1. a minimum of 80 per cent Peruvian national artists;
2. Peruvian national artists shall receive no less than 60 per cent of the total payroll for wages and salaries paid to artists; and
3. the same percentages established in the preceding paragraphs shall govern the work of technical personnel involved in artistic activities.

Sector: Customs Warehouses Services

Sub-Sector:

Obligations Concerned: Local Presence (Article 9.6)

Level of Government: Central

Measures: Supreme Decree N° 08-95-EF, "El Peruano" Official Gazette of February 5, 1995, Approve the Regulation of Customs Warehouses (Aprueban el Reglamento de Almacenes Aduaneros), Article 7

Description: Cross-Border Trade in Services

Only natural or juridical persons domiciled in Peru may apply for an authorisation to operate a customs warehouse.

Sector: Telecommunications Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.3)

Level of Government: Central

Measures: Supreme Decree N° 020-2007-MTC, "El Peruano" Official Gazette of July 04, 2007, Consolidated Text of the General Rules of the Telecommunications Law (Texto Autentico Ordenado del Reglamento General de la Ley de Telecomunicaciones), Article 258

Description: Cross-Border Trade in Services

Call-back, understood as being the offer of telephone services for the realisation of attempts to make calls originating in Peru with the objective of obtaining a return call with an invitation to dial, coming from a basic telecommunications network located outside the national territory, is prohibited.

Sector: Transportation

Sub-Sector: Air Transportation and Specialty Air Services

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3)Senior Management and Boards of Directors (Article 8.11)Local Presence (Article 9.6)

Level of Government: Central

Measures: Law N° 27261, "El Peruano" Official Gazette of May 10, 2000, Civil Aviation Law (Ley de Aeronáutica Civil), Articles 75 (modified by Legislative Decree N° 999, 19 April 2008) and 79Peruvian Aviation RegulationN° 61 (Regulación Aeronáutica del Perú – RAP N° 61), "El Peruano" Official Gazette of December 14, 2013.Supreme Decree N° 050-2001-MTC, "El Peruano" Official Gazette of December 26, 2001, Regulation of the Civil Aviation Law (Reglamento de la Ley de Aeronáutica Civil), Articles 159, 160 and VI Complementary Provision.

Description: Investment and Cross-Border Trade in Services

National Commercial Aviation (2) is reserved to a Peruvian natural or juridical person.

For the purposes of this entry, a Peruvian juridical person is an enterprise that fulfils the following requirements:

1. it is constituted under Peruvian law, specifies commercial aviation as its corporate purpose, is domiciled in Peru, and has its principal activities and administration located in Peru;
2. at least half plus one of the directors, managers and persons who control and manage the enterprise are Peruvian nationals or have permanent domicile or are resident in Peru; and
3. at least 51 per cent of the capital stock must be owned by Peruvian nationals and be under the real and effective control of Peruvian shareholders or partners permanently domiciled in Peru (this limitation shall not apply to the enterprises constituted under Law Nº 24882, which may maintain the ownership percentages set in such law). Six months after the date of authorisation of the enterprise to provide commercial air transportation services, foreign nationals may own up to 70 per cent of the capital stock of the enterprise.

In those operations conducted by national commercial aviation operators (explotadores nacionales), personnel performing aeronautical functions on board must be Peruvian nationals or foreign residents with a Peruvian licence.

In order to perform activities as a pilot of a Peruvian juridical person, the foreign pilot must prove, at least, two years of residence in Peru. This requirement is not applicable to the foreign resident who has the immigration category of "spouse" of a Peruvian national.

Notwithstanding the preceding paragraphs, the General Directorate of Civil Aviation (Dirección General de Aeronáutica Civil) may, for technical reasons, authorise foreign personnel without a Peruvian licence to perform these functions for a period not to exceed six months from the date on which the authorisation was granted, extendable due to ascertained nonexistence of such skilled personnel.

Sector: Transportation

Sub-Sector: Aquatic transportation

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3)Senior Management and Boards of Directors (Article 8.11)Local Presence (Article 9.6)Performance Requirements (Article 8.10)

Level of Government: Central

Measures: Law Nº 28583, "El Peruano" Official Gazette of July 22, 2005, Law of the Reactivation and Promotion of the National Merchant Marine (Ley de Reactivación y Promoción de la Marina Mercante Nacional), Articles 4.1, 6.1, 7.1, 7.2, 7.4 and 13.6Law Nº 29475, Law that modifies Law Nº 28583, "El Peruano" Official Gazette of December 17, 2009, Law of the Reactivation and Promotion of the National Merchant Marine(Ley de Reactivación y Promoción de la Marina Mercante Nacional), Article 13.6 and Tenth Transitory and Final ProvisionLaw N° 30580, Law that modifies Law Nº 29475, Law of the Reactivation and Promotion of the National Merchant Marine, for Promoting Cabotage in Foreign Trade Operations (Ley de Reactivación y Promoción de la Marina Mercante Nacional, para Promover el Cabotaje en las Operaciones de Comercio Exterior), Articles 1 and 2.Supreme Decree Nº 028 DE/MGP, "El Peruano" Official Gazette of May 25, 2001, Regulation of the Law Nº 26620 (Reglamento de la Ley Nº 26620), Article I-010106, paragraph (a)

Description: Investment and Cross-Border Trade in Services

A "national ship owner" or "national ship enterprise" is understood as a natural person of Peruvian nationality or juridical person constituted in Peru, with its principal domicile and real and effective headquarters in Peru, whose business is to provide services in water transportation in national traffic or sabotage (3) or international traffic and who is the owner or lessee under a financial lease or a bareboat charter, with an obligatory purchase option, of at least one Peruvian flag merchant vessel and that has obtained the relevant Operation Permit from the General Aquatic Transport Directorate (Dirección General de Transporte Acuático).

At least 51 per cent of the subscribed and paid-in capital stock must be owned by Peruvian citizens.

The Chair of the Board of Directors, the majority of the directors, and the General Manager must be Peruvian nationals and residents in Peru.

The captain and crew of Peruvian-flagged vessels must be entirely Peruvian nationals authorised by the General Directorate of Captaincy and Coastguards (Dirección General de Capitanías y Guardacostas). In exceptional cases and after ascertaining that there is no Peruvian qualified personnel with experience in that type of vessel available, foreign nationals may be hired to a maximum of 15 per cent of the total crew, and for a limited period of time. The latter exception does not include the captain of the vessel.

Only a Peruvian national may be a licensed harbour pilot.

Cabotage is exclusively reserved to Peruvian flagged merchant vessels owned by a national ship owner or national ship enterprise or leased under a financial lease or a bareboat charter, with an obligatory purchase option, except that:

1. up to 25 per cent of the transport of hydrocarbons in national waters is reserved for the ships of the Peruvian Navy; and
2. foreign-flagged vessels may be operated exclusively by national ship owners or national ship enterprises for a period of three years for water transportation exclusively between Peruvian ports or cabotage when such an entity does not own its own vessels or lease vessels under a financial leasing or bareboat charter with purchase obligation. This period may be renewed up to one year.

The national ship owner or national ship enterprise who signs a contract for the construction or repair of a vessel with a national shipyard, may lease a foreign flag vessel for a period equivalent to the period of construction or reparation. That period may not exceed five years.

Sector: Transportation

Sub-Sector: Aquatic transportation

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3)Local Presence (Article 9.6)

Level of Government: Central

Measures: Supreme Decree Nº 056-2000-MTC, "El Peruano" Official Gazette of December 31, 2000, Provides that aquatic transportation services and related services conducted in bays and port areas must be provided by authorised natural and juridical persons, with vessels and artifacts of national flag (Disponen que servicios de transporte marítimo y conexos realizados en bahías y áreas portuarias deberán ser prestados por personas naturales y jurídicas autorizadas, con embarcaciones y artefactos de bandera nacional), Article 1Ministerial Resolution Nº 259-2003-MTC/02, "El Peruano" Official Gazette of April 4, 2003, Approve Regulation of Aquatic Transportation services and related services rendered in bay traffic and port areas (Aprueban Reglamento de los servicios de Transporte Acuático y Conexos Prestados en Tráfico de Bahía y Áreas Portuarias), Articles 5 and 7

Description: Investment and Cross-Border Trade in Services

Water transport and related services supplied in bay and port areas must be supplied by natural persons domiciled in Peru, and juridical persons constituted and domiciled in Peru, properly authorised with Peruvian flag vessels and equipment, including:

1. fuel replenishment services;
2. mooring and unmooring services;
3. diving services;
4. victualing services;
5. dredging services;
6. harbour pilotage services;
7. waste collection services;
8. tug boat services; and
9. transport of persons.

Sector: Transportation

Sub-Sector: Aquatic transportation

Obligations Concerned: National Treatment (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central

Measures: Supreme Decree N° 006-2011-MTC, "El Peruano" Official Gazette of February 4, 2011, Supreme Decree that approves the Regulation of Tourist Water Transportation (Decreto Supremo que aprueba el Reglamento de Transporte Turístico Acuático), Article 1

Description: Cross-Border Trade in Services

The tourist water transport service will be provided by natural or juridical persons, domiciled and constituted in Peru. At the regional and national level, the tourist water transport service is reserved to be provided exclusively with owned or chartered Peruvian flagged ships or in the form of financial lease or a bareboat charter, with purchase option mandatory.

Sector: Transportation

Sub-Sector: Aquatic transportation

Obligations Concerned: National Treatment (Article 9.3)

Level of Government: Central

Measures: Law Nº 27866, "El Peruano" Official Gazette of November 16, 2002, Port Labour Law (Ley del Trabajo Portuario), Articles 3 and 7

Description: Cross-Border Trade in Services

Only Peruvian citizens may register in the Registry of Port Workers.

