# FREE TRADE AGREEMENT BETWEEN THE REPUBLIC OF PANAMA AND THE REPUBLIC OF PERU

PREAMBLE

The Government of the Republic of Peru, on the one hand, and the Government of the Republic of Panama, on the other hand, determined to:

STRENGTHEN the special ties of friendship and cooperation between them and promote regional economic integration;

PROPOSE the creation of a larger and more secure market for goods and services produced in their respective territories;

PROMOTE comprehensive economic development to reduce poverty;

PROMOTE the creation of new employment opportunities and improve working conditions and living standards in their respective territories;

ESTABLISH clear and mutually beneficial rules governing their commercial exchange; ENSURE a predictable legal and commercial framework for business and

investment;

RECOGNIZE that the promotion and protection of investments of one Party in the territory of the other Party will contribute to an increase in the flow of investments and stimulate mutually beneficial business activity;

AVOID distortions in their reciprocal trade;

PROMOTE the competitiveness of its companies in global markets;

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

STIMULATE creativity and innovation and promote trade in the innovative sectors of their economies;

PROMOTE transparency in international trade and investment; PRESERVE its ability to safeguard the public welfare; and

DEVELOP their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization and other treaties to which they are party,

HAVE AGREED as follows:

# Chapter 1. Initial Provisions and General Definitions

## Section A. Initial Provisions

### Article 1.1. Establishment of the Free Trade Zone

The Parties to this Agreement, in accordance with Article XXIV of the WTO General Agreement on Tariffs and Trade 1994 and Article V of the WTO General Agreement on Trade in Services, establish a free trade area.

### Article 1.2. Objectives

The objectives of this Treaty are as follows:

(a) stimulate the expansion and diversification of trade between the Parties;

(b) eliminate unnecessary barriers to trade and facilitate the cross-border movement of goods and services between the Parties;

(c) promote conditions of free competition in the free trade zone;

(d) increase investment opportunities in the territories of the Parties;

(e) adequately and effectively protect and enforce intellectual property rights in the territory of each Party, taking into consideration the balance of rights and obligations arising therefrom; and

(f) create effective procedures for the implementation and enforcement of this Agreement, for its joint administration, and for preventing and resolving disputes.

### Article 1.3. Relationship to other International Agreements

1. The Parties confirm the rights and obligations existing between them under the WTO Agreement and other agreements to which the Parties are parties.

2. In the event of any inconsistency between this Agreement and the agreements

referred to in paragraph 1, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.

### Article 1.4. Scope of Obligations

Each Party shall ensure the adoption of all measures necessary to give effect to the provisions of this agreement in its territory and at all levels of government.

## Section B. General Definitions

### Article 1.5. Definitions of General Application

For the purposes of this Agreement, unless otherwise specified:

WTO TRIPS Agreement means the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (1);

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

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

GATS of the WTO means the General Agreement on Trade in Services. of the WTO;

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

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

WTO Agreement means the Marrakesh Agreement Establishing the World Trade Organization, dated April 15, 1994;

WTO Agreement on Safeguards means the WTO Agreement on Safeguards;

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

customs duty means any import tax or duty and a charge of any kind levied in connection with the importation of goods, including any form of surcharge or additional charge on imports, except any:

(a) charge equivalent to an internal tax established in accordance with Article III.2 of GATT 1994;

(b) antidumping duty or countervailing measure to be applied in accordance with a Party's domestic law and in accordance with Article VI of the GATT 1994, the WTO Agreement on Subsidies and Countervailing Measures and the WTO Agreement on Implementation of Article VI of GATT 1994; or

(c) duty or other charge related to the importation, proportional to the cost of the services rendered;

Chapter means the first two digits of the Harmonized System Tariff Classification Number;

Commission means the Free Trade Commission established pursuant to Article 20.1 (The Free Trade Commission);

procurement means the process by which a government acquires 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 with a view to use in the production or supply of goods or services for commercial sale or resale;

days means calendar days;

corporation means any entity organized or organized under applicable law, whether or not for profit, or whether privately or governmentally owned, including corporations, trusts, partnerships, sole proprietorships, joint ventures, and other forms of associations;

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

measure includes any law, regulation, procedure, requirement or practice; merchandise means any product, article or material;

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

originating good means that it qualifies under the rules of origin set out in Chapter 3 (Rules of Origin and Origin Procedures);

national means a natural person who has the nationality of a Party in accordance with Annex 1.5 or a permanent resident of a Party;

central level of government means the national level of government; regional level of government means for:

(a) Peru: regional government in accordance with the Political Constitution of the Republic of Peru and other applicable legislation; and

(b) Panama: "regional level of government" is not applicable; local level of government means for:

(a) Peru: provincial and local municipalities;

(b) Panama: municipalities;

WTO means the World Trade Organization;

Party means the Republic of Peru, on the one hand, and the Republic of Panama, on the other hand, jointly referred to as the Parties;

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

person means a natural person or a company; Harmonized System (HS) means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes and Chapter Notes;

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

territory means, for a Party, the territory of that Party as set out in Annex 1.5.

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

## Annex 1.5. Country-Specific Definitions

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

Natural person who has the nationality of a Party means:

(a) with respect to the Republic of Peru, Peruvians by birth, naturalization or option in accordance with the provisions of the Political Constitution of Peru and the relevant domestic legislation; and

(b) with respect to the Republic of Panama, a Panamanian as defined in Articles 9, 10 and 11 of the Political Constitution of the Republic of Panama.

Territory (2) means:

(a) with respect to the Republic of Peru, the continental territory, the islands, th e maritime spaces and the air space that covers them, under sovereignty or sovereign rights and jurisdiction of Peru, in accordance with its Internal Law and International Law; and

(b) with respect to the Republic of Panama, the land, maritime and air space under its sovereignty; the exclusive economic zone and the continental shelf, over which it exercises sovereign rights and jurisdiction, in accordance with its national legislation and international law.

(2) For greater certainty, the definition of and references to "territory" contained in this Agreement apply solely for purposes of determining the geographic scope of application of this Agreement.

# Chapter 2. Access to Commodity Markets

## Article 2.1. Scope of Application

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

# Section A. National Treatment

## Article 2.2. National Treatment

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

2. Paragraph 1 shall not apply to the measures listed in Annex 2.2 (National Treatment and Import and Export Restrictions).

# Section B. Tariff Elimination

## Article 2.3. Tariff Elimination

1. Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty, or adopt any new customs duty, on a good originating in the other Party.

2. Except as otherwise provided in this Agreement, each Party shall eliminate its customs duties on originating goods of the other Party in accordance with Annex 2.3 (Tariff Elimination Program).

3. The tariff elimination program provided for in this Chapter shall not apply to used goods, including goods that are identified as such in headings or subheadings of the Harmonized System. Used goods also include goods that have been rebuilt, remanufactured, remanufactured or any other similar appellation given to goods that after having been used have undergone some process to restore them to their original characteristics or specifications, or to restore them to the functionality they had when new. (1)

4. At the request of any Party, consultations shall be held to consider the improvement of tariff conditions for market access in accordance with the Annex. 2.3 (Tariff Elimination Program).

5. Notwithstanding Article 20.1 (Free Trade Commission), an agreement between the Parties to improve the tariff conditions for market access of a good shall prevail over any customs duty or category defined in Annex 2.3 (Tariff Elimination Program) for such good, when approved by the Parties in accordance with their applicable legal procedures.

6. For greater certainty, a Party may:

(a) increase a customs tariff to the level set forth in Annex 2.3 (Tariff Elimination Program), following a unilateral reduction; or

(b) maintain or increase a customs tariff when authorized by the WTO Dispute Settlement Body.

(1) For greater certainty, this paragraph shall not apply to recycled goods.

# Section C. Special Regimes

## Article 2.4. Exemption from Customs Duties

1. No Party may adopt a new exemption from customs duties, or extend the application of an existing exemption from customs duties with respect to existing beneficiaries, or extend it to new beneficiaries, where the exemption is conditioned, explicitly or implicitly, on compliance with a performance requirement.

2. No Party may condition, explicitly or implicitly, the continuation of any existing customs duty exemption on compliance with a performance requirement.

## Article 2.5. Temporary Admission of Goods

1. Each Party shall authorize temporary admission free of customs duties, irrespective of their origin, for the following goods:

(a) professional equipment, including equipment for scientific research, medical activities, press or television, computer software, and broadcasting and cinematographic equipment necessary for the exercise of the business, trade or profession of a person who qualifies for temporary entry under the legislation of the importing Party;

(b) goods intended for display or demonstration at exhibitions, fairs, meetings or similar events;

(c) commercial samples, films and advertising recordings; and

(d) goods admitted for sporting purposes.

2. Each Party shall, at the request of the person concerned and for reasons deemed valid by its customs authority, extend the time limit for temporary admission beyond the period initially fixed in accordance with national legislation.

3. No Party may condition the temporary duty-free admission of a good referred to in paragraph 1 on conditions other than that the good:

(a) is used solely by or under the personal supervision of a national or resident of the other Party in the exercise of that person's business, trade, professional or sporting activity;

(b) is not subject to sale or lease while it remains in its territory;

(c) is accompanied by a bond or guarantee in an amount not exceeding the charges that would otherwise be due for entry or final importation, refundable at the time of departure of the merchandise;

(d) is susceptible to identification when exported;

(e) is exported upon the departure of the person referred to in subparagraph (a), or within such period corresponding to the purpose of the temporary admission as the Party may establish, or within one year, unless extended;

(f) is admitted in quantities no greater than is reasonable in accordance with its intended use; and

(g) otherwise admissible in the territory of the Party in accordance with its national legislation.

4. If any of the conditions imposed by a Party under paragraph 3 have not been met, the Party may apply the customs duty and any other charges that would normally be due on the good plus any other charges or penalties established in accordance with its national legislation.

5. Each Party shall adopt and maintain procedures to facilitate the expeditious clearance of goods admitted under this Article. To the extent possible, such procedures shall provide that when such merchandise accompanies a national or resident of the other Party who is requesting temporary entry, the merchandise shall be cleared simultaneously with the entry of that national or resident.

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

7. Each Party shall provide that the importer or other person responsible for a good admitted pursuant to this Article shall not be liable for the inability to export the good upon presentation of evidence satisfactory to the importing Party that the good has been destroyed within the original time limit fixed for temporary admission or any lawful extension.

8. Subject to Chapters 12 (Investment) and 13 (Cross-Border Trade in Services), no Party may:

(a) prevent a vehicle or container used in international transportation that has entered its territory from the other Party from leaving its territory by any route that has a reasonable relation to the prompt and economic departure of such vehicle or container;

(b) The port of entry of the vehicle or container is different from the port of departure, and no bond shall be required and no penalty or charge shall be imposed solely on the grounds that the port of entry of the vehicle or container is different from the port of departure;

(c) condition the release of any obligation, including any bond, which it has applied to the entry of a vehicle or container into its territory, to its departure through a particular port; and

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

9. For the purposes of paragraph 8, vehicle means a truck, tractor-trailer, tractor, trailer or trailer unit, locomotive or wagon or other railway equipment.

### Article 2.6. Goods Reimported after Repair or Alteration

1. No Party may apply a customs duty to a good, regardless of its origin, that has been re-entered into its territory after having been temporarily exported from its territory to the territory of the other Party to be repaired or altered, regardless of whether such repairs or alterations could have been carried out in the territory of the Party from which the good was exported for repair or alteration.

2. Neither Party may apply a customs duty to a good that, regardless of its origin, is temporarily admitted from the territory of the other Party for the purpose of being repaired or altered.

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

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

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

### Article 2.7. Free Lmport from Tariffs Tariffs for Commercial Samples of Insignificant Value and Printed Advertising Materials

Each Party shall allow duty-free importation of 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) such samples are imported solely for the purpose of soliciting orders for goods or services supplied from the territory of the other Party or a non Party; or

(b) such advertising materials are imported in packages containing not more than one printed copy each and that neither the materials nor the packages are part of a larger consignment.

## Section D. Non-Tariff Measures

### Article 2.8. Import and Export Restrictions

1. Except as otherwise provided in this Agreement, no Party may adopt or maintain any non-tariff measure that prohibits or restricts the importation of any good of the other Party or the exportation or sale for export of any good destined for the territory of the other Party, except as provided in Article XI of the GATT 1994 and its interpretative notes, and to this end, Article XI of the GATT 1994 and its interpretative notes are incorporated into this Agreement and form an integral part thereof, mutatis mutandis.

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

(a) export and import price requirements, except as permitted for the enforcement of antidumping and countervailing duty provisions and undertakings;

(b) granting import licenses conditional on compliance with a performance requirement; or

(c) voluntary export restrictions incompatible with Article VI of GATT 1994, implemented under Article 18 of the SCM Agreement and Article 8.1 of the WTO Antidumping Agreement.

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 2.2 (National Treatment and Import and Export Restrictions).

4. No Party may require that, as a condition of an import commitment or for the importation of a good, a person of the other Party establish or maintain a contractual or other relationship with a distributor in its territory.

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

### Article 2.9. Import and Export Licensing

1. No Party shall maintain or adopt a measure that is inconsistent with the WTO Agreement on Import Licensing Procedures (hereinafter referred to as the WTO Import Licensing Agreement). For this purpose, the WTO Agreement on Import Licensing and its interpretative notes are incorporated into this Agreement and form an integral part thereof, mutatis mutandis.

2. Upon entry into force of this Agreement, each Party shall notify the other Party of any existing import licensing procedures.

3. Each Party shall notify the other Party of any new import licensing procedures and any modifications to its existing import licensing procedures within sixty (60) days prior to their effectiveness. A notification provided under this Article:

(a) shall include the information set forth in Article 5 of the WTO Import Licensing Agreement; and

(b) shall not prejudge whether the import licensing procedure is compatible with this Agreement.

4. No Party may apply an import licensing procedure to a good of the other Party without having provided a notification in accordance with paragraph 2 or 3, as appropriate.

5. With the objective of seeking greater transparency in reciprocal trade, the Party that establishes procedures for the processing of export licenses shall notify the other Party in a timely manner.

### Article 2.10. Administrative Burdens and Formalities

1. Each Party shall ensure, in accordance with Article VII of the GATT 1994 and its interpretative notes, that all fees and charges of any nature (other than customs duties, charges equivalent to an internal tax or other internal charges applied in accordance with Article II:2 of GATT 1994, and anti-dumping and countervailing duties), imposed on or in connection with importation or exportation, shall be limited to the approximate cost of services rendered and shall not represent an indirect protection to domestic goods or a tax on imports or exports for fiscal purposes. For this purpose, Article VIII of GATT 1994 and its interpretative notes are incorporated into this Agreement and form an integral part thereof, mutatis mutandis.

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

3. Each Party shall make available and maintain, through the Internet, an updated list of fees or charges imposed in connection with importation or exportation.

### Article 2.11. Export Taxes

Neither Party shall adopt or maintain a tax, levy or other charge on the exportation of any good to the territory of the other Party.

## Section E. Other Measures

### Article 2.12. State Trading Enterprises

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

### Article 2.13. Customs Valuation

1. The WTO Customs Valuation Agreement and any successor agreement shall govern the customs valuation rules applied by the Parties in their trade with each other. To this end, the WTO Customs Valuation Agreement and any successor agreement are incorporated into and form an integral part of this Agreement, mutatis mutandis.