Sector: Transportation

Sub-Sector: Land transportation of passengers

Obligations Concerned: Local Presence (Article 9.6)

Level of Government: Central

Measures: Supreme Decree N° 017-2009-MTC, "El Peruano" Official Gazette of April 22, 2009, National Regulation of Transport Management (Reglamento Nacional de Administración de Transportes), Article 33, modified by Supreme Decree N° 006-2010-MTC of 22 January 2010

Description: Cross-Border Trade in Services

To supply land transport services it is necessary to have adequate physical infrastructure, which includes, when appropriate: offices; bus terminals for persons or goods; route stations; bus stops; all other infrastructure used as a place for loading, unloading and storage of goods; maintenance workshops; and any other infrastructure necessary for the supply of the service.

Sector: Transportation

Sub-Sector: Land transportation

Obligations Concerned: National Treatment (Article 9.3)

Level of Government: Central

Measures: Agreement on International Land Transport (Acuerdo sobre Transporte Internacional Terrestre - ATIT), signed between the Governments of the Republic of Chile, the Republic of Argentina, the Republic of Bolivia, the Federal Republic of Brazil, the Republic of Paraguay, the Republic of Peru and the Oriental Republic of Uruguay, done at Montevideo on January 1, 1990.

Description: Cross-Border Trade in Services

Foreign vehicles allowed by Peru, in conformity with the ATIT (4), which carry out international transportation by road, are not able to supply local transport (cabotage) in the Peruvian territory.

Sector: Research and Development Services

Sub-Sector: Archaeological services

Obligations Concerned: National Treatment (Article 9.3)

Level of Government: Central

Measures: Supreme Decree Nº 003-2014-MC, "El Peruano" Official Gazette of October 3, 2014, Regulation of Archaeological Interventions (Reglamento de Intervenciones Arqueológicas), Article 30

Description: Cross-Border Trade in Services

Archaeological research programs and projects headed by a foreign archaeologist, who does not reside in Peru, must have a Peruvian director.

Both directors shall be registered in the National Registry of Archaeologists and shall assume the same responsibilities in the formulation and the integral execution of the project (field and office work), and in the elaboration of the final report.

Sector: Services related to Energy Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.3) Local Presence (Article 9.6)

Level of Government: Central

Measures: Law Nº 26221, "El Peruano" Official Gazette of August 19, 1993, General Law of Hydrocarbons (Ley General de Hidrocarburos), Article 15

Description: Cross-Border Trade in Services

In order to enter into an exploration contract in Peru, foreign natural persons must register in the Public Registry and provide a power of attorney to a Peruvian national resident in the capital of the Republic of Peru.

Foreign enterprises must establish a branch or constitute a society under the General Law of Corporations (Ley General de Sociedades), be domiciled in the capital of the Republic of Peru, and appoint a Peruvian national as an executive agent.

(1) The "Unidad Impositiva Tributaria" (UIT) is an amount used as a reference in taxation rules in order to maintain in constant values the tax basis, deductions, affectation limits and other aspects of the tax that the legislator considers convenient.

(2) For greater certainty, National Commercial Aviation includes Specialty Air Services, except for flight training services. Only paragraphs 2, 3 and 4 of this entry apply to flight training.

(3) For greater certainty, water transportation includes transportation by lakes and rivers.

(4) The Agreement on International Land Transport (ATIT) applies to international land transport between signatory countries (the Governments of the Republic of Chile, the Republic of Argentina, the Republic of Bolivia, the Federal Republic of Brazil, the Republic of Paraguay, the Republic of Peru and the Oriental Republic of Uruguay) for purposes of land transportation between two signatory countries as well as transit to a third country.

ANNEX II. Explanatory notes

1. The Schedule of a Party to this Annex sets out, pursuant to Article 8.12 (Non-Conforming Measures) and Article 9.7 (Non-Conforming Measures), the specific sectors, subsectors or activities for which that Party may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

1. Article 8.4 (National Treatment) or Article 9.3 (National Treatment);
2. Article 8.5 (Most-Favoured-Nation Treatment) or Article 9.4 (Most-Favoured-Nation Treatment);
3. Article 8.10 (Performance Requirements);
4. Article 8.11 (Senior Management and Boards of Directors);
5. Article 9.5 (Market Access); or
6. Article 9.6 (Local Presence).

2. Each Schedule entry sets out the following elements:

1. sector refers to the sector for which the entry is made;
2. sub-sector, where referenced, refers to the specific subsector for which the entry is made;
3. obligations concerned specifies the obligations referred to in paragraph 1 that, pursuant to Article 8.12.2 (Non-Conforming Measures) and Article 9.7.2 (Non-Conforming Measures), do not apply to the sectors, subsectors or activities listed in the entry;
4. description sets out the scope or nature of the sectors, subsectors or activities covered by the entry to which the reservation applies; and
5. existing measures, where specified, identifies, for transparency purposes, a non-exhaustive list of existing measures that apply to the sectors, subsectors or activities covered by the entry.

3. In accordance with Article 8.12.2 (Non-Conforming Measures) and Article 9.7.2 (Non-Conforming Measures), the articles of this Agreement specified in the obligations concerned element of an entry do not apply to the sectors, subsectors and activities identified in the description element of that entry.

ANNEX II. Schedule of australia

Introductory notes

1. For the avoidance of doubt, in relation to education services, nothing in Chapter 8 (Investment) or Chapter 9 (Cross-Border Trade in Services) shall interfere with:

1. the ability of individual education and training institutions to maintain autonomy in admissions policies (including in relation to considerations of equal opportunity for students and recognition of credits and degrees), in setting tuition rates and in the development of curricula or course content;
2. non-discriminatory accreditation and quality assurance procedures for education and training institutions and their programmes, including the standards that must be met;
3. government funding, subsidies or grants, such as land grants, preferential tax treatment and other public benefits, provided to education and training institutions; or
4. the need for education and training institutions to comply with non-discriminatory requirements related to the establishment and operation of a facility in a particular jurisdiction.

2. For greater certainty, where Australia has more than one entry in its Schedule that could apply to a measure, each entry is to be read independently, and is without prejudice to the application of any other entry to the measure.

Sector: All

Obligations Concerned: Market Access (Article 9.5)

Description: Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure with respect to the supply of a service by the presence of natural persons, subject to the provisions of Chapter 11 (Temporary Entry for Business Persons), that is not inconsistent with Australia's obligations under Article XVI of GATS.

Sector: All

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3) Performance Requirements (Article 8.10) Senior Management and Boards of Directors (Article 8.11) Market Access (Article 9.5) Local Presence (Article 9.6)

Description: Investment and Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure according preferences to any Indigenous person or organisation or providing for the favourable treatment of any Indigenous person or organisation in relation to acquisition, establishment or operation of any commercial or industrial undertaking in the service sector.

Australia reserves the right to adopt or maintain any measure with respect to investment that accords preferences to any Indigenous person or organisation or providing for the favourable treatment of any Indigenous person or organisation.

For the purpose of this entry, an Indigenous person means a person of the Aboriginal and Torres Strait Islander peoples.

Existing Measures: Legislation and ministerial statements at all levels of government including Australia's foreign investment policy, and the Native Title Act 1993 (Cth).

Sector: All

Obligations Concerned: Market Access (Article 9.5)

Description: Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure at the regional level of government that is not inconsistent with Australia's obligations under Article XVI of GATS.

For the purposes of this entry, Australia's Schedule of Specific Commitments is modified as set out in Appendix A.

For the purposes of this entry, the reference to Australia's commitments under Article XVI of GATS includes commitments made under that Article after the date of entry into force of this Agreement.

Sector: All

Obligations Concerned: National Treatment (Article 8.4) Performance Requirements (Article 8.10)

Description: Investment (1)

Australia reserves the right to adopt or maintain any measure with respect to a proposed acquisition by a foreign person (2) of an interest in Australian land (3), other than developed commercial land or land that is used wholly and exclusively for a primary production business.

Existing Measures: Australia's Foreign Investment Framework, which comprises Australia's Foreign Investment Policy, the Foreign Acquisitions and Takeovers Act 1975 (Cth); Foreign Acquisitions and Takeovers Regulation 2015 (Cth); Foreign Acquisitions and Takeovers Fees Imposition Act 2015 (Cth); Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015 (Cth); Financial Sector (Shareholdings) Act 1998 (Cth); and MinisterialStatements.

Sector: All

Obligations Concerned: National Treatment (Article 8.4) Most-Favoured-Nation Treatment (Article 8.5) Performance Requirements (Article 8.10) Senior Management and Boards of Directors (Article 8.11)

Description: Investment (4)

Australia reserves the right to adopt or maintain any measure with respect to the proposed acquisition by a foreign person (5) of an interest in agricultural land (6) where the cumulative value of agricultural land owned by the foreign person alone or together with associates, including the proposed acquisition, is above $A 15 million;

Australia reserves the right to adopt or maintain any measure with respect to the proposed acquisition by a foreign person of an interest in an agribusiness where the cumulative value of the interest held by the foreign person in that agribusiness7, alone or together with associates, including the proposed acquisition, is above $A 55 million.

Existing Measures: Australia's Foreign Investment Framework, which comprises Australia's Foreign Investment Policy, the Foreign Acquisitions and Takeovers Act 1975 (Cth); Foreign Acquisitions and Takeovers Regulation 2015 (Cth); Foreign Acquisitions and Takeovers Fees Imposition Act 2015 (Cth); Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015 (Cth); Financial Sector (Shareholdings) Act 1998 (Cth); and Ministerial Statements.

Sector: All

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3) Performance Requirements (Article 8.10) Senior Management and Boards of Directors (Article 8.11) Market Access (Article 9.5)

Description: Investment and Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure with respect to:

1. the devolution to the private sector of services provided in the exercise of governmental authority at the date of entry into force of this Agreement; and
2. the privatisation of government owned entities or assets.

Sector: All

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3) Most-Favoured-Nation Treatment (Article 8.5 and Article 9.4)

Performance Requirements (Article 8.10) Senior Management and Boards of Directors (Article 8.11) Market Access (Article 9.5) Local Presence (Article 9.6)

Description: Investment and Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure8 with respect to the provision of law enforcement and correctional services, and the following services9 to the extent that they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health10, child care, public utilities, public transport and public housing.

Sector: Broadcasting and Audio-visual ServicesAdvertising ServicesLive Performance (11)

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3)Most-Favoured-Nation Treatment (Article 8.5 and Article 9.4) (12) Performance Requirements (Article 8.10)Market Access (Article 9.5) Local Presence (Article 9.6)13

Description: Investment and Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure (14) with respect to:

1. transmission quotas for local content on free-to-air commercial television broadcasting services;
2. non-discriminatory expenditure requirements for Australian production on subscription television broadcasting services;
3. transmission quotas for local content on free-to-air radio broadcasting services;
4. other audio-visual services transmitted electronically, in order to make Australian audio-visual content reasonably available to Australian consumers; (15)
5. spectrum management and licensing of broadcasting services (16); and
6. subsidies or grants for investment in Australian cultural activity.

This entry does not apply to foreign investment restrictions in the broadcasting and audio-visual services sector.

Existing Measures: Broadcasting Services Act 1992 (Cth)Radiocommunications Act 1992 (Cth)Income Tax Assessment Act 1936 (Cth) Income Tax Assessment Act 1997 (Cth)Screen Australia Act 2008 (Cth)Broadcasting Services (Australian Content) Standard 2005 Children's Television Standards 2009Television Program Standard 23 – Australian Content in AdvertisingCommercial Radio Codes of Practice and GuidelinesCommunity Broadcasting Codes of Practice

Sector: Broadcasting and Audio-visual Services

Obligations Concerned: Most-Favoured-Nation Treatment (Article 8.5 and Article 9.4)Performance Requirements (Article 8.10)

Description: Investment and Cross-Border Trade in Services

Australia reserves the right to adopt or maintain, under the International Co-production Program, preferential co-production arrangements for film and television productions. Official co-production status, which may be granted to a co-production produced under these co-production arrangements, confers national treatment on works covered by these arrangements.

Existing Measures: International Co-production Program

Sector: Recreational, Cultural and Sporting Services (other than audio-visual services)

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3)Most-Favoured-Nation Treatment (Article 8.5 and Article 9.4) Performance Requirements (Article 8.10) Senior Management and Boards of Directors (Article 8.11)Market Access (Article 9.5) Local Presence (Article 9.6)

Description: Investment and Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure with respect to the creative arts (17), (18) Indigenous traditional cultural expressions and other cultural heritage.(19)

Sector: Distribution Services

Obligations Concerned: Market Access (Article 9.5)

Description: Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure with respect to wholesale and retail trade services of tobacco products, alcoholic beverages or firearms.

Sector: Education Services

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3)Most-Favoured-Nation Treatment (Article 8.5 and Article 9.4) Performance Requirements (Article 8.10) Senior Management and Boards of Directors (Article 8.11) Market Access (Article 9.5) Local Presence (Article 9.6)

Description: Investment and Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure with respect to primary education.

Sector: Gambling and Betting

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3) Performance Requirements (Article 8.10) Senior Management and Boards of Directors (Article 8.11) Market Access (Article 9.5) Local Presence (Article 9.6)

Description: Investment and Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure with respect to gambling and betting.

Existing Measures: Legislation and ministerial statements including the Interactive Gambling Act 2001 (Cth).

Sector: Maritime Transport

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3) Performance Requirements (Article 8.10)Senior Management and Boards of Directors (Article 8.11)Market Access (Article 9.5)Local Presence (Article 9.6)

Description: Investment and Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure with respect to maritime cabotage services and offshore transport services. (20)

Existing Measures: Customs Act 1901 (Cth) Fair Work Act 2009 (Cth)Seafarers' Rehabilitation and Compensation Act 1992 (Cth) Occupational Health and Safety (Maritime Industry) Act 1993 (Cth)Income Tax Assessment Act 1936 (Cth) Coastal Trading (Revitalising Australian Shipping) Act 2012 (Cth) Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012 (Cth) Shipping Reform (Tax Incentives) Act 2012 (Cth)

Sector: Transport Services

Obligations Concerned: National Treatment (Article 8.4) Senior Management and Boards of Directors (Article 8.11)

Description: Investment

Australia reserves the right to adopt or maintain any measure with respect to investment in federal leased airports.

Existing Measures: Airports Act 1996 (Cth) Airports (Ownership-Interests in Shares) Regulations 1996 (Cth)Airports Regulations 1997 (Cth)

Sector: Services Related to Air Transportation

Obligations Concerned: National Treatment (Article 9.3) Most-Favoured-Nation Treatment (Article 9.4) Market Access (Article 9.5)Local Presence (Article 9.6)

Description: Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure relating to the provision of ground handling services or airport operation services, as defined in Article 9.1 (Definitions), but only to the extent that Peru adopts or maintains any measure that does not allow Australian persons to provide such services under similar circumstances to Peruvian persons.

Sector: All

Obligations Concerned: Most-Favoured-Nation Treatment (Article 8.5 and Article 9.4)

Description: Investment and Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to any service supplier or investor under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement. (21)

Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to any service supplier or investor of a Pacific Island Forum member state under any international agreement in force or signed after the date of entry into force of this Agreement.

Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to any service supplier or investor under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:

1. aviation;
2. fisheries; or
3. maritime matters, including salvage.

Appendix A.

For the following sectors, Australia's commitments under Article XVI of GATS as set out in Australia's Schedule of Specific Commitments under the GATS (GATS/SC/6, GATS/SC/6/Suppl.1 GATS/SC/6/Suppl.1/Rev.1, GATS/SC/6/Suppl.2, GATS/SC/6/Suppl.3 and GATS/SC/6/Suppl.4) are improved as described below.

Sector/subsector	**Market Access Improvement**
BUSINESS SERVICES	
Professional Services	
Legal services (22)	
Legal advisory and representational services in domestic law (host-country law)	Replace existing commitments with no limitations for modes 1-3. Mode 4 is unbound except as indicated in the horizontal section.
Legal advisory services in foreign law and international law and (in relation to foreign and international law only) legal arbitration and conciliation/mediation services.	Replace existing commitments with no limitations for modes 1 and 2, mode 3 is limited as follows: In South Australia, natural persons practising foreign law may only join a local law firm as a consultant and may not enter into partnership with or employ local lawyers. Mode 4 is unbound except as indicated in the horizontal section.
Research and development services	
Research and Development (R&D) services on natural sciences and engineering (CPC 851)	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Interdisciplinary research and development (R&D) services (CPC 853)	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Other business services	
Landscape architectural services (CPC 86742)	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Technical testing and analysis services (CPC 8676)	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
	Insert new commitments with no limitations for modes 1-3, mode 4 is

Site preparation work for mining (CPC 5115)	unbound except as indicated in the horizontal section.
Services incidental to manufacturing (CPC 884 and 885, except for 88442).	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Related scientific and technical consulting services (CPC 8675)	
- Geological, geophysical and other scientific prospecting services (CPC 86751)	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
- Subsurface surveying services (CPC 86752)	Replace existing commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section, for the whole sector.
- Map-making services (CPC 86754)	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment) (CPC 633 and 8861-8866).	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Packaging services (CPC 8760)	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Specialty design services (CPC 87907)	Replace existing commitments on Interior Design with no limitations for modes 1-3, mode 4 is unbound as indicated in the horizontal section.
COMMUNICATION SERVICES	
This covers the following sub-sectors from the Services Sectoral Classification List (W/120) and related CPC numbers 7521,7522,7523, 7529**: 1. voice telephone services; 2. packet-switched data transmission services; 3. circuit-switched data transmission services; 4. telex services; 5. telegraph services; 6. facsimile services; 7. private leased circuit services; and 8. other: digital cellular services, paging services, personal communications services, trunked radio system services, mobile data services, services covered by the Broadcasting Services Act 1992 (Cth) are excluded from the basic telecommunications sector.	Replace existing commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.

CONSTRUCTION AND RELATED ENGINEERING SERVICES	
Other	
Other general construction work for civil engineering (CPC 511, 515 and 518)	Insert new commitments with no limitations for modes 2 and 3, mode 1 unbound*, mode 4 is unbound except as indicated in the horizontal section.
DISTRIBUTION SERVICES	
Commission agents' services (CPC 62111, 62112**, 62113-62118)	Includes services by commission agents, commodity brokers, auctioneers and other wholesalers who trade on behalf of others, of food products, and non-alcoholic beverages. Excludes tobacco, alcoholic beverages, and firearms.
Wholesale trade services (CPC 6221**, 6222**, 6223 - 6228**) Wholesale trade services of agricultural raw materials and live animals. Excludes wholesale trade services of unmanufactured tobacco, tobacco products, alcoholic beverages and firearms. Retailing services (CPC 631**, 63211**, 63212, 6322, 6323, 6324, 6325, 6329**, 61112, 6113, 6121)	Replace existing commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Australia's commitments in relation to these services extend to cover the following services not listed in relevant CPC classifications: inventory management of goods, assembling, sorting and grading of goods, breaking bulk, re-distribution and delivery services for retailing. Does not cover dispensing of pharmaceuticals, retailing services of alcoholic beverages, tobacco products and firearms.	Replace existing commitments with no limitations for modes 2 and 3, mode 1 unbound except for mail order, mode 4 is unbound except as indicated in the horizontal section.
ENVIRONMENTAL SERVICES (23), (24)	
Wastewater management (CPC 9401)	
This covers removal, treatment and disposal of household, commercial and industrial sewage and other waste waters including tank emptying and cleaning, monitoring, removal and treatment of solid wastes.	Replace existing commitments on "Sewage services" with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Waste management (CPC 9402, 9403)	
This covers hazardous and non-hazardous waste collection, treatment and disposal (including incineration, composting and landfill); sweeping and snow removal, and other sanitation services	Replace existing commitments on "Refuse disposal services" and "Sanitation and similar services" with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.