2. Each Party's customs legislation shall comply with Article VII of the GATT 1994 and the WTO Customs Valuation Agreement.

## Section F. Agriculture

### Article 2.14. Scope and Coverage

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

### Article 2.15. Agricultural Export Subsidies

1. The Parties share the objective of the multilateral elimination of export subsidies on agricultural goods and should work together towards an agreement in the WTO to eliminate such subsidies and prevent their reintroduction in any form.

2. Neither Party may adopt or maintain any export subsidy on any agricultural commodity destined for the territory of the other Party.

3. If a Party considers that the other Party has failed to comply with its obligations under this Agreement, to maintain, introduce or reintroduce an export subsidy, such Party may request consultations with the other Party in accordance with Chapter 18 (Dispute Settlement) with the objective of taking measures to counteract the effect of such export subsidies and to achieve a mutually satisfactory solution.

## Section G. Institutional Arrangements Rule

### Article 2.16. Committee on Trade In Goods

1. The Parties establish a Committee on Trade in Goods (hereinafter referred to as the Committee), composed of representatives of each Party.

2. The meetings of the Committee, and of any Ad-hoc working group, shall be chaired by representatives of the Ministry of Foreign Trade and Tourism of Peru and the Ministry of Commerce and Industries of Panama, or their respective successors.

3. The functions of the Committee shall include:

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

(b) report to the Commission on the implementation and administration of this Chapter, as appropriate;

(c) promote trade in goods between the Parties, including through consultations on the acceleration of tariff elimination under this Agreement, and such other matters as may be appropriate;

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

(e) provide the Trade Capacity Building Committee with advice and recommendations on technical assistance needs in matters relating to this Chapter;

(f) review the conversion to the 2007 Harmonized System nomenclature and subsequent revisions to ensure that each Party's obligations under this Agreement are not altered, and consult to resolve any conflicts between:

(i) the Harmonized System of 2007 or later nomenclatures and Annex 2.3 (Tariff Elimination Program); and

(ii) Annex 2.3 (Tariff Elimination Program) and national nomenclatures;

(g) consult and use their best efforts to resolve any differences that may arise between the Parties on related matters with the classification of goods under the Harmonized System;

(h) establishing Ad-hoc working groups with specific mandates; and

(i) to deal with any other matter related to this Chapter.

4. Unless otherwise agreed by the Parties, the Committee shall meet at least once a year, on the date and according to the agenda previously agreed by the Parties. The Parties shall determine those cases in which extraordinary meetings may be held.

5. The meetings may be held by any means agreed upon by the Parties. When they are face-to-face, they shall be held alternately in the territory of each Party, and it shall be the responsibility of the host Party to organize the meeting.

6. All decisions of the Committee shall be made by mutual agreement.

7. The Parties establish the Ad-hoc Working Group on Trade in Agricultural Goods, which shall report to the Committee on Trade in Goods. For the purpose of discussing any matter related to market access for agricultural goods, this group shall meet at the request of a Party no later than thirty (30) days after the request is made.

# Section H. Definitions

## Article 2.17. Definitions

For the purposes of this Chapter:

consumed means

(a) actually consumed; or

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

duty-free means free of customs duties;

export license means an administrative procedure that requires the submission of an application or other documents (other than those generally required for customs clearance purposes) to the relevant administrative body as a condition precedent to export into the territory of the exporting Party;

import license means an administrative procedure that requires the submission of an application or other documents (other than those generally required for customs clearance purposes) to the relevant administrative body as a condition precedent to importation into the territory of the importing Party;

printed advertising materials means those goods classified in Chapter 49 of the Harmonized System including brochures, leaflets, printed matter, loose sheets, trade catalogs, yearbooks published by trade associations, tourist promotion materials and posters, used to promote, advertise or advertise a good or service, with the intention of advertising a good or service, and which are distributed free of charge;

goods temporarily admitted for sporting purposes means sporting equipment for use in sporting competitions, events or training in the territory of the Party into which they are admitted;

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

commercial samples of negligible value means commercial samples valued, individually or in the aggregate shipped, at not more than one United States dollar (US$ 1) or the equivalent amount in the currency of the other Party, or which are marked, torn, punctured or otherwise treated in a manner that disqualifies them for sale or for any use other than as samples;

goods intended for exhibition or demonstration include their components, auxiliary apparatus and accessories;

recycled goods means goods made entirely from goods that have reached the end of their useful life and have undergone a production process resulting in a new good;

advertising films and recordings means visual media or recorded audio materials consisting essentially of images and/or sound showing the nature or operation of goods or services offered for sale or hire by a person established or resident in

the territory of a Party, provided that such materials are suitable for exhibition to potential customers, but not for dissemination to the general public; performance requirement means a requirement of:

(a) export a certain volume or percentage of goods or services;

(b) replace imported goods with goods or services of the Party granting the exemption from customs duties or import license;

(c) that a person benefiting from a customs duty exemption or import license purchases other goods or services in the territory of the Party granting the customs duty exemption or import license, or grants a preference to domestically produced goods;

(d) that a person benefiting from an exemption from customs duties or import license produces goods or services in the territory of the Party granting the exemption from customs duties or the import license, with a certain level or percentage of domestic content; or

(e) 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,

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

(f) subsequently exported;

(g) used as material in the production of other merchandise that is subsequently exported;

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

(i) replaced by an identical or similar good that is subsequently exported;

export subsidies shall have the meaning assigned to that term in Article 1(e) of the WTO Agreement on Agriculture, including any modification of that Article; and

consular transactions means the requirements whereby goods of one Party destined for export to the territory of the other Party must first be presented 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, shipper's export declarations or any other customs documents required for or in connection with importation.

# Chapter 3. Rules of Origin and Origin Procedures

## Section A. Rules of Origin

### Article 3.1. Originating Goods

Except as otherwise provided In this Chapter, a Good Is Originating When:

(a) is wholly obtained or wholly produced in the territory of a Party, as defined in Article 3.2;

(b) is produced in the territory of one or both Parties from non-originating materials that comply with the change in tariff classification, regional value content, or other specific rules of origin contained in Annex 3 (Specific Rules of Origin); or

(c) is produced in the territory of one or both Parties exclusively from originating materials, and comply with the other provisions of this Chapter.

### Article 3.2. Wholly Obtained or Wholly Produced Goods

For purposes of Article 3.1(a), the following goods shall be considered to be wholly obtained or wholly produced in the territory of a Party:

(a) plants and plant products harvested or collected in the territory of a Party;

(b) live animals born and raised in the territory of a Party;

(c) goods obtained from live animals raised in the territory of a Party;

(d) goods obtained from hunting, trapping, fishing or aquaculture in the territory of a Party;

(e) fish, crustaceans and other marine species taken from the sea or seabed, outside the territory of a Party, by a vessel registered or recorded in a Party and flying its flag;

(f) goods produced on board factory ships registered or registered in a Party and flying its flag, exclusively from the goods referred to in subparagraph (e);

(g) minerals and other inanimate natural resources extracted from the soil, waters, seabed or subsoil in the territory of a Party;

(h) goods other than fish, crustaceans and other living marine species, obtained or extracted by a Party from marine waters, seabed or subsoil outside the territory of a Party, provided that Party has rights to exploit such marine waters, seabed or subsoil;

(i) wastes and residues derived from:

(i) manufacturing operations conducted in the territory of a Party; or

(ii) used goods collected in the territory of a Party,

provided that such waste or scrap is used only for the recovery of raw materials; and

(j) goods produced in a Party exclusively from the materials referred to in subparagraphs (a) through (i).

## Article 3.3. Regional Content Value

1. The regional value content (hereinafter RVC) of a good shall be calculated on the basis of the following method:

RCV = FOB - VMN / FOB x 100

where:

RCV: is the regional content value, expressed as a percentage;

FOB: is the free on board value of the goods, in accordance with the Article 3.35; and

VMN: is the value of non-originating materials.

2. The value of non-originating materials shall be:

(a) the CIF value at the time of importation of the material; or

(b) the first determinable price paid or payable for the non-originating materials, in the territory of the Party where the process was carried out, or transformation. When the producer of a good acquires non-originating materials within that Party, the value of such materials shall not include freight, insurance, packing costs and all other costs incurred in transporting the material from the supplier's warehouse to the place where the producer is located.

3. The values referred to above shall be determined in accordance with the WTO Customs Valuation Agreement.

## Article 3.4. Minimum Operations or Processes

1. The operations or processes that, individually or in combination, do not confer origin to a good are the following:

(a) operations to ensure the preservation of goods in good condition during transportation and storage;

(b) grouping or splitting of packages; (c) packing, unpacking or repacking operations for retail sale; or

(d) slaughter of animals.

2. The provisions of this article shall prevail over the specific rules of origin contained in Annex 3 (Specific Rules of Origin).

## Article 3.5. Intermediate Material

When an intermediate material is used in the production of a good, no account shall be taken of the non-originating materials contained in such intermediate material for purposes of determining the origin of the good.

## Article 3.6. Accumulation

1. Goods or materials originating in the territory of a Party, incorporated in a good in the territory of the other Party, shall be considered originating in the territory of that other Party.

2. A good shall be considered originating when it is produced in the territory of one or both Parties by one or more producers, provided that the good meets the requirements set out in Article 3.1 and all other applicable requirements of this Chapter.

3. Materials from Costa Rica, El Salvador, Guatemala or Honduras, incorporated in a good produced in the territory of the exporting Party, shall be considered originating in such Party, provided that there is a trade agreement in force between Peru and such countries and they comply with the specific rules of origin established in this Agreement.

4. For goods classified in Chapters 50 through 63 of the Harmonized System, paragraph 3 shall apply only when the applied customs duty is zero percent (0%) for both the cumulated materials and the final good, in accordance with the tariff elimination program established in this Agreement, as well as in the tariff elimination programs established in the trade agreements of the countries mentioned in paragraph 3 with the importing Party of the final good with which the exporting Party cumulates origin.

5. Materials that are excluded from the tariff elimination program granted by the importing Party to the countries involved in the cumulation may not be subject to the provisions set forth in paragraph 3.

6. Where each Party has established a preferential trade agreement with the same country or group of non-Party countries, goods or materials of such country or group of non-Party countries incorporated in the territory of a Party may be considered as originating in the territory of that Party, provided that the rules of origin applicable to such good or material under this Agreement are complied with.

7. For the application of paragraph 6, each Party shall have agreed with the non Party or group of non-Parties on provisions equivalent to those indicated in that paragraph, as well as on such conditions as the Parties deem necessary for the purposes of its application.

## Article 3.7. De Minimis

1. A good shall be considered originating if the value of all non-originating materials used in its production, which do not comply with the change in tariff classification pursuant to Annex 3 (Specific Rules of Origin), does not exceed ten percent (10%) of the FOB value of the good.

2. Where the good referred to in paragraph 1 is subject to a change in tariff classification and regional value content requirement, the value of all non-originating materials shall be included in the calculation of the regional value content of the good.

3. Notwithstanding paragraph 1, a good of the textile and apparel sector classified in Chapters 50 through 63 of the Harmonized System that is non-originating because certain fibers or yarns used in the production of the component of the good that determines its tariff classification do not undergo the change in tariff classification set out in Annex 3 (Specific Rules of Origin), shall be considered an originating good if the total weight of all such fibers or yarns in that component does not exceed ten percent (10%) of the total weight of such component.

4. In all cases, the merchandise shall comply with all other applicable requirements of this Chapter.

## Article 3.8. Goods and Fungible Materials

1. For the purpose of determining whether a good is originating, any good or fungible material shall be distinguished by:

(a) a physical separation of the goods or materials; or

(b) a method of inventory management recognized in the Generally Accepted Accounting Principles of the exporting Party.

2. The inventory management method selected, in accordance with paragraph 1, for a particular commodity or expendable material will continue to be used for those commodities or materials during the taxable year of the person who selected the inventory management method.

## Article 3.9. Accessories, Spare Parts and Tools

1. Accessories, spare parts or tools delivered with the good shall be treated as originating if the good is originating and shall be disregarded in determining whether all non-originating materials used in the production of the good undergo the corresponding change in tariff classification, provided that:

(a) the accessories, spare parts or tools are classified with the merchandise and have not been invoiced separately, regardless of whether each is identified separately on the invoice itself; and

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

2. If a good is subject to a regional value content requirement, the value of the accessories, spare parts or tools described in paragraph | shall be considered as originating or non-originating materials, as the case may be, when calculating the regional value content of the good.

## Article 3.10. Sets or Assortments of Goods

1. If goods are classified as a set as a result of the application of Rule 3 of the General Rules of Interpretation of the Harmonized System, the set shall be considered as originating only if each good in the set is originating, and both the set and the goods comply with all other applicable requirements of this Chapter.

2. Notwithstanding paragraph 1, a set or assortment of goods is originating if the value of all the non-originating goods in the set or assortment does not exceed fifteen percent (15%) of the FOB value of the set or assortment.

## Article 3.11. Retail Containers and Packaging Materials

1. Where retail containers and packaging materials are classified with the merchandise, the origin of such containers and packaging materials shall not be taken into account in determining the origin of the merchandise.

2. Where goods are subject to a regional value content requirement, the value of packaging materials and retail containers shall be taken into account in determining the origin of the goods, as the case may be.

## Article 3.12. Containers and Packing Materials for Shipment

Containers and packing materials for shipment shall not be taken into account in determining the origin of the goods.

## Article 3.13. Indirect Materials

1. For the purpose of determining whether a good is originating, indirect materials shall be considered as originating regardless of the place of production.

2. Indirect materials mean items used in the production of a commodity that are not physically incorporated into or part of the commodity, including:

(a) fuel, energy, catalysts and solvents;

(b) equipment, apparatus and attachments used for the verification or inspection of goods;

(c) gloves, goggles, footwear, clothing, safety equipment and attachments;

(d) tools, dies and molds;

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

(f) lubricants, greases, composites and other materials used in the production, operation of equipment or maintenance of buildings; and

(g) any other goods that are not incorporated into the goods, but whose use in the production of the goods can be adequately demonstrated to be part of that production.

## Article 3.14. Direct Transport

1. For an originating good to maintain such status, it must b e transported directly between the Parties.

2. Direct transport from the exporting Party to the importing Party shall be considered direct transport when:

(a) the good is transported without passing through the territory of a non Party; or

(b) the good transits through the territory of one or more non-Party countries, with or without transshipment or temporary storage in such non-Party countries, provided that:

(i) remains under the control of the customs authorities in the territory of a non-Party; and

(ii) do not undergo any operation other than unloading, reloading, repacking, or any other operation to keep them in good condition.

3. Compliance with the provisions set forth in paragraph 2 shall be evidenced b y the presentation to the customs authority of the importing Party of:

(a) in the case of transit or transshipment, the transport documents, such as_ the air waybill, bill of lading, or multimodal transport documents, certifying the transport from the country of origin to the importing Party, as the case may be; or

(b) in the case of storage, the transport documents, such as the air waybill, bill of lading, or multimodal transport documents, certifying the transport from the country of origin to the importing Party, as the case may be, and the documents issued by the customs authority of the country where the storage takes place.

# Section B. Origin Procedures

## Article 3.15. Proof of Origin

1. For the purposes of this Chapter, the following documents shall be considered as proofs of origin to certify that the goods qualify as originating in accordance with the provisions of this Chapter:

(a) a Certificate of Origin, as indicated in Article 3.16; or

(b) a Declaration of Origin, as indicated in Article 3.17.

2. The proofs of origin referred to in paragraph 1 shall be valid for a period of one year. (1) year from the date of issuance.

## Article 3.16. Certificate of Origin

1. In order for originating goods to qualify for preferential tariff treatment, at the time of importation, the importer must have in his possession the original of a valid Certificate of Origin issued on the basis of the format set out in Annex 3.16, and provide a copy to the customs authority of the importing Party upon request.

2. The exporter of the goods shall complete and submit a Certificate of Origin to the authorized entity, which shall be responsible for its issuance before or at the time of the date of shipment of the goods abroad, as well as in the cases indicated in paragraph 6.

3. The Certificate of Origin shall cover one or more goods of a single shipment.

4. The exporter of the good requesting a Certificate of Origin shall submit all the necessary documents proving the originating status of the good in question, as required by the authorized entity. Likewise, the exporter must undertake to comply with the other requirements applicable to this Chapter.

5. In case of theft, loss or destruction of a Certificate of Origin, the exporter may request in writing to the authorized entity that issued it, a certified copy of the original Certificate of Origin, which shall be made on the basis of the export invoice or any other proof that would have served as a basis for the issuance of the original Certificate of Origin, in possession of the exporter. The duplicate issued in accordance with this paragraph, shall have in the observations field the phrase "CERTIFIED COPY of the original Certificate of Origin numbet..... dated... ", so that the period of validity is counted from the date indicated.

6. Notwithstanding paragraph 2, a Certificate of Origin, in exceptional cases, may be issued after the date of shipment of the goods, provided that:

(a) was not issued prior to or at the time of shipment due to errors, inadvertent omissions or any other circumstance that may be considered justified, provided that not more than one (1) year has elapsed since the export and the exporter delivers all the necessary commercial documents, as well as the export declaration endorsed by the customs authority of the exporting Party; or

(b) it is demonstrated to the satisfaction of the competent authority or authorized entity that the Certificate of Origin initially issued was not accepted at the time of importation for technical reasons. The period of validity must be maintained as indicated in the Certificate of Origin that was originally issued.

In these cases, the phrase "CERTIFICATE ISSUED SUBSEQUENTLY" must be indicated in the observations field of the Certificate of Origin, and the number and date of the Certificate of Origin originally issued must also be indicated in the case of the case mentioned in subparagraph (b).

7. When the exporter of the goods is not the producer, he may request the issuance of a Certificate of Origin on the basis of:

(a) information provided by the producer of the goods; or

(b) a declaration of origin given by the producer of the goods to the exporter, stating that the goods qualify as originating in t h e exporting Party.

8. An exporter to whom a Certificate of Origin has been issued shall promptly notify in writing the competent authority of the importing Party, with a copy to the authorized entity, the competent authority of the exporting Party and the importer, when it becomes aware that the goods do not qualify as originating.

## Article 3.17. Declaration of Origin

1. The Declaration of Origin referred to in Article 3.15.1(b) may be issued, in accordance with this Article, only by an approved exporter as provided in Article 3.18.

2. The Declaration of Origin may be issued only if the goods in question are considered originating in the exporting Party.

3. Where the approved exporter is not the producer of the good in the exporting Party, a Declaration of Origin for the good may be issued by the approved exporter on the basis of:

(a) information provided by the producer of the goods to the approved exporter; or

(b) a declaration given by the producer of the good to the authorized exporter, indicating that the good qualifies as originating in the exporting Party.

4. An approved exporter shall be prepared to submit at any time, upon request to the competent authority of the exporting Party or, where applicable, to the authorized entity of the exporting Party, all appropriate documents demonstrating that the good for which the Declaration of Origin was issued qualifies as originating in the exporting Party.

5. The text of the Declaration of Origin shall be as set out in Annex 3.17. A Declaration of Origin shall be issued by an approved exporter by typing, stamping or printing on the invoice or any other commercial document that describes the good in sufficient detail to permit its identification. The Declaration of Origin shall be deemed to have been issued on the date of issue of such commercial document.

6. A Declaration of Origin must be issued by the authorized exporter prior to or at the time of shipment.

7. An approved exporter who has issued a Declaration of Origin shall promptly notify in writing the competent authority of the importing Party, with a copy to the competent authority of the exporting Party or, where applicable, the authorized entity of the exporting Party and the importer, when it becomes aware that the good does not qualify as originating.

## Article 3.18. Approved Exporter

1. The competent authority of the exporting Party or, where applicable, the authorized entity of the exporting Party, may authorize an exporter in that Party to issue origin declarations as an authorized exporter provided that the exporter:

(a) frequent shipments of goods originating in the exporting Party;

(b) has sufficient knowledge and ability to issue origin declarations in an appropriate manner and complies with the conditions set forth in the laws and regulations of the exporting Party; and

(c) provide the competent authority of the exporting Party or, where applicable, the authorized entity of the exporting Party, with a written statement accepting full responsibility for any origin declaration that identifies him, as if he had signed them by hand.

2. The competent authority of the exporting Party or, where applicable, the authorized entity of the exporting Party shall

grant the authorized exporter an authorization number, which shall appear on the Declaration of Origin. It shall not be necessary for the Declaration of Origin to be signed by the approved exporter.

3. The competent authority of the exporting Party or, where applicable, the authorized entity of the exporting Party, shall ensure the proper use of the authorization by the authorized exporter.

4. The competent authority of the exporting Party or, where applicable, the authorized entity of the exporting Party, may revoke the authorization at any time. It shall do so in accordance with the laws and regulations of the exporting Party when the authorized exporter no longer complies with the conditions set forth in paragraph | or otherwise misuses the authorization.

## Article 3.19. Notifications

1. Upon entry into force of this Agreement, each Party shall provide to the other Party a record of the names of the entities authorized and accredited officials to issue Certificates of Origin, as well as samples of the signatures and impressions of the seals used by the entity authorized to issue Certificates of Origin.

2. Any change in the registration referred to in paragraph | shall be notified in writing to the other Party. The change shall become effective fifteen (15) days after receipt of the notification or within a later period specified in such notification.

3. The competent authority of the exporting Party or, where applicable, the authorized entity of the exporting Party, shall provide the competent authority of the importing Party with information regarding the composition of the authorization number, as well as the names, addresses and authorization numbers of the authorized exporters, and the dates on which such authorizations become effective. Each Party shall notify the other Party of any change, including the date on which such change becomes effective.

## Article 3.20. Electronic Certificate of Origin

The Parties may start working on the development of electronic certification of origin as soon as this Agreement enters into force, with the objective of implementing it in the medium term.

## Article 3.21. Obligations Relating to Imports

1. Except as otherwise provided in this Chapter, each Party shall require that an importer applying for preferential tariff treatment in its territory:

(a) declare on the customs import document, on the basis of a Proof of Origin, that the good qualifies as originating in the other Party;

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

(c) has in its possession documents certifying that the requirements set forth in Article 3.14 have been met; and

(d) provide the Proof of Origin, as well as all the documentation indicated in subparagraph (c) to the customs authority, when required by the latter.

2. When the Proofs of Origin contain errors of a form which do not create doubts as to the accuracy of the information contained therein, such as typing errors, they may be accepted by the customs authority of the importing Party.

3. When a Certificate of Origin is not accepted by the customs authority of the importing Party at the time of importation, due to omissions in its completion or errors other than those of form, which do not affect compliance of origin or tariff preference, said customs authority shall not deny preferential tariff treatment. In this case, the customs authority of the importing Party shall request the importer, on a one-time and non-extendable basis, to submit a new Certificate of Origin within fifteen (15) days, counted from the day following the date of receipt of the notification of such omission or error and may authorize the release, after adopting the measures it deems necessary to ensure the fiscal interest, in accordance with its national legislation.

4. At the end of the period established in paragraph 3, if a new Certificate of Origin correctly issued has not been presented, the importing Party shall deny the preferential tariff treatment, and if measures have been adopted to guarantee the fiscal interest, it shall proceed to enforce them.

5. In case of presenting a new Certificate of Origin correctly issued and if measures have been adopted to guarantee the fiscal interest, the measures shall be lifted within a term not exceeding ninety (90) days, counted from the day following the

presentation of the request for the release of the measures by the importer to the customs authority of the importing Party, which may be extended for up to thirty (30) additional days in exceptional cases.

## Article 3.22. Refund of Customs Duties

When an originating good is imported into the territory of a Party, without the importer of the good having applied for preferential tariff treatment at the time of importation, the importer may apply, no later than one (1) year after the date of numbering or acceptance of the customs import declaration, for reimbursement of any duty overpaid as a result of not having applied for preferential tariff treatment, by submitting to the customs authority:

(a) the Proof of Origin, which shall comply with the provisions set forth in Articles 3.16 and 3.17; and

(b) other documentation related to the importation of the good, in accordance with the national legislation of the importing Party.

## Article 3.23. Supporting Documents

Documents used to demonstrate that goods covered by a Proof of Origin are considered to be originating goods and meet the requirements of this Chapter may include but are not limited to the following:

(a) direct evidence of the processes carried out by the exporter or producer to obtain the referred goods, contained for example in its accounts or internal accounting;

(b) documents proving the originating status of the materials used;

(c) documents proving the work or processing of the materials;

(d) certificates of origin proving the originating status of the materials used; and

(e) in the case ofa textile and apparel good classified in Chapters 50 to 63 of the Harmonized System, the exporter must necessarily obtain a sworn declaration issued by the producer of the originating materials.

## Article 3.24. Preservation of Proofs of Origin and Supporting Documents

1. An exporter requesting the issuance of a Certificate of Origin shall maintain for a period of at least five (5) years, the documents referred to in Article 3.23, counted from the date of its issuance.

2. The authorized entity of the exporting Party issuing the Certificate of Origin shall maintain a copy of the Certificate of Origin for a period of at least five (5) years from the date of its issuance.

3. An importer requesting preferential treatment for a good shall maintain, for a period of at least five (5) years from the date of importation of the good, documentation related to the importation including a copy of the Proof of Origin.

4. An authorized exporter who issues a Declaration of Origin shall maintain for a period of at least five (5) years, the documents referred to in Article 3.23, counted from the date of its issuance.

## Article 3.25. Exceptions to the Proof of Origin Requirement

1. The Parties shall not require a Proof of Origin demonstrating that a good is originating when it is:

(a) an import of goods the customs value of which does not exceed one thousand United States dollars (US$ 1000) or its equivalent in national currency or such greater amount as the Party may establish; or

(b) an importation of goods for which the importing Party has waived the requirement to submit the Proof of Origin.

2. Paragraph 1 shall not apply to imports, including staggered imports, which are made or intended to be made for the purpose of evading compliance with the certification requirements of this Chapter.

## Article 3.26. Verification Process

1. In order to determine whether a good imported by one Party from the other Party qualifies as an originating good, the competent authority of the importing Party may conduct a verification of origin through:

(a) written requests for information to the exporter or producer;

(b) written questionnaires addressed to the exporter or producer; and/or

(c) visits to the facilities of an exporter or producer in the territory of the other Party, for the purpose of observing the facilities and the production process of the good and reviewing the records related to the origin, including accounting books and any type of supporting documents indicated in Article 3.23. The competent authority of the exporting party may participate in these visits as an observer.

2. The competent authority of the importing Party shall notify the initiation of the verification process to the exporter or producer and the importer, together with the dispatch of the first questionnaire or written request for information or visit referred to in paragraph 1, and shall also send a copy of such notification to the competent authority of the exporting Party.

3. For the purposes of this Article, the competent authority of the importing Party carrying out the verification of origin shall notify by certified mail with return receipt requested or by any means that provides a record of the receipt of written requests for information, questionnaires and visits to exporters or producers.

4. For the purposes of subparagraphs 1 (a) and 1 (b), the exporter or producer shall respond to the request for information or questionnaire made by the competent authority of the importing Party, within a period of thirty (30) days from the date of receipt thereof. During such period, the exporter or producer may, only once, request in writing to the competent authority of the importing Party the extension of such period, which may not exceed thirty (30) additional days. The importing Party shall deny preferential tariff treatment for the good in question upon failure to respond to such request or questionnaire.

5. When the competent authority of the importing Party has received the response to the written request for information or the questionnaire referred to in subparagraphs | (a) and 1 (b), within the corresponding term, and considers that the information provided in the response is insufficient or that further information is required to verify the origin of the merchandise subject to verification, it may request such information from the exporter or producer, which shall be sent within a term not to exceed thirty (30) days from the date of receipt of the request for additional information.

6. The importer within a period of thirty (30) days from the notification of the initiation of the process of verification of origin, may provide the documents, evidence or statements it deems relevant, and may request only once and in writing an extension to the importing Party, which may not exceed thirty (30) days. If the importer does not provide documentation, this shall not be sufficient reason to deny preferential tariff treatment, without prejudice to the provisions of paragraph 5.

7. For the purposes of subparagraph 1 (c), the competent authority of the importing Party shall give written notice of such request at least thirty (30) days prior to the verification visit to the exporter or producer. In the event that the exporter or producer does not give its written consent to the visit within fifteen (15) days from the date of receipt of the notification, the importing Party shall deny preferential tariff treatment to the good in question. The request for the visit shall be communicated to the competent authority of the exporting Party.

8. When the exporter or producer receives a notification pursuant to paragraph 7, it may request, once only, within fifteen (15) days from the date of receipt of the notification, the postponement of the proposed verification visit for a period not exceeding thirty (30) days from the date on which the notification was received, or for such longer period as the competent authority of the importing Party and the exporter or producer may agree. For these purposes, the competent authority of the importing Party shall communicate the postponement of the visit to the competent authority of the exporting Party.

9. A Party shall not deny preferential tariff treatment solely on the basis of the postponement of the verification visit.

10. The competent authority of the importing Party shall draw up a record of the visit, which shall contain the facts found by it, and if applicable, a list of the information or documentation collected. Said report may be signed by the producer or exporter. In case the producer or exporter refuses to sign the minutes, this fact shall be recorded, without affecting the validity of the visit.

11. The competent authority of the importing Party shall, within a period not exceeding three hundred and sixty-five (365) days from the date of receipt of the notification of the initiation of the verification process, notify the exporter or producer in writing of the results of the determination of origin of the good, as well as the factual and legal basis for the determination.

12. The competent authority of the importing Party shall notify the importer in writing of the result of the origin verification procedure, which shall be accompanied by the legal and factual basis for the determination, respecting the confidentiality of the information provided by the exporter or producer, and a copy shall be sent to the competent authority of the exporting Party.

13. If, as a result of an origin verification procedure pursuant to this Article, the competent authority of the importing Party determines that the good does not qualify as originating, such Party may suspend preferential tariff treatment to any subsequent imports of identical goods that have been produced by the same producer, until it is demonstrated to the competent authority of the importing Party that the goods qualify as originating under the provisions of this Chapter.

14. The suspension of preferential tariff treatment, in accordance with paragraph 13, shall be communicated by the competent authority of the importing Party to the exporter or producer, importer and the competent authority of the exporting Party, stating the legal and factual basis for its determination, and respecting the confidentiality of the information.