Protection of ambient air and climate (CPC 9404)	
This covers services at power stations or industrial complexes to remove air pollutants; monitoring of mobile emissions and implementation of control systems or reduction programmes.	Insert new commitments with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Remediation and clean-up of soil and water (CPC 9406**) (25)	
This covers cleaning-up systems in situ or mobile, emergency response, clean-up and longer term abatement of spills and natural disasters; and rehabilitation programmes (e.g. recovery of mining sits) including monitoring.	Insert new commitments with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Noise and vibration abatement (CPC 9405)	
This covers monitoring programmes, and installation of noise reduction systems and screens.	Insert new commitments with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Protection of biodiversity and landscape (CPC 9406**) (26)	
This covers ecology and habitat protection and promotion of forests and promoting sustainable forestry.	Insert new commitments with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Other environmental and ancillary services (CPC 9409)	
This covers other environment protection services, including services related to environmental impact assessment.	Insert new commitments with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
TOURISM AND TRAVEL RELATED SERVICES	
Travel agencies and tour operators services (CPC 7471)	Replace existing commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
TRANSPORT SERVICES	
Air transport services	
Airport operation services, as defined in Article 9.1 (Definitions)	Insert new commitments with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Ground handling services, as defined in Article 9.1 (Definitions)	Insert new commitments with no limitations on modes 1-3, mode 4 is

	unbound except as indicated in the horizontal section.
Aircraft repair and maintenance services during which an aircraft is withdrawn from service, excluding so-called line maintenance (CPC 8868**) This covers establishments mainly engaged in periodic maintenance and repair (routine and emergency) of airframes (including wings, doors, control surfaces) avionics, engines and engine components, hydraulics, pressurisation and electrical systems and landing gear. Includes painting, other fuselage surface treatments and repair of flight-deck (and other) transparencies. Further includes rotary and glider aircraft.	Replace existing commitment on "Maintenance and repair of aircraft" with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Selling and marketing of air transport services, as defined in Article 9.1 (Definitions) This commitment confirms, without extending, the application to air transport services of the following: 1. travel agencies and tour operator services (CPC 7471); 2. market research and public opinion polling services (CPC 864); 3 advertising services (CPC 87110, 87120**, 87190), Covers services by advertising agencies in creating and placing advertising in periodicals, newspapers, radio and television for clients; outdoor advertising, media representation i.e. sale of time and space for various media; distribution and delivery of advertising material or samples. Does not include production or broadcast/screening of advertisements for radio, television or cinema; and 4. distribution: Commission agents' services (CPC 62113-62118); Wholesale trade services (CPC 6223-6228); Retailing services (as described in this Appendix); and Franchising (CPC 8929). Excludes unmanufactured tobacco, tobacco products, alcoholic beverages and firearms.	Insert new commitments with no limitations on mode 1 except that Retailing services (CPC 631**, 63211**, 63212, 61112, 6113, 6121, 6322, 6323, 6324, 6325, 6329**) are unbound except for mail order, no limitations on modes 2 and 3. Mode 4 is unbound except as indicated in the horizontal section.
Rail transportation services	
Freight transportation (CPC 7112);Pushing and towing services (CPC 7113); andSupporting services for rail transport services (CPC 743).	Insert new commitments with no limitations for modes 1 and 2. Mode 3 is limited as follows:1. below track: Most rail-track networks in Australia are government owned although much is leased to private operators. There are no restrictions on the right to establish new networks but access to public land may not be guaranteed. 2. above track (rail transport services (such as trains) that operate over the rail-track infrastructure): none except that access to rail infrastructure is allocated under pro-competitive principles for safety, efficiency and the long term interests of users. Mode 4 is unbound except as indicated in the horizontal section.
Road transportation services	
Freight transportation (CPC 7123)	

- Transportation of frozen or refrigerated goods (CPC 71231)	Insert new commitments with no limitations for mode 1.
- Transportation of bulk liquids or gases (CPC 71232)	Insert new commitments with no limitations for mode 1.
- Transportation of containerized freight (CPC 71233)	Insert new commitments with no limitations for mode 1.
- Transportation of furniture (CPC 71234)	Insert new commitments with no limitations for mode 1.
- Mail transportation (CPC 71235)	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
- Freight transportation by man- or animal-drawn vehicles (CPC 71236)	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
- Transportation of other freight (CPC 71239)	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Rental of commercial vehicles with operator (CPC 7124)	Insert new commitments with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section
Services auxiliary to all modes of transport	
Storage and warehouse services (CPC 742 excluding maritime) Australia's commitment in relation to these services extends to cover the following services in addition to those listed in CPC 742: distribution centre services and materials handling and equipment services such as container station and depot services (excluding maritime).	Replace existing commitments with no limitations for modes 2 and 3, mode 1 is unbound*, mode 4 is unbound except as indicated in the horizontal section.
Freight transport agency services (CPC 748 excluding maritime) Australia's commitment in relation to these services extends to cover the following services in addition to those listed in CPC 748: customs agency services and load scheduling services (excluding maritime).	Replace existing commitments on "freight forwarding" with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Other supporting and auxiliary transport services (CPC 749 excluding maritime) Australia's commitment in relation to these services extends to cover the following services in addition to those listed under CPC 749: container leasing and rental services (excluding maritime).	Replace existing commitments on "pre-shipment inspections" with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.

* Unbound due to lack of technical feasibility.** Indicates that the service specified constitutes only a part of the total range

of activities covered by the CPC concordance.

(1) The terms in this entry should be interpreted in accordance with Australia's Foreign Investment Framework as at the date of entry into force of this Agreement.

(2) The term "foreign person" has the meaning set out in the Foreign Acquisitions and Takeovers Act 1975 (Cth)and Foreign Acquisitions and Takeovers Regulation 2015 (Cth).

(3) The terms "Australian land" and "interest in Australian land" have the meaning set out in the Foreign Acquisitions and Takeovers Act 1975 (Cth)and Foreign Acquisitions and Takeovers Regulation 2015 (Cth).

(4) The terms in this entry should be interpreted in accordance with Australia's Foreign Investment Framework as at the date of entry into force of this Agreement.

(5) The term "foreign person" has the meaning set out in the Foreign Acquisitions and Takeovers Act 1975 (Cth)and Foreign Acquisitions and Takeovers Regulation 2015 (Cth).

(6) The term "agricultural land" has the meaning set out in the Foreign Acquisitions and Takeovers Act 1975 (Cth)and Foreign Acquisitions and Takeovers Regulation 2015 (Cth).

(7) The term "agribusiness" has the meaning set out in the Foreign Acquisitions and Takeovers Act 1975 (Cth)and Foreign Acquisitions and Takeovers Regulation 2015 (Cth).

(8) For greater certainty, measures adopted or maintained with respect to the provision of services covered by this entry include measures for the protection of personal information relating to health and children.

(9) This includes any measure with respect to: the collection of blood and its components; the distribution of blood and blood-related products, including plasma derived products; plasma fractionation services; and the procurement of blood and blood-related products and services.

(10) For greater certainty, the subsidies programmes under Australia's Pharmaceutical Benefits Scheme and Medicare Benefits Scheme, or successor programmes, are not subject to Article 8.4 (National Treatment), Article 8.5 (Most-Favoured-Nation Treatment), and Article 8.11 (Senior Management and Boards of Directors), in accordance with Article 8.12(6)(b) (Non-Conforming Measures).

(11) Applies only in respect of subparagraph (f).

(12) Applies only to the treatment as local content of New Zealand programmes or productions.

(13) Applies only in respect of subparagraph (e) and in respect of the licensing of services covered by subparagraph (d).

(14) For greater certainty, this includes the right to adopt or maintain measures under subparagraphs (a) through (f) with respect to the services supplied by the Australian Broadcasting Corporation and the Special Broadcasting Service Corporation.

(15) Any such measure will be implemented in a manner that is consistent with Australia's commitments under Article XVI and Article XVII of GATS.

(16) In respect of subparagraph (e), Australia's reservation applies only in respect of Article 9.5 (Market Access) and Article 9.6 (Local Presence).

(17) For the purposes of this entry, "creative arts" means: the performing arts (including live theatre, dance and music); visual arts and craft; literature (other than literary works transmitted electronically); and hybrid art works, including those which use new technologies to transcend discrete art form divisions. For live performances of the "creative arts", as defined, this entry does not extend beyond subsidies and grants for investment in Australian cultural activity.

(18) Notwithstanding this, such measures shall be implemented in a manner that is consistent with Australia's commitments under Article XVI and Article XVII of GATS, as applicable.

(19) For the purposes of this entry, "cultural heritage" means: ethnological, archaeological, historical, literary, artistic, scientific or technological moveable or built heritage, including the collections which are documented, preserved and exhibited by museums, galleries, libraries, archives and other heritage collecting institutions.

(20) For the purposes of this entry, "cabotage" is defined as the transportation of passengers or goods between a port located in Australia and another port located in Australia and traffic originating and terminating in the same port located in Australia. "Offshore transport" refers to shipping services involving the transportation of passengers or goods between a

port located in Australia and any location associated with or incidental to the exploration or exploitation of natural resources of the continental shelf of Australia, the seabed of the Australian coastal sea and the subsoil of that seabed.

(21) For greater certainty, this right extends to any differential treatment accorded pursuant to a subsequent review or amendment of the relevant bilateral or multilateral international agreement. For the avoidance of doubt, this includes measures adopted or maintained under any existing or future protocol to the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA), done at Canberra on 28 March 1983.

(22) For the purposes of this entry: "legal advisory services" – includes provision of advice to and consultation with clients in matters, including transactions, relationships and disputes, involving the application or interpretation of law; participation with or on behalf of clients in negotiations and other dealings with third parties in such matters; and preparation of documents governed in whole or in part by law, and the verification of documents of any kind for purposes of and in accordance with the requirements of law. Does not include advice, consultation and documentation services performed by service suppliers entrusted with public functions, such as notary services, or services provided by patent or trade mark attorneys.

"legal representational services" – includes preparation of documents intended to be submitted to courts, administrative agencies, and other duly constituted official tribunals in matters involving the application and interpretation of law; and appearance before courts, administrative agencies, and other duly constituted official tribunals in matters involving the application and interpretation of the specified body of law. (Note: The inclusion of representational services before administrative agencies and other duly constituted official tribunals within the context of legal services does not necessarily mean that a licensed lawyer must supply such services in all cases. The precise scope of services subject to licensing requirements is subject to the discretion of the relevant regulatory authority.) Does not include documentation services performed by service suppliers entrusted with public functions, such as notary services, or services provided by patent or trade mark attorneys.

"legal arbitration, conciliation and mediation services" – preparation of documents to be submitted to, preparation for and appearance before, an arbitrator, conciliator or mediator in any dispute involving the application and interpretation of law. Does not include arbitration, conciliation and mediation services in disputes for which the law has no bearing which fall under services incidental to management consulting. As a sub-category, international legal arbitration, conciliation and mediation services refer to the same services when the dispute involves parties from two or more countries.

"domestic law (host country law)" – the law of Australia.

"foreign law" – the law of the territories of WTO Members and other countries other than the law of Australia."international law" – includes law established by international treaties and conventions, as well as customary law.

For the purposes of these definitions:

"arbitration" is taken to mean a process in which the parties to a dispute present arguments and evidence to a dispute resolution practitioner (the arbitrator) who makes a determination.

"mediation" is taken to mean a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted.

"conciliation" is taken to mean a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the conciliator), identify the issues in dispute, develop options, consider alternatives and endeavour to reach an agreement. The conciliator may have an advisory role on the content of the dispute or the outcome of its resolution, but not a determinative role. The conciliator may advise on or determine the process of conciliation whereby resolution is attempted, and may make suggestions for terms of settlement, give expert advice on likely settlement terms, and may actively encourage the participants to reach an agreement.

(23) Australia's commitments on environmental services exclude the provision of water for human use, including water collection, purification and distribution through mains.

(24) The classification scheme adopted on environmental services is largely based upon the scheme proposed by the European Communities (EC) in 2000 (see pages 6-7 of the EC paper "GATS 2000: Environmental Services", S/CSS/W/38), but see especially footnote 22 above.

(25) This commitment and Australia's commitment on protection of biodiversity and landscape combine to cover the entirety of CPC 9406 services.

(26) This commitment and Australia's commitment on remediation and clean-up of soil and water combine to cover the entirety of CPC 9406 services.

ANNEX II. Schedule of peru

Sector: All

Sub-Sector:

Obligations Concerned: Most-Favoured-Nation Treatment (Article 8.5 and Article 9.4)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

Peru reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving: aviation; fisheries; or maritime matters, (1) including salvage.

Existing Measures:

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.4) Most-Favoured-Nation Treatment (Article 8.5) Senior Management and Boards of Directors (Article 8.11)

Description: Investment

Peru, when selling or disposing of its equity interests in, or the assets of, an existing state enterprise (2) or an existing governmental entity, may prohibit or impose limitations on the ownership of such interests or assets, and on the ability of owners of such interests or assets to control any resulting enterprise, by investors of the other Party or of a non-Party or their investments. With respect to such a sale or other disposition, Peru may adopt or maintain any measure relating to the nationality of individuals appointed to senior management positions or members of the board of directors.

For the purposes of this entry, "state enterprise" means an enterprise owned or controlled through ownership interests by Peru and includes an enterprise established after the date of entry into force of this Agreement solely for the purposes of selling or disposing of equity interests in, or the assets of, an existing state enterprise or governmental entity.

Existing Measures:

Sector: Indigenous Communities, Peasant, Native and Minority Affairs

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3) Most-Favoured-Nation Treatment (Article 8.5 and Article 9.4) Performance Requirements (Article 8.10) Senior Management and Boards of Directors (Article 8.11) Local Presence (Article 9.6)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities and ethnic groups. For the purposes of this entry, "ethnic groups" means indigenous, native, and peasant communities.

Existing Measures:

Sector: Fishing and Services Related to Fishing

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3) Most-Favoured-Nation Treatment (Article 8.5 and Article 9.4) Performance Requirements (Article 8.10)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure relating to artisanal fishing.

Existing Measures:

Sector: Cultural Industries

Sub-Sector:

Obligations Concerned: Most-Favoured-Nation Treatment (Article 8.5 and Article 9.4)

Description: Investment and Cross-Border Trade in Services

For the purposes of this entry, "cultural industries" means:

the publication, distribution, or sale of books, magazines, periodical publications, or printed or electronic newspapers, excluding the printing and typesetting of any of the foregoing;

the production, distribution, sale, or display of recordings of movies or videos;

the production, distribution, sale, or display of music recordings in audio or video format;

the production and presentation of theatre arts3;

the production and exhibition of visual arts;

the production, distribution, or sale of printed music scores or scores readable by machines;

the design, production, distribution and sale of handicrafts; or

radiobroadcasts aimed at the public in general, as well as all radio, television, and cable television-related activities, satellite programming services, and broadcasting networks.

Peru reserves the right to adopt or maintain any measure giving preferential treatment to persons of other countries pursuant to any existing or future bilateral or multilateral international agreement regarding cultural industries, including audio-visual cooperation agreements.

For greater certainty, Article 8.4 (National Treatment) and Article 8.5 (Most-Favoured-Nation Treatment) and Chapter 9 (Cross-Border Trade in Services) shall not apply to government support for the promotion of cultural industries.

Existing Measures:

Sector: Handicraft Industries

Sub-Sector: Obligations Concerned:

National Treatment (Article 8.4 and Article 9.3)

Performance Requirements (Article 8.10)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure relating to the design, distribution, retailing or exhibition of handicrafts that are identified as Peruvian handicrafts.

Performance requirements shall in all cases be consistent with the Agreement on Trade-Related Investment Measures (TRIMs Agreement).

Existing Measures:

Sector: Audio-Visual Industry

Sub-Sector:

Obligations Concerned:

Performance Requirements (Article 8.10) National Treatment (Article 9.3)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure whereby a specified percentage (up to 20 per cent) of the total cinematographic works shown on an annual basis in cinemas or exhibition rooms in Peru consist of Peruvian cinematographic works. In establishing such percentage, Peru shall take into account factors including national cinematographic production, the existing exhibition infrastructure in the country and attendance.

Existing Measures:

Sector: Jewellery Design Theatre Arts Visual Arts Music Publishing

Sub-Sector:

Obligations Concerned: Performance Requirements (Article 8.10)

National Treatment (Article 9.3)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure conditioning the receipt or continued receipt of government support for the development and production of jewellery design, theatre arts, visual arts, music and publishing on the recipient achieving a given level or percentage of domestic creative content.

Existing Measures:

Sector: Audio-Visual Industry Publishing Music

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3)

Most-Favoured-Nation Treatment (Article 8.5 and Article 9.4)

Description: Investment and Cross-Border Trade in Services

Peru may adopt or maintain any measure that affords a person of the other Party the treatment that is afforded by that Party to Peruvian persons in the audio-visual, publishing and music sectors.

Existing Measures:

Sector: Social Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3) Most-Favoured-Nation Treatment (Article 8.5 and Article 9.4) Performance Requirements (Article 8.10) Senior Management and Boards of Directors (Article 8.11) Local Presence (Article 9.6)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent that they are social services established or maintained for a public purpose: income security and insurance, social security, social welfare, public education, public training, health, childcare, and public utilities.

Existing Measures:

Sector: Public Supply of Potable Water

Sub-Sector:

Obligations Concerned: Local Presence (Article 9.6)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure in relation to the public supply of potable water.

For greater certainty, nothing in this entry shall affect the ability of a foreign enterprise to supply bottled water.

Existing Measures:

Sector: Public Sewage Services

Sub-Sector:

Obligations Concerned: Local Presence (Article 9.6)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure in relation to public sewage services.

Existing Measures:

Sector: Telecommunications Services

Sub-Sector:

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.4) Local Presence (Article 9.6)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure in relation to the granting of a concession for the installation, operation and exploitation of public telecommunication services.

Existing Measures:

Sector: Education Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.3) Most-Favoured-Nation Treatment (Article 9.4) Local Presence (Article 9.6)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure relating to natural persons who supply educational services, including teachers and auxiliary personnel rendering educational services in basic and superior education including technical and productive training (educación técnico productiva) as well as other people who supply services related to education including sponsors of educational institutions of any level or stage of the educational system.

Existing Measures:

Sector: Transportation Services

Sub-Sector: Road transportation services

Obligations Concerned: National Treatment (Article 9.3)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure that authorises only Peruvian natural or juridical persons to supply land transportation of persons or merchandise inside the territory of Peru (cabotage). For this, the enterprises shall use vehicles registered in Peru.

Existing Measures:

Sector: Transportation

Sub-Sector: International road transportation services

Obligations Concerned: National Treatment (Article 8.4 and Article 9.3) Most-Favoured-Nation Treatment (Article 8.5 and Article 9.4) Local Presence (Article 9.6)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure relating to the international land transportation of cargo or passengers in border areas.