## Article 3.27. Measures to Guarantee the Fiscal Interest

1. In case doubts arise at the time of release of the goods regarding the authenticity of the Proofs of Origin or the origin of the goods, including the veracity of the information declared in the Proof of Origin, the customs authority may not prevent the release of the goods. However, the customs authority may adopt such measures as it deems necessary to ensure the fiscal interest, ina c cordance with its national legislation.

2. When the importing Party adopts measures to ensure the fiscal interest, it may request information in accordance with paragraph 3 related to the authenticity of the Proofs of Origin, within a period of no more than sixty (60) days following the adoption of such measures. Otherwise, the measures adopted shall be lifted within a period of no more than ninety (90) days following the importer's request for the release of the measures to the customs authority of the importing Party, which may be extended for up to thirty (30) additional days in exceptional cases.

3. The competent authority of the importing Party may request, through a written request, information to the authorized entity responsible for the issuance of the certificate of origin, or to the competent authority of the exporting Party, as applicable, in order to verify the authenticity of the certificates of origin. In the case of declarations of origin, the competent authority of the importing Party may request, through a written request, information to the competent authority of the exporting Party or, when applicable, to the authorized entity of the exporting Party.

In both scenarios, the competent authority or the authorized entity of the exporting Party, as appropriate, shall have a period of sixty (60) days following the date of receipt of the request to provide the requested information.

4. In the event that the competent authority of the importing Party does not receive the requested information and documentation within the established term or the exporting Party does not recognize the authenticity of the Proofs of Origin, preferential tariff treatment may be denied to the goods covered by t h e Proofs of Origin subject to review and the measures adopted to guarantee the fiscal interest may be executed.

5. In the event that the competent authority or authorized entity of the exporting Party, as applicable, recognizes the authenticity of the Proofs of Origin, the importing Party shall proceed to issue a determination accepting the preferential tariff treatment, and to lift the measures that have been adopted in order to guarantee the fiscal interest within a term not exceeding ninety (90) days following the request for release of the measures by the importer to the customs authority of the importing Party, which may be extended for up to thirty (30) additional days in exceptional cases.

6. If there are doubts about the origin of the good, which includes the veracity of the information declared in the proof of origin, the competent authority of the importing Party shall initiate a process of verification of origin in accordance with Article 3.26 within a period of no more than sixty (60) days after they have adopted measures in order to guarantee the fiscal interest. Otherwise, it shall proceed to accept the corresponding preferential tariff treatment and to lift the measures that have been adopted to guarantee the fiscal interest, within a term no longer than ninety (90) days following the importer's request to the customs authority of the importing Party for the release of the measures, which may be extended for up to thirty (30) additional days in exceptional cases.

7. If the competent authority of the importing Party does not issue a determination of origin within the term mentioned in Article 3.26.11, it shall proceed to accept the corresponding preferential tariff treatment and to lift the measures that have been adopted and that guaranteed the fiscal interest, within a term no longer than ninety (90) days following the request for release of the measures by the importer to the customs authority of the importing Party, which may be extended for up to thirty (30) additional days in exceptional cases.

8. If as a result of the conclusion of the verification of origin in accordance with Article 3.26 it is determined:

(a) the originating status of the good, the importing Party shall proceed to accept the request for preferential tariff treatment and to lift the measures it has adopted to guarantee the fiscal interest within a term not exceeding ninety (90) days following the importer's request to the customs authority of the importing Party for the release of the measures, which

may be extended for up to thirty (30) additional days in exceptional cases; or

(b) the non-originating character of the good, the importing Party shall deny the claim for preferential tariff treatment and shall proceed to implement the measures it has adopted in order to ensure the fiscal interest.

## Article 3.28. Sanctions

Each Party shall maintain or adopt criminal, civil or administrative penalties for violations related to the provisions of this Chapter, in accordance with its national legislation.

## Article 3.29. Review and Appeal Appeals

Each Party shall ensure, with respect to its administrative acts related to the determination of origin, that importers, exporters or producers have access to:

(a) a level of administrative review independent of the official or unit that issued the administrative act; and

(b) a level of judicial review of the administrative act.

## Article 3.30. Confidentiality

1. Each Party shall maintain, in accordance with its national legislation, the confidentiality of information provided in the framework of a verification of origin process.

2. Such information shall not be disclosed without the express consent of the person providing it, except in the event that it is required in the context of judicial or administrative proceedings.

3. Any breach of confidentiality of information shall be dealt with in accordance with the national legislation of each Party.

## Article 3.31. Invoicing by a Third Country

In the case of an importation of originating goods in accordance with the provisions of this Chapter, the invoice presented at the time of importation may be issued by a person located in the territory of a non-Party. In such case, the full legal name of the operator of the non-Party who issued the invoice shall be indicated in the remarks box of the Certificate of Origin or, if the goods are covered by a Declaration of Origin, this information shall be indicated thereon.

## Article 3.32. Uniform Regulations

1. The Parties may establish, through their respective national laws and regulations, on the date of entry into force of this Agreement, or on such other date as the Parties may agree, Uniform Regulations concerning the interpretation, application and administration of this Chapter.

2. Once the Uniform Regulations are in force, each Party shall put into effect any modification or addition thereto, no later than one hundred eighty (180) days after the respective agreement between the Parties, or within such other period as the Parties may agree.

## Article 3.33. Rules of Origin Committee

1. The Parties establish a Committee on Rules of Origin (hereinafter the Committee), composed of representatives of each Party.

2. The functions of the Committee shall include:

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

(b) report to the Commission on the implementation and administration of this Chapter, as appropriate;

(c) to cooperate in the effective, uniform and consistent administration of this Chapter, and to encourage cooperation in this regard;

(d) review and recommend to the Commission any modifications to Annex 3 (Specific Rules of Origin), including when amendments are made to the Harmonized System;

(e) propose to the Parties, through the Commission, modifications to this Chapter. The proposed modifications shall be submitted at the request of one or both Parties, who shall submit the proposals with the corresponding technical support and studies; and

(f) to deal with any other matter related to this Chapter.

3. Unless otherwise agreed by the Parties, the Committee shall meet at least once (1) a year, on the date and according to the agenda previously agreed by the Parties. The Parties shall determine those cases in which extraordinary meetings may be held.

4. The meetings may be held by any means agreed upon by the Parties. When they are face-to-face, they shall be held alternately in the territory of each Party, and it shall be the responsibility of the host Party to organize the meeting.

5. All decisions of the Committee shall be made by mutual agreement.

## Article 3.34. Re-export Certificate

1. The Parties recognize that a good that meets the conditions of originating good, in accordance with the trade agreements or treaties in force between Peru and Costa Rica, El Salvador, Guatemala or Honduras, which is re-exported from the Colon Free Zone (Panama) shall not lose its status of originating good by the mere fact of having been transported, stored or transshipped in said free zone.

2. Goods coming from the Colon Free Zone must be accompanied by a Re-Export Certificate that certifies the origin and control over the goods issued by the customs authorities of Panama and validated by the administrative authority of the Colon Free Zone. This document will certify that the merchandise remained under customs control and did not undergo any changes, nor underwent further processing or any other type of operation other than those necessary to maintain them in good condition, in accordance with the trade agreements or treaties referred to in paragraph 1.

3. Imports of goods covered by a Re-export Certificate that qualify as originating, in accordance with the trade agreements or treaties referred to in paragraph 1, shall not lose the tariff preference granted by the importing Party by the sole fact of having been transported, stored or transshipped in the Colon Free Zone.

4. For the purposes of the application of paragraph 3, the importing Party may require, in accordance with the trade agreements or treaties referred to in paragraph 1, the presentation of a Proof of Origin (e.g., a Certificate of Origin) issued by one of the exporting countries referred to in paragraph 1, which shall benefit from the preferential tariff treatment granted by the importing Party.

5. The Re-Export Certificate evidencing the origin of the goods referred to in this Article may only be applied to goods that qualify as originating based on the Proof of Origin issued in accordance with the trade agreements or treaties referred to in paragraph 1.

6. An invoice relating to an originating good exported pursuant to a trade agreement or treaty referred to in paragraph | may be issued by a logistics operator established in the Colon Free Zone, provided that such agreement or treaty permits invoicing in third countries.

7. After two (2) years from the entry into force of this Agreement, the Parties shall regulate, through the corresponding authorities of each Party, the recognition of the Re Export Certificate for originating goods, in accordance with their respective agreements signed with third countries, which accounts for the deposit and control of such goods in cases of transit or transshipment of such goods in the Colon Free Zone.

## Article 3.35. Definitions

For the purposes of this Chapter:

aquaculture means the cultivation or breeding of aquatic species, including, among others: fish, mollusks, crustaceans, other invertebrates and plants, covering their complete or partial biological cycle, starting from seeds such as eggs, immature fish, fry and larvae. It is carried out in a selected and controlled environment, in natural or artificial water environments, in marine, fresh or brackish waters. It includes stocking or seeding, restocking or replanting, cultivation, as well as research activities and the processing of the products derived from this activity;

competent authority means for:

(a) Panama: the National Customs Authority; and

(b) Peru: the Ministry of Foreign Trade and Tourism, or its successors.

CIF means the value of the imported merchandise, including insurance and freight costs to the port or place of entry into the country of importation, regardless of the means of transport;

shipping containers and packing materials means goods used to protect merchandise during transportation and does not include containers and materials in which merchandise is packaged for retail sale;

authorized entity means for: (a) Panama: the Ministry of Commerce and Industries; and

(b) Peru: the entity designated by the competent authority to issue Certificates of Origin, in accordance with national legislation. In the case of Peru, the competent authority is in charge of issuing Certificates of Origin and may delegate the issuance of such certificates to authorized entities, or their successors.

exporter means a person located in the territory of a Party from which the good is exported;

FOB means the value of the goods free on board, including the cost of transportation to the port or final place of shipment, regardless of the means of transport;

importer means a person located in the territory of a Party into which the good is imported;

material means a good that is used in the production of another good, including any component part, ingredient, raw material, part or piece;

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

merchandise means any product, article or material;

fungible goods or materials means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical and which cannot be distinguished from one another by simple visual examination;

Identical goods means identical goods, as defined in the WTO Customs Valuation Agreement;

non-originating good or non-originating material means a good or material that is not an originating good or material under this Chapter;

Generally Accepted Accounting Principles means recognized consensus or substantial support authorized and adopted 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. Generally Accepted Accounting Principles may encompass broad guidelines of general application, as well as those detailed standards, practices and procedures;

production means the cultivation, extraction, harvesting, fishing, breeding, trapping, hunting, hunting, manufacturing, processing, or assembling of a commodity; and

producer means a person who engages in the production of a good in the territory of a Party.

# Chapter 4. Trade Facilitation and Customs Procedures

## Article 4.1. Publication

1. Each Party shall publish, including on the Internet, its customs legislation, regulations, and procedures.

2. Each Party shall designate or maintain one or more consultation points to address inquiries from interested persons on customs matters, and shall make available on the Internet information regarding the procedures to be followed in making such inquiries.

3. To the extent possible, each Party shall publish in advance any regulations of general application on customs matters that it proposes to adopt, and shall provide interested persons with an opportunity to comment prior to their adoption.

4. Each Party shall endeavor to ensure that its customs legislation, regulations and procedures are transparent, trade facilitating and non-discriminatory.

5. Information concerning fees and charges related to the supply of services affecting foreign trade provided by a Party shall be published, including on the Internet.

## Article 4.2. Dispatch of Goods

1. In order to facilitate trade between the Parties, each Party shall adopt or maintain simplified customs procedures for the efficient clearance of goods.

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 their customs legislation, and to the extent possible, for the goods to be released within forty-eight (48) hours of arrival; and

(b) allow goods to be cleared at the point of arrival, without mandatory transfer to warehouses or other premises, except when the customs authority needs to exercise additional controls or for infrastructure reasons.

## Article 4.3. Automation

1. Each Party shall endeavor to use information technology that makes the procedures for the clearance of goods expeditious and efficient. In choosing the information technology to be used for this purpose, each party shall:

(a) will strive to use internationally recognized norms, standards and practices;

(b) will make electronic systems accessible to its customs users;

(c) shall allow the electronic transmission and processing of information and data prior to the arrival of the goods, in order to allow their clearance in accordance with Article 4.2;

(d) employ electronic and/or automated systems for risk analysis and management;

(e) work on the development of compatible electronic systems between the Parties' customs authorities to facilitate the exchange of international trade data between them; and

(f) will work to develop the set of common data elements and processes in accordance with the World Customs Organization (hereinafter WCO) Customs Data Model and related WCO recommendations and guidelines.

2. Each Party shall adopt or maintain, to the extent possible, procedures that permit expeditious control of means of transport of goods leaving or entering its territory.

## Article 4.4. Risk Administration or Risk Management

1. Each Party shall endeavor to adopt or maintain risk management systems that enable its customs authority to focus its inspection activities on high-risk goods, and that simplify the clearance and movement of low-risk goods, while respecting the confidential nature of information obtained through such activities.

2. In implementing risk management, each Party shall inspect imported goods based on appropriate selectivity criteria, avoiding physical inspection of all goods entering its territory, and to the extent possible, with the aid of non-intrusive inspection instruments.

## Article 4.5. Transit of Goods

Each Party shall grant free transit to goods of the other Party in accordance with Article V of the GATT 1994, including its interpretative notes.

## Article 4.6. Expedited Delivery Shipments

1. Each Party shall adopt or maintain special customs procedures for fast delivery shipments, while maintaining appropriate control and selection systems in accordance with their nature.

2. The procedures referred to in paragraph 1 shall:

(a) provide for separate and expedited customs procedures for fast delivery shipments;

(b) provide for the submission and processing of information necessary for the clearance of an expedited shipment, prior to the arrival of the shipment;

(c) to allow the presentation of a single cargo manifest covering all the goods contained in a shipment transported by an express delivery service, through electronic means;

(d) provide for the clearance of lower risk and/or lower value goods with a minimum of documentation;

(e) under normal circumstances, provide for the clearance of expedited shipments within six (6) hours of the presentation of the necessary customs documents, provided the shipment has arrived; and

(f) under normal circumstances, provide that no tariffs shall be fixed for the expedited delivery of correspondence, documents, newspapers and periodicals for non-commercial purposes.

## Article 4.7. Authorized Economic Operator

The Parties shall promote the implementation of Authorized Economic Operators in accordance with the WCO Framework of Standards to Secure and Facilitate Global Trade (known as the SAFE Framework of Standards), to facilitate the clearance of their goods. Their obligations, requirements and formalities shall be established in accordance with the national legislation of each Party.

## Article 4.8. Foreign Trade Single Window

The Parties shall promote the creation of a Foreign Trade Single Window to expedite and facilitate trade. To the extent possible, the Parties shall seek the interconnection between their Foreign Trade Single Windows.

## Article 4.9. Review and Appeal

Each Party shall ensure, with respect to administrative acts in customs matters, that natural or legal persons subject to such acts have access to:

(a) a level of administrative review, which is independent of the official or office that issued such act; and

(b) at least one level of judicial review.

## Article 4.10. Sanctions

Each Party shall adopt or maintain measures to permit the imposition of administrative and, where appropriate, criminal penalties for violations of customs laws and regulations, including those governing tariff classification, customs valuation, origin, and claims for preferential treatment.