Additionally, Peru reserves the right to adopt or maintain the following limitations for the supply of international land transportation from Peru:

the service supplier must be a Peruvian natural or juridical person;

the service supplier must have a real and effective domicile in Peru; and

in the case of juridical persons, the service supplier must be legally constituted in Peru and more than 50 per cent of its capital stock must be owned by Peruvian nationals and its effective control must be by Peruvian nationals.

Existing Measures:

Sector: Transportation

Sub-Sector: Air transportation services

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.4) Local Presence (Article 9.6)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure relating to ground-handling services.

Existing Measures:

Sector: Transportation

Sub-Sector: Air transportation services

Obligations Concerned: National Treatment (Article 9.3) Most-Favoured-Nation Treatment (Article 9.4) Local Presence (Article 9.6)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure relating to airport operation services.

Existing Measures:

Sector: All

Sub-Sector:

Obligations Concerned: Market Access (Article 9.5)

Description: Cross-Border Trade in Services

For the purposes of this entry:

"(a)" refers to the supply of a service from the territory of the other Party into the territory of Peru;

"(b)" refers to the supply of a service in the territory of the other Party by a person of that Party to a person of Peru;

"(c)" refers to the supply of a service in the territory of Peru by an investor of the other Party or by a covered investment; and

"(d)" refers to the supply of a service by a national of the other Party in the territory of Peru.

"none" means no limitations or conditions on the application of Article 9.5 (Market Access).

Peru reserves the right to adopt or maintain any measure relating to Article 9.5 (Market Access), except for the following sectors and sub-sectors subject to the limitations and conditions listed below:

Legal services: For (a) and (c): None, except that the number of notary positions depends of the number of inhabitants of each city. For (b): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Accounting, auditing and bookkeeping services: For (a) and (c):None, except that auditing societies shall be constituted only and exclusively by public accountants licensed and resident in the country and duly qualified by the Association of Public Accountants of Lima (Colegio de Contadores Públicos de Lima). No partner may be a member of another auditing society in

Peru. For (b): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Taxation services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Architectural services: For (a), (b) and (c): None, except that for temporary registration, non-resident foreign architects must have a contract of association with a Peruvian architect residing in Peru. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Engineering services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Integrated engineering services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Urban planning and landscape architectural services: For (a), (b) and (c): None, except that to obtain temporary registration, non-resident foreign architects must have a contract of association with a Peruvian architect residing in Peru. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Veterinary services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Services provided by midwives, nurses, physiotherapists, and paramedical personnel: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Computer and related services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Research and development services on natural sciences: For (a), (b) and (c): None, except that a permission of operation may be required and the competent authority may require the inclusion in the expedition of one or more representatives of the Peruvian pertinent activities, in order to participate and understand the research and its scope. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Research and development services on social sciences and humanities: For (a), (b) and (c): None, subject to the respective authorisations of the competent authority. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Interdisciplinary research and development services:For (a), (b) and (c): None, except that a permission of operation may be required. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Real estate services involving owned or leased property or on a fee or contract basis: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Rental/leasing services without crew/operators, related to vessels, aircraft, any other transport equipment, and other machinery and equipment:

For (a), (b) and (c): None, except that:

A "national ship owner" or "national ship enterprise" is understood as a natural person of Peruvian nationality or juridical person constituted in Peru, with its principal domicile and real and effective headquarters in Peru, whose business is to provide water transportation services in national traffic or cabotage4 or international traffic and who is the owner or lessee under a financial lease or a bareboat charter, with an obligatory purchase option, of at least one Peruvian flag merchant vessel and that has obtained the relevant Operation Permit from the General Aquatic Transport Directorate (Dirección General de Transporte Acuático).

Cabotage is exclusively reserved to Peruvian flagged merchant vessels owned by a national ship owner or national ship enterprise or leased under a financial lease or a bareboat charter, with an obligatory purchase option, except that:

up to 25 per cent of the transport of hydrocarbons in national waters is reserved for the ships of the Peruvian Navy; and

foreign-flagged vessels may be operated exclusively by national ship owners or national ship enterprises for a period of three years for water transportation exclusively between Peruvian ports or cabotage when such an entity does not own its own vessels or lease vessels under financial leasing or bareboat charter with purchase obligation. That period may be renewed for up to one year.

For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Advertising services: For (a), (b) and (c): None, except that: commercial advertising produced in Peru, must use at least 80 per cent national artists. National artists shall receive no less than 60 per cent of the total payroll for wages and salaries paid to artists. The same percentages shall govern the work of technical personnel involved in commercial advertising. For (d): No commitments, except as indicated in the Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante) and Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Market research and public opinion polling services, management consulting services, services related to management consulting, and technical testing and analysis services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Services related to agriculture, hunting and forestry: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Services incidental to fishing: solely advisory and consulting services relating to fishing:For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Services related to mining, placement and supply services of personnel, and investigation and security services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Related scientific and technical consulting services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Maintenance and repair of equipment (not including vessels, aircraft, or other transport equipment), building-cleaning services, photographic services, packing services and convention services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratacion de Trabajadores Extranjeros).

Printing and publishing services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Other (CPC 8790) except: credit rating services (CPC 87901); jewellery design services; design services of handicrafts that are identified as Peruvian handicrafts; and other business services not elsewhere classified (CPC 87909): For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Express delivery services: For (a) and (b): No commitments. For (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Advisory services on telecommunications:For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

National or international long-distance telecommunications services: For (a), (b), (c) and (d): Peru reserves the right to adopt or maintain any measure that is not inconsistent with Peru's obligations under Article XVI of GATS.

Carrier telecommunications services, private telecommunications services and value-added services5:

For (a), (b), (c): None, except for the obligation of obtaining a concession, authorisation, registry or any other title which Peru considers convenient to grant in order to habilitate the suppliers to provide these services. The juridical persons constituted under Peruvian law can be eligible for a concession.

Call-back, understood as being the offer of telephone services for the realisation of attempts to make calls originating in the country with the objective of obtaining a return call with an invitation to dial, coming from a basic telecommunications network located outside the national territory, is prohibited.

International traffic shall be routed through the installations of a company holding a concession or other permission for

operation granted by the Ministry of Transport and Communications (Ministerio de Transportes y Comunicaciones).

Interconnection among private services is prohibited.

For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Commission agents services (except hydrocarbons): For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Retailing services, except alcohol and tobacco: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Wholesale trade services (except hydrocarbons): For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Franchising: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Construction services: solely consulting services related to construction: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Higher Education Services6: For (a): No commitments, except for subjects that are part of a program that mainly takes place outside Peru. For (b): None. For (c) and (d): no commitments.

Environmental services: solely consulting services:For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Hotels and restaurants (including catering), travel agencies and tour operators services, and tourist guide services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Entertainment services (including theatre, live bands, and circus services), news agencies services, libraries, archives, museums, and other cultural and sporting services: For (a), (b) and (c): None, except that:

any domestic theatre arts7 and visual arts production and any domestic artistic live performance must be comprised of at least 80 per cent national artists. National artists shall receive no less than 60 per cent of the total payroll for wages and salaries paid to artists. The same percentages shall govern the work of technical personnel involved in artistic activities.

a foreign circus may stay in Peru with the original cast for a maximum of 90 days. This period may be extended for the same period of time. If it is extended, the foreign circus will include a minimum of 30 per cent Peruvian nationals as artists and 15 per cent Peruvian nationals as technicians. The same percentages shall apply to the payroll of salaries and wages.

For (d): No commitments, except as indicated in the Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante) and Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Exploitation of facilities for competitive and recreational sports: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Recreational parks services:For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Road transport: rental of commercial vehicles with operator, maintenance and repair of road transport equipment, and exploitation of roads, bridges and tunnels services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Services auxiliary to all transport: cargo handling services; storage and warehouse services; freight transport agency services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Aircraft repair and maintenance services: For (a): No commitments. For (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

Selling and marketing of air transport services, and computer reservation system services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de

Trabajadores Extranjeros).

Airport operation and ground handling services: For (a) and (b): No commitments. For (c): None. For (d): No commitments, except as indicated in the Law for the Recruitment of Foreign Workers (Ley para la Contratación de Trabajadores Extranjeros).

For greater certainty, nothing in this entry shall be inconsistent with Peru's commitments under Article XVI of GATS.

Existing Measures:

(1) For greater certainty, "maritime matters" includes transport by lakes and rivers.

(2) An illustrative list of existing state enterprises in Peru can be found at the following website: www.fonafe.gob.pe.

(3) The term "theatre arts" means live performances or presentations such as drama, dance or music.

(4) For greater certainty, water transportation includes transportation by lakes and rivers.

(5) Value-added services shall be defined in accordance with Peruvian legislation.

(6) For greater certainty, these commitments do not affect any regulation or mandatory requirements related to the recognition of certificates or degrees and they shall not be construed to exempt any student from meeting any applicable requirement to practice a profession or otherwise engage in business activities.

(7) The term "theatre arts" means live performances or presentations such as drama, dance or music.

ANNEX III. Explanatory notes

1. The Schedule of a Party to this Annex sets out:

1. headnotes or introductory notes that limit or clarify the commitments of a Party with respect to the obligations described in paragraphs 1(b) and 1(c);
2. in Section A, pursuant to Article 10.10.1, a Party's existing measures that are not subject to some or all of the obligations imposed by:Article 10.3;Article 10.4;Article 10.5;Article 10.6; orArticle 10.9; and
3. Article 10.3;
4. Article 10.4;
5. Article 10.5;
6. Article 10.6; or
7. Article 10.9; and
8. in Section B, pursuant to Article 10.10.2 (Non-Conforming Measures), the specific sectors, subsectors or activities for which a Party may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:Article 10.3;Article 10.4;Article 10.5;Article 10.6; orArticle 10.9.
9. Article 10.3;
10. Article 10.4;
11. Article 10.5;
12. Article 10.6; or
13. Article 10.9.

2. Each Schedule entry in Section A sets out the following elements:

1. Sector refers to the sector for which the entry is made;
2. Sub-Sector, where referenced, refers to the specific subsector for which the entry is made;
3. Obligations Concerned specifies the obligations referred to in paragraph 1(b) that, pursuant to Article 10.10.1(a), do not apply to the listed measures as indicated in the headnote or introductory note for each Party's Schedule;
4. Level of Government indicates the level of government maintaining the listed measures;
5. Measures identifies the laws, regulations or other measures for which the entry is made. A measure cited in the Measures element:means the measure as amended, continued or renewed as of the date of entry into force of this Agreement; andincludes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and
6. means the measure as amended, continued or renewed as of the date of entry into force of this Agreement; and
7. includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and
8. Description, as indicated in the headnote or introductory note for each Party's Schedule, either sets out the non-

conforming measure or provides a general non-binding description of the measure for which the entry is made.

3. Each Schedule entry in Section B sets out the following elements:

1. Sector refers to the sector for which the entry is made;
2. Sub-Sector, where referenced, refers to the specific subsector for which the entry is made;
3. Obligations Concerned specifies the obligations referred to in paragraph 1(c) that, pursuant to Article 10.10.2, do not apply to the sectors, subsectors or activities listed in the entry;
4. Level of Government indicates the level of government maintaining the listed measures;
5. Description sets out the scope or nature of the sectors, subsectors or activities covered by the entry to which the reservation applies; and
6. Existing Measures identifies, for transparency purposes, a non-exhaustive list of existing measures that apply to the sectors, subsectors or activities covered by the entry.

4. Parties recognise that measures falling under exceptions applicable to this Chapter, such as those in Article 10.11 (Exceptions), need not be scheduled. Nevertheless, the Parties may have listed measures that fall within applicable exceptions. For greater certainty, the listing of a measure in a Party's Schedule to Annex III is without prejudice to whether that measure or any other measure:

1. adopted or maintained by the Party; or
2. adopted or maintained by any other Party,

is covered by exceptions such as those in Article 10.11.

ANNEX III. Schedule of australia

INTRODUCTORY NOTES

1. Commitments under Chapter 10 (Financial Services) are undertaken subject to the limitations and conditions set forth in these headnotes and the Schedule below.

2. To clarify Australia's commitment with respect to Article 10.5 (Market Access for Financial Institutions), juridical persons supplying financial services and constituted under the laws of Australia are subject to non-discriminatory limitations on juridical form. (1)

3. Article 10.10.1(c) (Non-Conforming Measures) shall not apply to non-conforming measures relating to Article 10.5(b) (Market Access for Financial Institutions).

4. Description sets out the non-conforming measure for which the entry is made.

5. For Section A of this Schedule, in accordance with Article 10.10.1 (Non- Conforming Measures), the Articles specified in the Obligations Concerned element of an entry shall not apply to the non-conforming measures identified in the Description element of that entry.

(1) For example, partnerships and sole proprietorships are generally not acceptable juridical forms for authorised depository institutions in Australia. This headnote is not itself intended to affect, or otherwise limit, a choice by a financial institution of the other Party between branches or subsidiaries.

Section A.

Sector: Financial Services

Sub-Sector: Banking and other financial services (excluding insurance)

Obligation Concerned: National Treatment (Article 10.3)Market Access for Financial Institutions (Article 10.5)

Level of Government: Central

Measures: Banking Act 1959 (Cth)Payment Systems (Regulation) Act 1998 (Cth)

Description: A branch of a foreign bank that is authorised as a deposit taking institution in Australia (foreign ADI) is not permitted to accept initial deposits (and other funds) from individuals and non-corporate institutions of less than $A250,000.

A representative office of a foreign bank is not permitted to undertake any banking business, including advertising for deposits, in Australia. Such a representative office is only permitted to act as a liaison point.

Sector: Financial Services

Sub-Sector: All

Obligation Concerned: Senior Management and Boards of Directors (Article 10.9)

Level of Government: Central

Measures: Corporations Act 2001 (Cth)Corporations Regulations 2001 (Cth)

Description: At least one director of a private company must be ordinarily resident in Australia.

At least two directors of a public company must be ordinarily resident in Australia.

Sector: Financial Services

Sub-Sector: All

Obligation Concerned: National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4)Market Access for Financial Institutions (Article 10.5)Cross-Border Trade (Article 10.6)Senior Management and Boards of Directors (Article 10.9)

Level of Government: Regional

Measures: All existing non-conforming measures at the regional level of government.

Description: All existing non-conforming measures at the regional level of government.

Sector: Financial Services

Sub-Sector: Banking and other financial services (excluding insurance)

Obligation Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Commonwealth Banks Act 1959 (Cth)

Description: Liabilities of the Commonwealth Bank, previously Commonwealth Government-owned, are covered by transitional guarantee arrangements.

Sector: Financial Services

Sub-Sector: Life insurance services

Obligation Concerned: National Treatment (Article 10.3)Market Access for Financial Institutions (Article 10.5)

Level of Government: Central

Measures: Life Insurance Act 1995 (Cth)

Description: Approval of non-resident life insurers is restricted to subsidiaries incorporated under Australian law.

Section B.

Sector: Financial Services

Sub-Sector: All

Obligation Concerned: National Treatment (Article 10.3)

Level of Government: Central and regional

Description:

Australia reserves the right to adopt or maintain any measure with respect to the guarantee by government of government-

owned entities whose operations include the provision of financial services, including guarantees related to the privatisation of such entities.

(1) For example, partnerships and sole proprietorships are generally not acceptable juridical forms for authorised depository institutions in Australia. This headnote is not itself intended to affect, or otherwise limit, a choice by a financial institution of the other Party between branches or subsidiaries.

ANNEX III. Schedule of peru

INTRODUCTORY NOTES

1. Commitments under Chapter 10 (Financial Services), in the sector and sub-sectors listed in this Schedule, are undertaken subject to the limitations and conditions set forth in these headnotes and in the Schedule below.

2. To clarify the commitment of Peru with respect to Article 10.5 (Market Access for Financial Institutions), juridical persons supplying financial services constituted under the laws of Peru are subject to non-discriminatory limitations on juridical form (1)

3. Article 10.10.1(c) (Non-Conforming Measures) shall not apply to those non- conforming measures relating to Article 10.5(b) (Market Access for Financial Institutions).

4. For Section A of this Schedule, Description provides a general non-binding description of the measure for which the entry is made.

(1) For example, limited liability partnerships and sole proprietorships with limited liability are generally not acceptable juridical forms for financial institutions in Peru. This introductory note does not affect, or otherwise limit, a choice by an investor of the other Party between branches and subsidiaries.

Section A.

Sector: Financial Services

Sub-Sector: Banking and other financial services (excluding insurance)

Obligation Concerned: Market Access for Financial Institutions (Article 10.5)

Level of Government: Central

Measures: General Law of the Financial and Insurance Systems and Organic Law of the Superintendency of Banking and Insurance (Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros), Law N° 26702 and its amendments

Description: A financial institution of the other Party providing banking services and established in Peru through a branch must assign to its branch certain capital, which must be located in Peru. In addition to measures that Peru may impose consistent with Article 10.11.1 (Exceptions) the operations of the branch are limited by its capital located in Peru.

Sector: Financial Services

Sub-Sector: Insurance and insurance-related services

Obligation Concerned: Market Access for Financial Institutions (Article 10.5)

Level of Government: Central

Measures: General Law of the Financial and Insurance Systems and Organic Law of the Superintendency of Banking and Insurance (Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros), Law N° 26702 and its amendments

Description: A financial institution of the other Party providing insurance or insurance-related services and established in Peru through a branch must assign to its branch certain capital, which must be located in Peru. In addition to measures that Peru may impose consistent with Article 10.11.1 (Exceptions) the operations of the branch are limited by its capital located in Peru.

Sector: Financial Services

Sub-Sector: Banking and other financial services (excluding insurance)

Obligation Concerned: Cross-Border Trade (Article 10.6)

Level of Government: Central

Measures: Securities Market Law (Ley del Mercado de Valores),approved by Legislative Decree N° 861 and its amendments, Articles 280, 333, 337 and Seventeenth Final ProvisionGeneral Law of the Financial and Insurance Systems and Organic Law of the Superintendency of Banking and Insurance (Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros), Law N° 26702 and its amendments, Articles 136 and 296

Description: Financial institutions constituted under the laws of Peru and debt securities offered in a primary or secondary public offering in the territory of Peru must be rated by credit rating companies constituted under the laws of Peru. They may also be rated by other credit rating agencies, but only in addition to the mandatory rating.

Sector: Financial Services

Sub-Sector: Banking and other financial services (excluding insurance)

Obligation Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: General Law of the Financial and Insurance Systems and Organic Law of the Superintendency of Banking and Insurance(Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros), Law N° 26702 and its amendmentsLaw Establishing the Banco Agropecuario(Ley de Creación del Banco Agropecuario), Law N° 27603 and its amendmentsLaw Establishing the Corporación Financiera de Desarrollo (COFIDE) (Ley de Creación de la Corporación Financiera de Desarrollo (COFIDE)), Law Decree N° 206 and its amendments and Law Nº 25382Law Establishing the Banco de la Nación(Ley de Creación del Banco de la Nación), Law N° 16000 and its amendmentsLaw Nº 28579, (Ley de Conversión del Fondo Hipotecario de la Vivienda - Fondo MIVIVIENDA a Fondo MIVIVIENDA S.A.)and its amendmentsLaw N° 10769 (Creando la Caja Municipal de Crédito Popular de Lima) and its amendmentsSupreme Decree N° 157-90-EF (Norman Funcionamiento en el País de las Cajas Municipales de Ahorro y Crédito) and its amendmentsSupreme Decree Nº 07-94-EF (Aprueban el Estatuto del Banco de la Nación) and its amendments

Description: Peru may grant advantages or exclusive rights, without limitation, to one or more of the following financial entities, as long as they are partially or fully owned by the State: Corporación Financiera de Desarrollo (COFIDE), Banco de la Nación, Banco Agropecuario, Fondo Mivivienda, Cajas Municipales de Ahorro y Crédito, and the Caja Municipal de Crédito Popular.