## Article 4.11. Advance Rulings

1. Each Party shall issue a written advance ruling, prior to the importation of a good into its territory, when an importer in its territory, or an exporter or producer in the territory of the other Party (1) has so requested in writing, with respect to:

(a) tariff classification;

(b) the application of customs valuation criteria for a particular case, in accordance with the application of the provisions contained in the WTO Customs Valuation Agreement (2) ;

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

(d) whether a good reimported into the territory of a Party after having been exported to the territory of another Party for repair or alteration is eligible for duty-free treatment under Article 2.6 (Goods Reimported after Repair or Alteration); and

(e) such other matters as the Parties may agree.

2. Each Party shall issue the advance ruling within one hundred fifty days. (150) days following the filing of the request, provided that the requester has submitted all the information that the Party requires, including, if requested, a sample of the good for which the requester is requesting the advance ruling. In making the advance ruling, the Party shall take into account the facts and circumstances submitted by the applicant.

3. Each Party shall provide that advance rulings shall take effect from the date of their issuance, or such other date specified in the ruling provided that the facts or circumstances on which the ruling is based have not changed.

4. The Party issuing the advance ruling may modify or revoke it after having notified the applicant, when the criteria, facts, circumstances, laws, regulations or rules on which it was based change or when it was based on incorrect or false information. In the event that such modification or revocation is based on a change in the criteria, facts, circumstances, laws, regulations or rules on which they were based, such modification or revocation may be applied from the date on which such criteria, facts, circumstances, laws, regulations or rules take effect. In case of incorrect or false information, such modification or revocation may be applied from the date of the issuance of such advance ruling.

5. Subject to confidentiality requirements under its domestic law, each Party may make its advance rulings publicly available.

6. If an applicant provides false information or omits relevant facts or circumstances related to the advance ruling, or fails to act in accordance with the terms and conditions of the advance ruling, the Parties may apply such measures as may be appropriate, including civil, criminal and administrative actions in accordance with each Party's domestic law.

(1) References to importer, exporter or producer include their duly accredited representatives, in accordance with the national legislation of the Party receiving the application.

(2) Regarding advance rulings on valuation, the customs authority will only rule on the valuation method to be applied for the determination of the customs value, in accordance with the provisions of the WTO Customs Valuation Agreement, that is, the ruling will not be determinative on the amount to be declared for the customs value.

### Article 4.12. Committee on Trade Facilitation and Customs Procedures

1. The Parties establish a Committee on Trade Facilitation and Customs Procedures (hereinafter referred to as the Committee), composed of representatives of each Party.

2. The functions of the Committee shall include:

(a) monitor the implementation and administration of this Chapter and Chapter 5 (Cooperation and Mutual Administrative Assistance in Customs Matters);

(b) report to the Commission on the implementation and administration of the Chapters referred to in subparagraph (a), when applicable;

(c) promptly deal with matters that a Party proposes with respect to the development, adoption, application or implementation of the provisions of the Chapters referred to in subparagraph (a);

(d) to promote the joint cooperation of the Parties in the development, application, implementation and improvement of all matters concerning the Chapters referred to in subparagraph (a), including, in particular, customs procedures, customs valuation, tariff regimes, customs nomenclature, customs cooperation, matters relating to free zones, mutual administrative assistance in customs matters, as well as to provide a forum for consultation and discussion on such matters;

(e) upon request of a Party, resolve consultations on any matter arising under the Chapters referred to in subparagraph (a), within a period of thirty (30) days; and

(f) to deal with any other matter related to the Chapters referred to in subparagraph (a).

3. Unless otherwise agreed by the Parties, the Committee shall meet at least once (1) a year, on the date and according to the agenda previously agreed by the Parties. The Parties shall determine those cases in which extraordinary meetings may be held.

4. The meetings may be held by any means agreed upon by the Parties. When they are face-to-face, they shall be held alternately in the territory of each Party, and it shall be the responsibility of the host Party to organize the meeting. The first meeting of the Committee shall be held no later than one (1) year after the date of entry into force of this Agreement.

5. Unless otherwise agreed by the Parties, the Committee shall be of a permanent nature and shall develop its working rules.

6. All decisions of the Committee shall be made by mutual agreement.

## Chapter 5. Cooperation and Mutual Administrative Assistance In

# Customs Matters

## Article 5.1. Scope

1. The Parties, through their competent authorities, shall provide mutual administrative and technical assistance to each other, in accordance with the terms established in this Chapter, for the proper application of customs legislation; for the prevention, investigation and sanctioning of customs offenses and customs infractions; and for the facilitation of customs procedures. Likewise, the Parties, through their competent authorities, shall provide cooperation and mutual assistance on customs matters in general, including the provision of statistics and other such information as may be available, in accordance with the national legislation of each Party.

2. Pursuant to the provisions of this Chapter, and subject to their national legislation, the Parties, within the scope of the competence and available resources of their respective competent authorities, shall cooperate and provide mutual assistance to:

(a) facilitate and expedite the flow of goods and people between the two countries;

(b) prevent, investigate and repress customs offenses and customs infringements; and

(c) promote mutual understanding of each other's customs legislation, procedures and techniques.

3. When a Party becomes aware of any unlawful activity related to its customs legislation or regulations, such Party may request that the other Party provide specific information and documentation in relation to certain customs and/or commercial operations carried out in whole or in part in its territory.

4. Assistance, as provided for in this Chapter, shall include, inter alia, on a Party's own initiative or at the request of the other Party, all appropriate information to ensure compliance with customs legislation and the correct assessment of customs duties and other taxes. However, assistance shall not cover requests for the arrest or detention of persons, confiscation or detention of property or the return of duties, taxes, fines or any other monies on behalf of the other Party, which activities shall be governed by the relevant International Agreements.

5. This Chapter is intended only for mutual administrative assistance between the Parties in customs matters. The provisions of this Chapter do not entitle any private person to obtain, suppress or exclude any evidence or prevent the execution of a request.

6. Compliance with the provisions of this Chapter shall be without prejudice to cooperation or assistance between the Parties on the basis of other international agreements, including mutual assistance in criminal matters. If mutual assistance is to be provided pursuant to other international agreements in force between the Parties, the Party shall

5-1 The required information should indicate the name of the agreement and of the relevant authorities involved.

## Article 5.2. Implementation

In order to ensure the proper implementation of this Chapter, each competent authority shall adopt the necessary measures for this purpose, and strengthen cooperation and assistance in the following aspects:

(a) promote the exchange of customs legislation, regulations and procedures;

(b) exchange information on measures to simplify customs procedures and facilitate trade and the movement of means of transport, in accordance with the national legislation of the parties;

(c) inform on restrictions and/or prohibitions on imports or exports;

(d) maintain ongoing consultations on issues related to the implementation of customs procedures and trade facilitation;

(e) periodic review of its customs procedures; and

(f) implement other measures they deem necessary.

## Article 5.3. Communication of Information

1. Upon request, the requested Party shall provide all information on applicable customs legislation, regulations and procedures concerning investigations related to a possible customs offence or customs infringement occurring in the

territory of the requesting Party.

2. The competent authorities shall communicate, ex officio and without delay, any available information on:

(a) new techniques for compliance with customs legislation;

(b) new trends, means or methods used in the commission of customs offenses and customs infringements, and those used in combating them;

(c) new procedures, methods and techniques for customs facilitation; and

(d) other matters of mutual interest.

3. In serious cases involving substantial damage to the economic, public health, public safety or other vital interest of one Party, the competent authority of the other Party shall provide the information referred to in paragraph 1 without delay and on its own initiative.

4. Upon request, the requested Party shall provide information, in accordance with its national legislation, on the import procedure operations carried out in its customs territory on the goods exported from the territory of the requesting administration, including, if required, the procedure for the release of the goods.

5. In addition, at the request of a Party and to the extent of its possibilities and available resources, the requested Party may provide information, in accordance with its national legislation, related to:

(a) information on persons known to the requesting Party to have committed or to be involved in the commission of a customs offence or infringement;

(b) information on goods destined for the customs territory of the requesting Party, which are sent in transit or destined for storage for subsequent transit to that territory; or

(c) information on the means of transport allegedly used in the commission of offenses in the territory of the requesting Party.

## Article 5.4. Verification

1. Upon request, the requested Party shall send to the requesting Party information about:

(a) the authenticity of official documents produced in support of the customs declaration made to the requesting Party;

(b) whether the goods exported from the territory of the requesting Party have been legally imported into the territory of the requested Party; and

(c) whether the goods imported into the territory of the requesting Party come from or have been legally exported from the territory of the requested Party.

2. In addition, the requested Party shall provide information, in accordance with its national legislation, related to:

(a) the determination of customs duties on goods, and in particular, information on the determination of the customs value;

(b) means of transport and destination of the goods transported, with an indication of the references enabling the goods to be identified;

(c) controls carried out on goods in transit to the territory of one of the Parties froma third country; or

(d) smuggling and customs fraud carried out by its importers and/or exporters.

## Article 5.5. Cooperation and Technical Assistance

Where it does not contravene their national legislation, provisions and practices, the competent authorities shall cooperate in customs matters, including:

(a) the exchange of customs experts where mutually beneficial, in order to promote understanding of each Party's customs legislation, procedures and techniques;

(b) training, particularly for the development of specialized skills of its customs officers;

(c) the exchange of professional, scientific and technical information related t o customs legislation, regulations and procedures;

(d) the exchange of information on new technologies, methods and procedures in the application of customs legislation; and

(e) cooperation in the areas of research, development and testing of new customs procedures.

## Article 5.6. Applications

1. Requests for assistance under this Chapter shall be addressed directly to the requested Party by the requesting Party, in writing or by electronic means, and accompanied by the necessary documents. The requested Party may request written confirmation of electronic requests.

2. When a request is urgent, it may also be made verbally. Such a request must be confirmed in writing or electronically as soon as possible. As long as the written confirmation has not been received, fulfillment of the request may be suspended.

3. Requests made pursuant to paragraph | shall include the following details:

(a) the administrative unit, the name, signature and position of the official making the request;

(b) the information requested and the reason for the request;

(c) a brief description of the subject matter, the legal elements and the nature of the customs procedure;

(d) the names, addresses, identification document or any other known and relevant information of the persons to whom the request relates; and

(e) all necessary information available to identify the goods or the customs declaration related to the application.

4. The information referred to in this Chapter shall be communicated to the officials specially designated for this purpose by each competent authority. To this end, each Party shall provide a list of designated officials to the competent authority of the other Party.

5. The requesting Party shall be in a position to provide the same assistance if requested to do so.

## Article 5.7. Execution of Applications

1. A request for assistance shall be executed as soon as possible taking into consideration the available resources of the requested Party. A complete response to the request for assistance shall be provided within ninety (90) days after receipt of the written request.

2. Upon request, the requested Party shall conduct an investigation, in accordance with its national legislation, to obtain information related to customs offenses or infringements in international trade operations occurring in the territory of one of the Parties, and shall provide the requesting Party with the results of such investigation and all related information it deems relevant.

3. If the requested information is available in electronic form, the requested Party may provide it by electronic means to the requesting Party, unless the requesting Party has requested otherwise.

4. If a request made by any of the competent authorities requires compliance with a certain procedure, such procedure shall be followed in accordance with the national legislation and administrative provisions of the requested Party.

5. If the requested Party does not have the requested information, it shall, within the limits of its domestic law and available resources, exhaust all possibilities and make every effort, as provided in paragraph 1.

## Article 5.8. Archives, Documents and other Materials

1. Upon request, the requested Party may certify copies of the documents requested, if it is unable to provide the originals when its national legislation prevents it from doing so.

2. Any information to be exchanged under this Chapter may be accompanied by additional information that is relevant to its interpretation or use.

## Article 5.9. Use of Information

Information, documents and other materials received under this Chapter shall be used only for the purposes set forth in this Chapter, and subject to such restrictions as may be established by the requested Party, consistent with the provisions of this Chapter.

## Article 5.10. Confidentiality

1. Information, documents and other materials obtained by the requesting Party inthe cou rseo f mutual assistance under this Chapter shall be treated as confidential, and in this case, shall be accorded the same protection with respect to confidentiality that applies to the same type of information, documents, and other materials in the territory of the requesting Party.

2. Such information shall be used or disclosed only for the purposes set forth in this Chapter, including in those cases in which it is required within the framework of administrative, judicial or investigative proceedings carried out by the competent authority or whoever corresponds. The information may be used or disclosed for other purposes or by other authorities, only in the event that the requested Party expressly authorizes it in writing.

## Article 5.11. Costs

1. The competent authorities shall waive any claim for reimbursement of costs incurred in executing the requests provided for in this chapter, except for expenses and allowances paid to experts, which shall be borne by the requesting Party.

2. If expenses of a substantial or extraordinary nature are necessary to execute the application, the competent authorities shall consult to determine the terms and conditions under which the application will be executed, as well as the manner in which the expenses will be borne.

## Article 5.12. Exception from the Obligation to Provide Assistance

1. In cases where, in the opinion of the requested Party, assistance requested under this Agreement would infringe its national sovereignty, public order, security or other substantial national interests, or violate legally protected trade secrets in its territory, such assistance may be refused or may be provided subject to certain conditions.

2. If the requesting Party is unable to comply with a similar request that the requested Party may make, it shall note that fact in its request. The requested Party may refuse to grant assistance.

3. The requested Party may postpone assistance on the ground that it will interfere with an investigation, prosecution or proceeding in progress. In such a case, the requested Party shall consult with the requesting Party to determine whether assistance may be granted under the terms and conditions set forth by the requested Party.

4. When assistance is denied or postponed, the reasons for the denial and postponement shall be provided.

## Article 5.13. Process of Verification of Compliance Y Dispute Resolution Dispute Resolution

1. The competent authorities shall communicate directly and identify points of contact in order to address issues regarding the administration, implementation and enforcement of this Chapter. For such purposes, the Technical Committee for Cooperation and Mutual Assistance in Customs Matters is established, which shall be composed of two (2) representatives of each of the competent authorities, appointed by their respective superior bodies and shall meet in regular session at least two (2) times a year and in extraordinary session as often as necessary, at the request of any of the Parties.

2. The Technical Committee shall have, among others, the following functions:

(a) to ensure effective compliance with the provisions of this Chapter.

(b) prepare analyses and reports for the knowledge and approval of the higher bodies of the competent authorities.

(c) propose more detailed agreements to the higher bodies of the competent authorities, within the framework of this Treaty, to facilitate its implementation and compliance.

(d) propose to the superior bodies of the competent authorities mechanisms and procedures to facilitate the implementation and compliance with this Agreement, with a view to strengthening bilateral customs policy; and

(e) such other duties as may be entrusted to it by the higher bodies of the competent authorities by mutual agreement.

3. For purposes of the application of the dispute resolution mechanism, if a direct solution is not found in accordance with paragraphs 1 and 2, the superior bodies of the competent authorities, shall resolve issues arising from the interpretation, implementation and enforcement of the Chapter through comprehensive consultations, with the aim of finding a mutually satisfactory solution, within a period of thirty (30) days, for the benefit of the tax interest.

### Article 5.14. Definitions

For the purposes of this Chapter:

competent authority means:

(a) in the case of Panama, the National Customs Authority and the Ministry of Commerce and Industry, according to their competencies; and

(b) In the case of Peru, the National Superintendency of Tax Administration (SUNAT) and the Ministry of Foreign Trade and Tourism (MINCETUR), according to their competencies, or their successors;

Customs offence or infringement means any breach ora tt e mp te d breach of the customs legislation of each Party;

information means documents, reports or other communications in any format, including electronic, as well as certified or authenticated copies thereof;

customs legislation means any legal provision administered, applied or enforced by the competent authorities of each Party and/or regulating the exit, entry or transit of goods in all or part of its territory;

Requested Party means the competent authority from which cooperation is requested or assistance; and

Requesting Party means the competent authority requesting cooperation or assistance.

## Chapter 6. Sanitary and Phytosanitary Measures

### Article 6.1. Scope of Application

This Chapter applies to all sanitary and phytosanitary measures that may directly or indirectly affect trade between the Parties, including food safety, the exchange of animals, animal products and by-products, plants, plant products and by-products in accordance with the WTO SPS Agreement, the Codex Alimentarius Commission, the World Organization for Animal Health (hereinafter OIE) and the International Plant Protection Convention (hereinafter IPPC).

### Article 6.2. Objectives

The objectives of this Chapter are: to protect human, animal and plant life and health in the territories of the Parties, to facilitate and increase trade between the Parties by addressing and resolving problems arising from the application of sanitary and phytosanitary measures, to collaborate in the further implementation of the WTO SPS Agreement and to create a Committee to address in a transparent manner issues related to sanitary and phytosanitary measures and to promote the continuous improvement of the sanitary and phytosanitary situation of the Parties.

### Article 6.3. Reaffirmation of WTO SPS Agreement

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

### Article 6.4. Rights and Obligations of the Parties

1. The Parties may adopt, maintain or apply their sanitary or phytosanitary measures to achieve an appropriate level of sanitary or phytosanitary protection provided that they are based on scientific principles.

2. The Parties may establish, apply or maintain sanitary or phytosanitary measures with a higher level of protection than that which would be achieved by the application ofa measure based on an international standard, guideline or recommendation, provided that there is scientific justification for doing so.

3. The Parties shall ensure that their sanitary and phytosanitary measures do not constitute a disguised restriction on trade

or create unnecessary barriers to trade.

## Article 6.5. Equivalence

1. The recognition of equivalence of sanitary and phytosanitary measures may be given considering the standards, guidelines and recommendations established by the competent international organizations and the decisions adopted by the Committee on Sanitary and Phytosanitary Measures of the WTO on the matter.

2. A Party shall accept as equivalent the sanitary or phytosanitary measures of the other Party, even if they differ from its own, provided that they are shown to achieve the other Party's appropriate level of protection, in which case reasonable access for inspections, tests and other necessary procedures shall be provided.

3. The Parties, in the Committee established in Article 6.11, shall define the mechanisms for evaluating and, if necessary, accepting the equivalence of sanitary and phytosanitary measures.

## Article 6.6. Risk Assessment and Determination of the Appropriate Level of SPS Protection

1. The sanitary and phytosanitary measures applied by the Parties shall be based on an assessment appropriate to the circumstances of the risks to human, animal or plant life or health, including products and by-products, taking into account the relevant standards, guidelines and recommendations of the competent international organizations.

2. The establishment of appropriate levels of protection shall take into account the objective of protecting human, animal and plant health, while facilitating trade and avoiding arbitrary or unjustified distinctions that could become disguised restrictions.

3. The Parties shall provide each other with the necessary facilities for the evaluation, when required, of sanitary and phytosanitary services, based on the guidelines and recommendations of international organizations or other procedures mutually agreed upon by the Parties.

4. In this regard, the Parties agree to instruct the Committee established in Article 6.11 to determine the actions and procedures to expedite the process of sanitary and phytosanitary risk assessment.

## Article 6.7. Adaptation to Regional Conditions with Inclusion of Pest- or Disease Free Areas and Areas of Low Pest or Disease Prevalence

1. In assessing the sanitary or phytosanitary characteristics of a region, the Parties shall take into account, inter alia, the level of prevalence of specific diseases or pests, the existence of eradication or control programs, and appropriate criteria or guidelines that may be developed by competent international organizations.

2. Parties shall recognize pest- or disease-free areas and areas of low pest or disease prevalence in accordance with the WTO SPS Agreement, OTE and IPPC recommendations and/or guidelines.

3. In determining such areas, the Parties shall consider factors such as geographic location, ecosystems, epidemiological surveillance, and effectiveness of sanitary and phytosanitary controls, among other technically and scientifically justified considerations, which provide the necessary evidence to objectively demonstrate to the other Party that such areas are and are likely to remain pest- or disease-free areas or areas of low prevalence. To this end, reasonable access shall be provided, upon request to the other Party, for inspection, testing and other relevant procedures.

4. The Parties recognize the recommendations expressed in the standards on compartmentalization established by the OIE.

5. The Committee established in Article 6.11 shall develop an appropriate procedure for the recognition of pest or disease free areas and areas of low prevalence, taking into account international standards, guidelines or recommendations. 6. If a Party does not recognize the determination of pest- or disease-free areas or areas of low pest or disease prevalence made by the other Party, it shall justify the technical and scientific reasons for such refusal in a timely manner.

## Article 6.8. Inspection, Control and Approval

The Parties shall establish inspection, control and approval procedures taking into consideration Article 8 and Annex C of the WTO SPS Agreement.

## Article 6.9. Transparency

1. The Parties shall apply sanitary and phytosanitary measures in a transparent manner. For these purposes, the Parties shall notify each other of such measures in accordance with Annex B of the WTO SPS Agreement.

2. Additionally, the Parties shall notify each other:

(a) the application of emergency measures or modification of measures already in force within a period not exceeding three (3) days, in accordance with the provisions of Annex B of the WTO SPS Agreement, as well as health alert situations regarding the control of food traded between the Parties, in which a risk to human health associated with its consumption is detected, in accordance with the corresponding sanitary standard of the Codex Alimentarius in force at the time;

(b) situations of non-compliance with measures detected in the certifications of export products subject to the application of sanitary and phytosanitary measures, including as much information as possible, as well as the reasons for their rejection;

(c) cases of exotic or unusually occurring pests or diseases; and

(d) updated information at the request of a Party, of the requirements that apply to the importation of specific products, and to report on the status of the processes and measures in process, with respect to requests for access of animal, plant, forestry, fishery and other related products to the SPS Agreement of the WTO by the exporting Party.

3. Likewise, the Parties shall make their best efforts to improve mutual understanding of sanitary and phytosanitary measures and their application, and shall exchange information on matters related to the development and application of sanitary and phytosanitary measures, which affect or may affect trade between the Parties, with a view to minimizing their negative effects on trade.

4. Notifications shall be made in writing to the contact points established in accordance with the WTO SPS Agreement. Written notification shall be understood to mean notifications by post, fax or e-mail.

## Article 6.10. Cooperation and Technical Assistance

1. The Parties agree to cooperate and provide each other with the necessary technical assistance for the implementation of this Chapter.

2. The Parties shall develop through the Committee established in Article 6.11 a work program, including the identification of cooperation and technical assistance needs to establish and/or strengthen the capacity of the Parties in human health, animal health, plant health and food safety of common interest.

## Article 6.11. Committee on Sanitary and Phytosanitary Measures

1. The Parties establish a Committee on Sanitary and Phytosanitary Measures (hereinafter the Committee), composed of representatives of each Party with responsibilities in this area, in accordance with Annex 6.11 (Committee on Sanitary and Phytosanitary Measures), as a forum to ensure and monitor the implementation and administration of this Chapter, as well as to address and attempt to resolve problems that arise in trade in goods subject to the application of sanitary and phytosanitary measures.

2. The Committee may establish working groups on sanitary and phytosanitary matters as it deems appropriate.

3. The functions of the Committee shall include:

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

(b) report to the Commission on the implementation and administration of this Chapter, as appropriate;

(c) serve as a forum to consult, discuss and attempt to resolve problems related to the development or application of sanitary or phytosanitary measures that affect or may affect trade between the Parties;

(d) contribute to trade facilitation through the timely handling of consultations on problems related to the implementation of this Chapter;

(e) improve any present or future relationship between the offices responsible for the application of sanitary and phytosanitary measures of the Parties;

(f) contribute to mutual understanding of the Parties' sanitary and phytosanitary measures, their implementation processes, and related domestic regulations;

(g) detect and promote cooperation, technical assistance, training and exchange of information on sanitary and phytosanitary measures;

(h) Establish procedures for the recognition of pest or disease free zones, areas or compartments;

(i) define the mechanisms or procedures for the recognition of equivalence of sanitary and phytosanitary measures, as well as determine the procedures and deadlines for risk evaluations in an agile and transparent manner;

(j) consult on the position of the Parties on issues to be discussed at meetings of the WTO Committee on Sanitary and Phytosanitary Measures, Codex Alimentarius committees and other fora to which the Parties are party; and

(k) to deal with any other matter related to this Chapter.

4. Unless otherwise agreed by the Parties, the Committee shall meet at least once (1) a year, on the date and according to the agenda previously agreed upon by the Parties. The Parties shall determine those cases in which extraordinary meetings may be held.

5. The meetings may be held by any means agreed upon by the Parties. When they are face-to-face, they shall be held alternately in the territory of each Party, and it shall be the responsibility of the host Party to organize the meeting. The first meeting of the Committee shall be held no later than one (1) year after the date of entry into force of this Treaty.

6. Unless otherwise agreed by the Parties, the Committee shall be of a permanent nature and shall develop its working rules.

7. All decisions of the Committee shall be made by mutual agreement.

### Article 6.12. Settlement of Disputes

Once the consultation procedure has been exhausted in accordance with Article 6.11.3 (c), a Party that is not satisfied with the outcome of such consultations may have recourse to the dispute settlement procedure set forth in Chapter 18 (Dispute Settlement).

### Article 6.13. Definitions

For the purposes of this Chapter, the definitions and glossaries of Annex A of the WTO SPS Agreement and of the international reference bodies shall apply.

## Chapter 7. Technical Barriers to Trade

### Article 7.1. Scope of Application

1. This Chapter applies to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures, including those relating to metrology, of each Party that may directly or indirectly affect trade in goods.

2. Notwithstanding the provisions of paragraph 1, this Chapter does not apply to:

(a) sanitary and phytosanitary measures, which shall be covered by Chapter 6 (Sanitary and Phytosanitary Measures); and

(b) purchasing specifications established by governmental institutions for the production or consumption needs of governmental institutions, which shall be governed by Chapter 10 (Government Procurement).

### Article 7.2. Objectives

The objective of this Chapter is to facilitate and increase trade in goods by identifying, avoiding and eliminating unnecessary obstacles to trade between the Parties that may arise as a result of the preparation, adoption and application of technical regulations, standards and conformity assessment procedures, including those relating to metrology, and the promotion of joint cooperation between the Parties, within the terms of the WTO TBT Agreement.

## Article 7.3. Reaffirmation of the WTO TBT Agreement

The Parties reaffirm their existing rights and obligations with respect to each other under the WTO 7BT Agreement, which are incorporated into this Chapter, mutatis mutandis.

## Article 7.4. Trade Facilitation

1. The Parties shall intensify their joint work in the field of standards, technical regulations and conformity assessment procedures, with a view to facilitating trade between the Parties. In particular, the Parties shall seek to identify, develop and promote trade facilitating initiatives relating to standards, technical regulations and conformity assessment procedures that are appropriate to particular issues or sectors, taking into account the Parties' respective experience in other appropriate bilateral, regional or multilateral agreements.

2. The initiatives referred to in paragraph 1 may include cooperation on regulatory matters, such as convergence or harmonization with international standards, reliance on a supplier's declaration of conformity, recognition and acceptance of the results of conformity assessment procedures and the use of accreditation to qualify conformity assessment bodies, as well as cooperation through mutual recognition agreements.

3. When a Party detains at the port of entry a good originating in the territory of the other Party by virtue of a perceived non-compliance with a technical regulation, it shall immediately notify the importer of the reasons for the detention.

## Article 7.5. Use of International Standards

1. Each Party shall use relevant international standards, guides and recommendations as provided for in Articles 2.4 and 5.4 of the WIO 7BT Agreement as _ the basis for its technical regulations and conformity assessment procedures.

2. In determining whether an international standard, guide or recommendation within the meaning of Article 2, Article 5 and Annex 3 of the WTO TBT Agreement exists, each Party shall apply the principles set out in the Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade (hereinafter WTO TBT Committee) since 1 January 1995, G/TBT/1/Rev.9, 08 September 2008 issued by the WTO TBT Committee.

3. Each Party shall encourage its national standardizing bodies to cooperate with the relevant national standardizing bodies of the other Party in international standardization activities. Such cooperation may be effected through the activities of the Parties in regional and international standardizing bodies of which the Parties are members.

## Article 7.6. Technical Regulations

1. Each Party shall favorably consider accepting as equivalent the technical regulations of the other Party, even if they differ from its own, provided that it is satisfied that they adequately fulfill the legitimate objectives of its own technical regulations.

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

3. At the request of a Party that has an interest in developing a technical regulation similar to the technical regulation of the other Party and to minimize duplication of costs, the other Party shall provide any available information, studies or other relevant documents on which it has based the development of that technical regulation, except for confidential information.

## Article 7.7. Conformity Assessment

1. The Parties recognize that a wide range of mechanisms exist to facilitate the acceptance in the territory of one Party of the results of conformity assessment procedures carried out in the territory of the other Party, for example:

(a) the importing Party's reliance on a supplier's declaration of conformity;

(b) voluntary agreements between conformity assessment bodies in the territory of the Parties;

(c) agreements on mutual acceptance of the results of conformity assessment procedures with respect to specific regulations, carried out by bodies located in the territory of the other Party;

(d) accreditation procedures to qualify conformity assessment bodies;

(e) the designation of conformity assessment bodies; and

(f) the recognition by a Party of the results of conformity assessment procedures carried out in the territory of the other Party.

The Parties shall intensify the exchange of information in relation to these and similar mechanisms to facilitate the acceptance of results of conformity assessment procedures.

2. In the event that a Party does not accept the results of a conformity assessment procedure carried out in the territory of the other Party, the latter shall, at the request of that other Party, explain the reasons for its decision.

3. Each Party shall accredit, license or otherwise recognize conformity assessment bodies in the territory of the other Party on terms no less favorable than those accorded to conformity assessment bodies in its territory. If a Party accredits, authorizes or otherwise recognizes a body assessing conformity to a specific standard or technical regulation in its territory and refuses to accredit, authorize or otherwise recognize a body assessing conformity to that same standard or technical regulation in the territory of the other Party, it shall, on request of that other Party, explain the reasons for its decision.

4. The Parties may enter into negotiations aimed at the conclusion of agreements on mutual recognition of the results of their respective conformity assessment procedures, following the principles of the WTO TBT Agreement. In the event that a Party does not agree to enter into such negotiations, it shall, at the request of that other Party, explain the reasons for its decision.