Examples of such advantages are the following: (2)

The Banco de la Nación and Banco Agropecuario are not required to diversify their risk; and

The Cajas Municipales de Ahorro y Crédito may directly sell collateral they repossess in cases of loan default, in accordance with pre-established procedures.

Sector: Financial Services

Sub-Sector: Banking and other financial services (excluding insurance)

Obligations Concerned: Market Access for Financial Institutions (Article 10.5)

Level of Government: Central

Measures: Securities Market Law (Ley del Mercado de Valores), approved by Legislative Decree N° 861 and its amendments, Articles 130, 167, 185, 204, 223, 259, 269, 270, 302, 324, 354 and Seventeenth Final ProvisionLegislative Decree N° 862, Law of the Investment Funds and their Management Corporations (Ley de Fondos de Inversión y sus Sociedades Administradoras) and its amendments; Article 12Law N° 26361,Law on Commodities Exchange(Ley sobre Bolsas de Productos) and its amendments, Articles 2, 9 and 15Law Decree N° 22014 (Empresas Administradoras de Fondos Colectivos se constituirán como Sociedades Anónimas), Article 1Consolidated Text of the Law of Private Pension Funds(Texto Organico Ordenado de la Ley del Sistema Privado de Administración de Fondos de Pensiones), approved by Supreme Decree N° 054-97-EF, Article 13; and the Regulation of the Consolidated Text of the Law of Private Pension Funds(Reglamento del Texto

Ãnico Ordenado de la Ley del Sistema Privado de Administración de Fondos de Pensiones), approved by Supreme Decree Nº 004-98-EF, Article 18

Description: Financial institutions established in Peru to supply financial services in the securities or commodities markets or financial services related to asset management, including pension fund managers, must be constituted under the laws of Peru. Therefore, financial institutions of the other Party established in Peru to supply these financial services may not be established as branches or agencies.

Sector: Financial Services

Sub-Sector: All

Obligation Concerned: Cross-Border Trade (Article 10.6)

Level of Government: Central

Measures: General Law of the Financial and Insurance Systems and Organic Law of the Superintendency of Banking and Insurance (Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros), Law N° 26702 and its amendments

Description: Creditors domiciled in Peru have legal preference with regard to the assets located in Peru of a branch of a foreign financial institution, in case of liquidation of the financial institution or its branch in Peru.

(2) For greater certainty, and notwithstanding the location of this entry within Section A of this Schedule, the Parties understand that the advantages or exclusive rights that Peru may grant to the specified entities are not limited only to the cited examples.

Section B.

Sector: Financial Services

Sub-Sector: Insurance and insurance-related services

Obligation Concerned: Cross-Border Trade (Article 10.6)

Letter terminating the agreement between australia and the republic of peru on the promotion and protection of investments

THE HON STEVEN CIOBO MP

Minister for Trade, Tourism and Investment

12 February 2018

The Honourable Mr. Eduardo Ferreyros Kiippers Minister of Foreign Trade and Tourism Peru

Dear Minister

In connection with the signing on this date of the Peru-Australia Free Trade Agreement (PAFTA), I have the honour to confirm the following understanding reached between the Government of Australia and the Government of Peru during the course of the negotiation of Chapter Eight (Investment), Chapter Nine (Cross-Border Trade in Services) and Chapter Ten (Financial Services):

In the interests of greater transparency, this is to notify the Government of Peru that upon the entry into force of PAFTA, the Government of Australia will initiate a review of the existing non-conforming measures at the regional level of government in relation to Annex I - Investment and Cross-Border Trade in Services and Annex III - Financial Services of PAFTA. The Government of Australia will inform the Government of Peru of the results of this review, including a list of individual non-conforming measures at the regional level of government, within 12 months of the date of entry into force of PAFTA.

I look forward to your letter in reply confirming that your Government shares this understanding.

Yours sincerely

Steven Ciobo

Parliament House Canberra ACT 2600 Australia Telephone (02) 6277 7420 E-mail Trade.Minister@dfat.gov.au

12 February 2018

The Honourable Mr. Steven Ciobo Minister for Trade, Tourism, and Investment Australia

Dear Minister,

I have the honour to acknowledge receipt of your Note of 12 February 2018, which reads as follows:

"In connection with the signing on this date of the Peru-Australia Free Trade Agreement (PAFTA), I have the honour to confirm the following understanding reached between the Government of Australia and the Government of Peru during the course of the negotiation of Chapter Eight (Investment), Chapter Nine (Cross-Border Trade in Services) and Chapter Ten (Financial Services):

In the interests of greater transparency, this is to notify the Government of Peru that upon the entry into force of PAFTA, the Government of Australia will initiate a review of the existing non-conforming measures at the regional level of government in relation to Annex I - Investment and Cross-Border Trade in Services and Annex III - Financial Services of PAFTA. The Government of Australia will inform the Government of Peru of the results of this review, including a list of individual non-conforming measures at the regional level of government, within 12 months of the date of entry into force of PAFTA."

I have the further honour to confirm that the above reflects the agreement reached between the Government of Peru and the Government of Australia during the course of negotiations on PAFTA, and your Note and this Note of confirmation in reply, both equally authentic in the Spanish and English languages, shall constitute an agreement between the Government of Peru and the Government of Australia.

THE HON STEVEN CIOBO MP

Minister for Trade, Tourism and Investment

The Honourable Ms. Lucia Cayetana Aljovin Gazzani

Minister of PERU

Foreign Affairs

Dear Minister

In connection with the signing on 12 February 2018 of the Peru-Australia Free Trade Agreement ("PAFTA"), I have the honour to confirm the following agreement reached between the Government of Australia and the Government of Peru (the "Parties") during the course of the negotiations on PAFTA:

(a) without prejudice to paragraph (b), the Parties agree to terminate the "Agreement between Australia and the Republic of Peru on the Promotion and Protection of Investments", done in Lima on 7 December 1995 (the "IPPA"™), on the date of entry into force of PAFTA (the "date of termination");

(b) the IPPA shall continue to apply for a period of five years from the date of termination to any investment (as defined in Article 1(1)(a) of the IPPA) which was made before the entry into force of PAFTA with respect to any act or fact that took place or any situation that existed before the date of termination;

(c) notwithstanding paragraph (b), an investor (as defined in Article 1(1)(c) of the IPPA) may only submit a claim under Article 13 of the [PPA (Settlement of disputes between a Party and an investor of the other Party) within three years of the date of termination; and

(d) the Parties agree that the provisions for termination of the IPPA contained in this Note shall, at the date of termination, supersede the provisions for termination contained in Article 16 of the IPPA.

I have the honour to propose that this Note and your Note of confirmation in reply, both equally authentic in the English and the Spanish languages, shal] constitute an agreement between the Parties ("the agreement of termination"), which shall enter into force on the date of termination.

Prior to the entry into force of this agreement of termination. each Party shall notify the other Party through diplomatic channels that its domestic requirements have been completed.

Yours sincerely

Steven Ciobo

MINISTERIO DE RELACIONES EXTERIORES DESPACHO MINISTERIAL

Nota RE (DPE) N° 6/4

Lima

The Honourable Mr. Steven Ciobo Minister for Trade, Tourism and Investment

Australia

Dear Minister,

I have the honour to acknowledge receipt of your Note of 26 January 2018, which reads as follows:

"In connection with the signing on 12 February 2018 of the Peru-Australia Free Trade Agreement ("PAFTA"), I have the honour to confirm the following agreement reached between the Government of Australia and the Government of Peru (the "Parties") during the course of the negotiations on PAFTA:

(a) without prejudice to paragraph (b), the Parties agree to terminate the "Agreement between Australia and the Republic of Peru on the Promotion and Protection of Investments", done in Lima on 7 December 1995, (the "IPPA"), on the date of entry into force of PAFTA (the "date of termination"):

(b) the IPPA shall continue to apply for a period of five years from the date of termination to any investment (as defined in Article 1(1)(a) of the IPPA) which was made before the entry into force of PAFTA with respect to any act or fact that took place or any situation that existed before the date of termination;

(c) notwithstanding paragraph (b), an investor (as defined in Article 1(1)(c) of the IPPA) may only submit a claim under Article 13 of the IPPA (Settlement of disputes between a Party and an investor of the other Party) within three years of the date of termination; and

(d) the Parties agree that the provisions for termination of the IPPA contained in this Note shall, at the date of termination, supersede the provisions for termination contained in Article 16 of the IPPA.

I have the honour to propose that this Note and your Note of confirmation in reply, both equally authentic in the English and the Spanish languages, shall constitute an agreement between the Parties ("the agreement of termination"), which shall enter into force on the date of termination.

Prior to the entry into force of this agreement of termination, each Party shall notify the other Party through diplomatic channels that its domestic requirements have been completed."

MINISTERIO DE RELACIONES EXTERIORES DESPACHO MINISTERIAL

I have the further honour to confirm that the above reflects the agreement reached between the Government of Peru and the Government of Australia during the course of negotiations on PAFTA, and your Note and this Note of confirmation in reply, both equally authentic in the Spanish and English languages, shall constitute an agreement between the Government of Peru and the Government of Australia.

Yours sincerely,

Cayetana Aljovin

Minister of Foreign Affairs