## Article 7.8. Transparency

1. Each Party shall notify the other Party electronically through the contact points established under Article 10 of the WTO TBT Agreement, at the same time as it submits its notification to the WTO central notification registry in accordance with the WTO TBT Agreement:

(a) its draft technical regulations and conformity assessment procedures; and

(b) technical regulations and conformity assessment procedures adopted to address urgent safety, health, environmental protection or national security problems that arise or threaten to arise under the terms of the WTO TBT Agreement.

2. Each Party shall publish on the website of the competent national authority those technical regulations and conformity assessment procedures that are consistent with the technical content of any relevant international standard. This publication shall remain publicly available as long as such technical regulations and conformity assessment procedures are in force.

3. Each Party shall allow a period of at least sixty (60) days from the date of the notification referred to in subparagraph 1(a) for the other Party and interested persons to provide written comments on the proposal. A Party shall give favorable consideration to reasonable requests for an extension of the time period for comment.

4. Each Party shall publish or make publicly available, either in printed or electronic form, its responses to significant comments it receives from interested persons or from the other Party in accordance with paragraph 3 no later than the date on which it publishes the final version of the technical regulation or conformity assessment procedure.

5. The notification of draft technical regulations and conformity assessment procedures shall include an electronic link to, or a copy of, the full text of the notified document.

6. A Party shall, upon request of the other Party, provide information on the objective and basis of the technical regulation or conformity assessment procedure that such Party has adopted or proposes to adopt.

7. The Parties agree that the period between publication and entry into force of technical regulations and conformity assessment procedures shall not be less than six (6) months, unless it is impracticable to meet their legitimate objectives within that period. The Parties shall give favorable consideration to reasonable requests for extension of the time period.

8. The Parties shall ensure that all technical regulations and procedures of the Parties are the conformity assessment systems adopted and in force are publicly available on a free official website, in such a way that they are easy to locate and access.

9. Each Party shall implement the provisions of paragraph 4 as soon as possible and in no case later than three (3) years after the entry into force of this Agreement.

## Article 7.9. Technical Cooperation

1. At the request of a Party, the other Party shall give favorable consideration to any sector-specific proposal that the requesting Party makes to encourage further cooperation under this Chapter.

2. The Parties agree to cooperate and provide technical assistance in the field of standards, technical regulations and conformity assessment procedures, including metrology, with a view to facilitating access to their markets. In particular, the Parties shall consider the following activities, among others:

(a) to promote the application of this Chapter;

(b) to promote the implementation of the WTO TBT Agreement;

(c) strengthen the capacities of their respective standardization, technical regulation, conformity assessment, metrology, and information and notification systems under the WTO TBT Agreement, including human resources education and training; and

(d) increase participation in international organizations, including those of a regional nature, related to standardization, technical regulation, conformity assessment and metrology.

## Article 7.10. Committee on Technical Barriers to Trade

1. The Parties establish a Committee on Technical Barriers to Trade (hereinafter the Committee), composed of representatives of each Party in accordance with Annex 7.10 (Committee on Technical Barriers to Trade).

2. The functions of the Committee shall include:

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

(b) report to the Commission on the implementation and administration of this Chapter, as appropriate;

(c) promptly deal with matters that a Party proposes with respect to the development, adoption, application or implementation of standards, technical regulations, or conformity assessment procedures;

(d) encourage joint cooperation of the Parties in the development and improvement of standards, technical regulations and conformity assessment procedures, including metrology;

(e) as appropriate, facilitate sectoral cooperation between governmental and non-governmental bodies on standards, technical regulations and conformity assessment procedures, including metrology, in the territories of the Parties;

(f) exchange information about the work being carried out in non governmental, regional and multilateral fora involved in activities related to standards, technical regulations and conformity assessment procedures;

(g) at the request of a Party, resolve consultations on any matter arising under this Chapter;

(h) review this Chapter in light of any developments under the WTO 7BT Agreement, and decisions or recommendations of the WTO TBT Committee, and make suggestions on possible amendments to this Chapter;

(i) take any other action that the Parties consider will assist them in the implementation of this Chapter and the WTO 7BT Agreement and in the facilitation of trade between the Parties;

(j) to recommend to the Commission the establishment of working groups to deal with specific matters related to this Chapter and the WTO TBT Agreement; and

(k) to deal with any other matter related to this Chapter.

3. The Parties shall make every effort to reach a mutually satisfactory solution to the consultations referred to in subparagraph 2 (g) within a period of thirty (30) days.

4. Where the Parties have resorted to consultations pursuant to subparagraph 2(g), such consultations shall replace those provided for in Article 18.4 (Consultations).

5. The representatives of each Party in accordance with Annex 7.10 (Committee on Technical Barriers to Trade) shall be responsible for coordinating with the relevant bodies and persons in its territory, as well as for ensuring that such bodies and persons are convened.

6. Unless otherwise agreed by the Parties, the Committee shall meet at least once a year. (1) once a year, on the date and according to the agenda previously agreed by the Parties. The Parties shall determine those cases in which extraordinary

meetings may be held.

7. The meetings may be held by any means agreed upon by the Parties. When they are face-to-face, they shall be held alternately in the territory of each Party, and it shall be the responsibility of the host Party to organize the meeting. The first meeting of the Committee shall be held no later than one (1) year after the date of entry into force of this Agreement.

8. Unless otherwise agreed by the Parties, the Committee shall be of a permanent nature and shall develop its working rules.

9. All decisions of the Committee shall be made by mutual agreement.

### Article 7.11. Exchange of Information

1. Any information or explanation provided at the request of a Party pursuant to the provisions of this Chapter shall be provided in printed or electronic form within thirty (30) days, which may be extended upon justification by the reporting Party.

2. Regarding the exchange of information, in accordance with Article 10 of the WTO TBT Agreement, the Parties should apply the recommendations indicated in the document Decisions and Recommendations adopted by the WTO TBT Committee since January 1, 1995, G/TBT/1/Rev.9, September 8, 2008, Section V (Information Exchange Procedure) issued by the WTO TBT Committee.

### Article 7.12. Definitions

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

# Chapter 8. Trade Defense

## Section A. Bilateral Safeguard Measures

### Article 8.1. Imposition of a Bilateral Safeguard Measure

1. During the transition period, if as a result of the reduction or elimination of a customs duty under this Agreement, a good originating in one Party is being imported into the territory of the other Party in such increased quantities in absolute terms or relative to domestic production and under such conditions as to constitute a substantial cause of serious injury or threat thereof to the domestic industry producing a like or directly competitive good, the importing Party may adopt a bilateral safeguard measure described in paragraph 2.

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

(a) suspend the future reduction of any tariff rate provided for in this Agreement for the good; or

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

(i) the most favored nation (MFN) tariff rate applied at the time the measure is applied; or

(ii) the base tariff rate as set forth in Annex 2.3 (Tariff Elimination Program) (1).

3. The adoption of a bilateral safeguard measure provided for in this Section shall not affect goods which on the date of entry into force of the measure are in existence:

(a) (i) the goods actually shipped as evidenced by the transport documents, provided that they are intended for final consumption or final importation within a period not exceeding twenty (20) days from the completion of unloading in the territory of the importing Party; or

(b) in the territory of the importing Party pending clearance, provided that the clearance is carried out within a period not exceeding twenty (20) days, counted from the adoption of the measure. Excluded from this provision are goods that, being in free zones, are to be entered into the territory of the importing Party.

(1) The Parties understand that neither tariff rate quotas nor quantitative restrictions would be a permissible form of bilateral safeguard measure.

## Article 8.2. Standards for a Bilateral Safeguard Measure

1. No Party may maintain a bilateral safeguard measure:

(a) except to the extent and for the period necessary to prevent or remedy the serious damage and to facilitate readjustment;

(b) for a period exceeding two (2) years; except that this period may be extended for an additional one (1) year, if the competent authority determines, in accordance with the procedures set forth in Article 8.3, that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the domestic industry is in the process of adjustment; or

(c) after the expiration of the transition period.

2. In order to facilitate readjustment in a situation where the expected duration of a bilateral safeguard measure exceeds one (1) year, the Party applying the measure shall progressively liberalize it at regular intervals during the period of application.

3. A Party may not apply a bilateral safeguard measure more than once against the same good until a period equal to the duration of the previous bilateral safeguard measure, including any extensions, has elapsed, starting from the termination of the previous bilateral safeguard measure, provided that the period of non-application is at least one (1) year.

4. Upon termination of the bilateral safeguard measure, the Party that has adopted the measure shall apply the tariff rate in accordance with its Schedule of Schedule 2.3 (Tariff Elimination Program).

## Article 8.3. Investigation Procedures and Transparency Requirements

1. A Party may apply a bilateral safeguard measure only after an investigation by the Party's competent authority pursuant to Articles 3 and 4.2(c) of the WTO Agreement on Safeguards; and to this end, Articles 3 and 4.2(c) of the WTO Agreement on Safeguards are incorporated into and made an integral part of this Agreement, mutatis mutandis.

2. In the investigation described in paragraph 1, the Party shall comply with the requirements of Articles 4.2(a) and 4.2(b) of the WTO Agreement on Safeguards; and to this end, Articles 4.2(a) and 4.2(b) of the WTO Agreement on Safeguards are incorporated into and made an integral part of this Agreement, mutatis mutandis.

3. Each Party shall ensure that its competent authorities complete this type of investigation within the time limits established in its national legislation.

## Article 8.4. Provisional Bilateral Safeguard Measures

1. In critical circumstances, where any delay would cause injury which would be difficult to repair, a Party may apply a provisional bilateral safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports from the other Party have caused or are threatening to cause serious injury to the domestic industry.

2. The duration of the provisional bilateral safeguard shall not exceed two hundred (200) days, shall take any of the forms provided for in Article 8.1.2 and shall comply with the relevant requirements of Articles 8.1 and 8.3. Guarantees or funds received for provisional measures shall be released or reimbursed promptly, when the investigation does not determine that increased imports have caused or threatened to cause serious injury to the domestic industry. The duration of any provisional bilateral safeguard measure shall be counted as part of the duration of a definitive bilateral safeguard measure.

## Article 8.5. Notification and Consultation

1. A Party shall promptly notify the other Party in writing, when:

(a) initiate a bilateral safeguard procedure in accordance with this Section;

(b) apply a provisional bilateral safeguard measure; and

(c) adopt the final decision to apply or extend a bilateral safeguard measure.

2. A Party shall provide to the other Party a copy of the public version of the reportof its competent investigating authority required under Article 8.3.1.

3. Upon request of a Party whose good is subject to a bilateral safeguard proceeding under this Chapter, the Party conducting the proceeding shall initiate consultations with the requesting Party to review the notifications under paragraph 1 or any public notice or report issued by the competent investigating authority in connection with such proceeding.

### Article 8.6. Compensation

1. No later than thirty (30) days after it applies a bilateral safeguard measure, a Party shall provide an opportunity for consultations with the other Party regarding appropriate trade liberalization compensation in the form of concessions having substantially equivalent effect on trade, or equivalent to the value of the additional duties expected as a result of the measure.

2. If the Parties are unable to agree on compensation within thirty (30) days after the initiation of consultations, the exporting Party may suspend the application of substantially equivalent concessions to the trade of the Party applying the bilateral safeguard measure.

3. The exporting Party shall notify the Party applying the bilateral safeguard measure in writing at least thirty (30) days before suspending concessions under paragraph 2.

4. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 shall terminate on the date of termination of the bilateral safeguard measure.

### Article 8.7. Definitions

For the purposes of this Section:

threat of serious harm means the clear imminence of serious harm based on facts and not merely on allegation, conjecture or remote possibility;

competent investigating authority means:

(a) in the case of Panama, the General Directorate of Trade Defense of the National Directorate of Administration of International Trade Treaties and Trade Defense of the Office of International Trade Negotiations of the Ministry of Commerce and Industries; and

(b) In the case of Peru, the Vice-Ministry of Foreign Trade of the Ministry of Foreign Trade and Tourism,

or their successors;

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

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

transition period means the five (5) year period beginning on the date of entry into force of this Agreement, except for any good for which Annex 2.3 (Tariff Elimination Schedule) of the Party applying the safeguard measure provides that the Party eliminates its duties on t h e good over a period of five (5) years or more, where transition period means the period of tariff elimination for the good set out in Annex 2.3 (Tariff Elimination Schedule) plus an additional period of two (2) years.

## Section B. Global Safeguarding Measures

### Article 8.8. Global Safeguarding Measures

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

2. This Agreement confers no additional rights or obligations on the Parties with respect to actions taken pursuant to Article XIX of the GATT 1994 and the WTO Agreement on Safeguards, except that the Party imposing a global safeguard measure may exclude imports of a good originating in the other Party, if such imports are not a substantial cause of serious injury or threat of serious injury.

3. No Party shall apply with respect to the same good and during the same period:

(a) a bilateral safeguard measure pursuant to Section A; and

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

4. For the purposes of this Section, competent investigating authority means for:

(a) in the case of Panama, the General Directorate of Trade Defense of the National Directorate of Administration of International Trade Treaties and Trade Defense of the Office of International Trade Negotiations of the Ministry of Commerce and Industries; and

(b) in the case of Peru, the Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (National Institute for the Defense of Competition and the Protection of Intellectual Property), or their successors.

5. Except as provided in paragraph 3, Chapter 18 (Dispute Settlement) shall not apply to this Section.

# Section C. Antidumping and Countervailing Duties

## Article 8.9. Antidumping and Countervailing Duties

1. Each Party retains its rights and obligations under Article VI of the GATT 1994, the WTO Agreement on Implementation of Article VI of the GATT 1994, and the WTO Agreement on Subsidies and Countervailing Measures, with respect to the application of antidumping and countervailing duties.

2. Except as provided in paragraph 3, nothing in this Agreement shall be construed to impose any rights or obligations on the Parties with respect to anti-dumping and countervailing duties.

3. Without prejudice to Article 6.5 of the WTO Antidumping Agreement and Article 12.4 of the WTO Subsidies Agreement, and in accordance with Article 6.9 of the WTO Antidumping Agreement and Article 12.8 of the WTO Subsidies Agreement, the competent investigating authority shall make full and meaningful disclosure of all essential facts and considerations that form the basis for the decision on the application of definitive measures. In this regard, the competent investigating authority shall send to the interested parties a written report containing such information, and shall allow the interested parties sufficient time to submit their comments and rebuttals in writing and orally to this report.

4. For the purposes of this Section, a competent investigating authority shall mean means:

(a) in the case of Panama, the General Directorate of Trade Defense of the National Directorate of Administration of International Trade Treaties and Trade Defense of the Office of International Trade Negotiations of the Ministry of Commerce and Industries; and

(b) in the case of Peru, the Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (National Institute for the Defense of Competition and the Protection of Intellectual Property), or their successors.

5. Chapter 18 (Dispute Resolution) shall not apply to this Section.

# Section D. Cooperation

## Article 8.10. Cooperation

The Parties agree to establish a mechanism for cooperation between their investigating authorities. Cooperation between the Parties may include, but is not limited to, the following activities:

(a) exchange of available non-confidential information on trade defense investigations they have conducted with respect to imports originating in or coming from third countries other than the Parties;

(b) technical assistance in trade defense; and

(c) exchange of information in order to improve understanding of this Chapter and the Parties' trade defense regimes.

# Chapter 9. Intellectual Property

## Article 9.1. Basic Principles

1. The Parties recognize that the protection and enforcement of intellectual property rights shall contribute to the generation of knowledge, the promotion of innovation, transfer and dissemination of technology and cultural progress, to the mutual benefit of producers and users of technological and cultural knowledge, favoring the development of social and economic welfare and the balance of rights and obligations.

2. The Parties recognize the need to maintain a balance between the rights of right holders and the interests of the general public, in particular, in education, research, public health and access to information within the framework of the exceptions and limitations established in the national legislation of each Party.

3. The Parties, in formulating or amending their laws and regulations, may adopt measures necessary to protect public health and nutrition of the population, or to promote the public interest in sectors of vital importance to their socioeconomic and technological development, provided that such measures are consistent with the provisions of this Chapter.

4. The Parties recognize that technology transfer contributes to the strengthening of national capacities to establish a solid and viable technological base.

5. The Parties, in interpreting and implementing the provisions of this Chapter, shall observe the principles set forth in the Declaration on the TRIPS Agreement and Public Health, adopted on November 14, 2001 at the Fourth WTO Ministerial Conference.

6. The Parties shall contribute to the implementation of and respect for the WTO General Council Decision of August 30, 2003 on paragraph 6 of the Declaration on the TRIPS Agreement and Public Health, and the Protocol amending the TRIPS Agreement, signed in Geneva on December 6, 2005. They also recognize the importance of promoting the gradual implementation of Resolution WHA61.21, Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property, adopted by the 61st World Health Assembly on May 24, 2008.

7. The Parties shall ensure that the interpretation and implementation of the rights and obligations assumed under this Chapter shall be consistent with paragraphs 1 through 6.

## Article 9.2. General Provisions

1. Each Party shall apply the provisions of this Chapter and may, but shall not be obliged to, provide in its national legislation for more extensive protection than that required by this Chapter, provided that such protection does not contravene the provisions of this Chapter.

2. The Parties reaffirm their rights and obligations under the WTO TRIPS Agreement, the Convention on Biological Diversity, and any other multilateral intellectual property agreements or treaties administered by the World Intellectual Property Organization (hereinafter WIPO) to which the Parties are party. In this regard, nothing in this Chapter shall be to the detriment of the provisions of such multilateral treaties.

3. Each Party, in formulating or amending its laws and regulations, may make use of the exceptions and flexibilities allowed by multilateral treaties related to the protection of intellectual property to which the Parties are party.

4. A Party shall accord to nationals of the other Party treatment no less favorable than that it accords to its own nationals. Exceptions to this obligation shall be in accordance with the relevant provisions referred to in Articles 3 and 5 of the WTO TRIPS Agreement.

5. With respect to the protection and enforcement of intellectual property rights referred to in this Chapter, any advantage, favor, privilege or immunity granted by a Party to nationals of any other country shall be accorded immediately and unconditionally to nationals of the other Party. Exceptions to this obligation shall be in accordance with the relevant provisions referred to in Articles 4 and 5 of the WTO TRIPS Agreement.

6. Nothing in this Chapter shall prevent a Party from taking measures necessary to prevent the abuse of intellectual property rights by right holders, or the resort to practices that unreasonably restrain trade, or are detrimental to the international transfer of technology. Likewise, nothing in this Chapter shall be construed to diminish the protections that the Parties agree or have agreed to benefit the conservation and sustainable use of biodiversity, nor shall it prevent the Parties from adopting or maintaining measures to this end.

## Article 9.3. Marks

1. The Parties shall protect trademarks in accordance with the WTO TRIPS Agreement.

2. Article 6 bis of the Paris Convention for the Protection of Industrial Property shall apply, mutatis mutandis, to goods or services that are not identical or similar to those identified by a well-known mark, provided that the use of such mark in connection with those goods or services indicates a connection between those goods or services and the owner of the mark, and provided that the interests of the trademark owner could be injured by such use. For greater certainty, the Parties may

also apply this protection to well-known unregistered trademarks, provided that the national legislation of each Party so permits.

3. In determining whether a trademark is well known (1), no Party shall require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services. For greater certainty, the sector of the public that normally deals with the relevant goods or services is determined in accordance with the national legislation of each Party.

4. Each Party shall provide a system for the registration of trademarks, which shall provide for:

(a) written notification to the applicant indicating the reasons for the refusal to register the trademark. If the national legislation so permits, notifications may be made by electronic means;

(b) an opportunity for interested parties to oppose an application for trademark registration or to request the nullity of the trademark after it has been registered;

(c) that decisions in registration and nullity proceedings be reasoned and in writing; and

(d) the opportunity for interested parties to challenge administratively or judicially, as established by the national legislation of each Party, the decisions issued in trademark registration and nullity proceedings.

5. Each Party shall provide that applications for registration, publications of such applications and registrations shall indicate the goods and services by their names, grouped according to the classes of the classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1979), as revised and amended (hereinafter referred to as the Nice Classification).

Goods or services may not be considered similar to each other solely on the ground that, in any registration or publication, they appear in the same class of the Nice Classification. Likewise, each Party shall provide that goods or services may not be considered as dissimilar to each other solely on the ground that, in any registration or publication, they appear in different classes of the Nice Classification.

(1) Notoriety must be demonstrated within the territorial scope determined by the national legislation of each Party.

## Article 9.4. Geographical Indications

1. Geographical indications are those that identify a product as originating in the territory of a Party, or a region or locality in that territory, when a given quality, reputation or other characteristic of the product is essentially attributable to its geographical origin, which may include natural or human factors.

2. Each Party shall establish in its national legislation mechanisms for the registration and protection of geographical indications, including appellations of origin.

3. Nothing in this Article shall prevent the Parties from maintaining or adopting in their national legislation measures relating to homonymous geographical indications.

4. The names listed in Section A of Annex 9.4 are protected geographical indications in Peru, pursuant to Article 22.1 of the WTO TRIPS Agreement. Subject to the requirements and procedures for their protection provided for in the national laws and regulations of Panama and, in a manner consistent with the WTO TRIPS Agreement, these names shall be protected as geographical indications in the territory of Panama.

5. The name listed in Section B of Annex 9.4 is a geographical indication protected in Panama, in accordance with the provisions of Article 22.1 of the WTO TRIPS Agreement. Subject to the requirements and procedures for its protection provided for in the national laws and regulations of Peru and, in a manner consistent with the WTO TRIPS Agreement, this name shall be protected as a geographical indication in the territory of Peru.

6. The geographical indications of a Party that are granted protection in the territory of the other Party shall be notified to the Party concerned, once the respective procedure is completed, through the contact points established in Article 19.1 (Contact Points) and shall enjoy the protection established in paragraphs 7 and 8.

7. The Parties shall protect the geographical indications, including appellations of origin, of the other Party registered and/or protected in their respective territories in accordance with the provisions of paragraphs 4, 5 and 6. Accordingly, the Parties shall not permit the importation, manufacture or sale of products under such geographical indications, including

appellations of origin, unless such products have been produced and certified in the country of origin, in accordance with the national legislation applicable to such products.

8. The use of geographical indications, including appellations of origin, recognized and protected in the territory of a Party in relation to any type of product originating in the territory of said Party, is reserved exclusively for authorized producers, manufacturers and craftsmen who have their production or manufacturing establishments in the locality or region of the Party designated or evoked by said geographical indication.

9. The Parties may grant the agreed protection to other geographical indications, including appellations of origin, protected in the Parties. To this end, the Party concerned shall notify the other Party of such protection, after which it shall proceed as provided in paragraphs 4, 5 and 6.

## Article 9.5. Traditional Knowledge

1. Each Party, in accordance with its national legislation, recognizes the right of indigenous and local communities (2) over their traditional knowledge, and reiterates its commitment to respect, preserve and maintain the traditional knowledge, innovations and practices of indigenous and local communities in the territories of the Parties.

2. The Parties may protect the rights referred to in this Article against acts constituting unfair competition, in accordance with the provisions of their national legislation.

3. The Republic of Panama declares, within the traditional knowledge protected in its national legislation, the following products:

(a) MOLA KUNA PANAMA;

(b) NAHUA;

(c) CHACARA;

(d) CHAQUIRA;

(e) NGOBE AND BUGLE HAT;

(f) WOOD CARVING;

(g) TAGUA;

(h) HOSIG DÍ o JIW'A (BASKET);

(i) HAMACA KUNAS PANAMA; and

(j) MUSICAL INSTRUMENTS KUNAS PANAMÁ.

4. The Parties express their interest in encouraging and promoting discussions on the protection of genetic resources, traditional knowledge and traditional cultural expressions in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, in the WTO Council for TRIPS, as well as in any other relevant forum dealing with such matters.

(2) If the national legislation of each Party so provides, "indigenous and local communities" shall include Afro-American or Afro-descendant communities.

## Article 9.6. Measures Related to the Protection of Biodiversity and Traditional Knowledge

1. The Parties recognize the importance and value of their biological diversity and its components. Each Party exercises sovereignty over its biological and genetic resources and their derived products, and accordingly determine the conditions of their access, in accordance with the principles and provisions contained in relevant national and international standards.

2. The Parties recognize the importance and value of the knowledge, innovations and practices of indigenous and local communities, as well as their past, present and future contribution of these communities to the conservation and sustainable use of biological and genetic resources and their derived products, and in general, the contribution of the traditional knowledge of such communities to the culture and to the economic and social development of nations.

3. Each Party, in accordance with its national legislation, reiterates its commitment to respect, preserve and maintain the traditional knowledge, innovations and practices of indigenous and local communities in the territory of each Party.

4. Access to biological and genetic resources and their derived products shall be conditioned to the prior informed consent of the Party that is the country of origin, in mutually agreed terms. Likewise, access to traditional knowledge of indigenous and local communities associated with such resources shall be conditioned to the prior informed consent of the holders or possessors, as the case may be, of such knowledge, on mutually agreed terms. Both cases shall be subject to the provisions of the national legislation of each Party.

5. The Parties shall promote measures to ensure fair and equitable sharing of benefits arising from the utilization of biological and genetic resources and derived products and traditional knowledge of indigenous and local communities.

6. Each Party shall promote political, legal and administrative measures to ensure full compliance with the conditions of access to biological and genetic resources of biodiversity.

7. Any intellectual property rights arising from the use of biological and genetic resources and their derivative products, and/or traditional knowledge of indigenous and local communities, of which a Party is the country of origin, shall comply with the specific national and international standards on the matter.

8. The Parties shall require that patent applications developed from biological and genetic resources and/or associated traditional knowledge, of which they are the country of origin, demonstrate legal access to such resources or knowledge, as well as the disclosure of the origin of the accessed resource and/or traditional knowledge, in case the national legislation of the Party so requires.

9. The Parties may, through their competent national authorities, exchange information related to biodiversity and/or traditional knowledge and documented information related to biological and genetic resources and their derivatives, or if applicable, traditional knowledge of their indigenous and local communities, in order to support the evaluation of patents.

10. The Parties agree to collaborate, at the request of either Party, in the provision of public information available to them for the investigation and monitoring of illegal access to genetic resources and/or traditional knowledge, innovations and practices in their territories.

## Article 9.7. Copyright and Related Rights

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

2. In accordance with the international conventions referred to in paragraph 1 and with its national legislation, each Party shall provide adequate and effective protection to authors of literary and artistic works and to performers, producers of phonograms and broadcasting organizations, in their artistic performances, phonograms and broadcasts, respectively.

3. Independently of the author's economic rights, and even after the transfer of these rights, the author shall retain, at least, the right to claim authorship of the work and to oppose any distortion, mutilation or other modification thereof, or any attack upon it, that would be prejudicial to his honor or reputation.

4. The rights recognized to the author in accordance with paragraph 3 shall be maintained after his death, at least until the extinction of his economic rights, and shall be exercised by the persons or institutions to which the national legislation of the country in which protection is claimed recognizes rights.

5. The rights granted under paragraphs 3 and 4 shall be granted, mutatis mutandis, to performers in respect of their live performances or fixed performances.

6. Each Party shall ensure that a broadcasting organization in its territory shall have at least the exclusive right to authorize the following acts: the fixation, reproduction and retransmission of its broadcasts.

7. The Parties may provide in their national legislation for limitations and exceptions to the rights established in this Article only in certain cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the owner of the rights.

8. The Parties recognize the importance of collective management societies of copyright and related rights, for the purpose of ensuring an effective management of the rights entrusted to them, and an equitable distribution of the remunerations collected, which are proportional to the use of works, performances and phonograms, within a framework of transparency,

in accordance with the national legislation of each Party. Societies or associations that manage copyright and related rights collectively shall be subject to the authorization, inspection and supervision of the State.

## Article 9.8. Enforcement

1. Without prejudice to the rights and obligations established under the WTO TRIPS Agreement, in particular Part III, the Parties may develop in their national legislation, measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights.

2. The Parties shall adopt procedures that allow the right holder, who has valid reasons to suspect that the importation, exportation, or transit of counterfeit trademark goods or pirated goods infringing copyright (3) is being prepared, to submit to the competent authorities, a request or complaint, according to the national legislation of each Party, in order for the customs authorities to suspend the release of such goods.

3. Each Party shall provide that the competent authorities shall have the authority to require the right holder initiating the proceedings referred to in paragraph 2 to provide a bond or equivalent security sufficient to protect the defendant and the competent authorities and to prevent abuse. The bond or equivalent security shall not unduly deter access to such proceedings.

4. When its competent authorities determine that the goods are counterfeit or pirated, the Party shall grant its competent authorities the authority to inform the right holder, the name and address of the consignor, the importer and the consignee, as well as the quantity of the goods in question.

5. Each Party shall provide that the competent authorities shall be empowered to initiate border measures ex officio, without the need for a formal request from the right holder or a third party, when there are reasons to believe or suspect that the goods being imported, exported or in transit are counterfeit or pirated.

(3) For the purposes of paragraphs 2 to 5: (a) counterfeit trademark goods means any goods, including their packaging, bearing without authorization a mark which is identical to the trademark validly registered for such goods, or which cannot be distinguished in its essential aspects from that trademark, and which thereby violates the rights conferred by the legislation of the country of importation on the owner of the trademark in question; and (b) pirated copyright infringing goods means any copies made without the consent of the right holder or a person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of such a copy would have constituted an infringement of copyright or a related right under the law of the country of importation.

## Article 9.9. Cooperation and Science and Technology

1. The Parties shall exchange information and material in education and dissemination projects regarding the use of intellectual property rights, in accordance with their national laws, regulations and policies, with a view to:

(a) improve and strengthen intellectual property administrative systems to promote the efficient registration of intellectual property rights;

(b) stimulate the creation and development of intellectual property within the territory of the Parties, particularly for small inventors and creators, as well as micro, small and medium-sized enterprises;

(c) promoting dialogue and cooperation in relation to science, technology, entrepreneurship and innovation; and

(d) other matters of mutual interest regarding intellectual property rights.

2. The Parties recognize the importance of promoting research, technological development, entrepreneurship and innovation, as well as the importance of disseminating technological information and building and strengthening their technological capabilities; to this end, they shall cooperate in these areas taking into consideration their resources.

3. The Parties shall encourage the establishment of incentives for research, innovation, entrepreneurship, transfer and dissemination of technology between the Parties, aimed, among others, at companies, universities, research centers and technology centers.

4. Cooperative activities in science and technology may take, among others, the following forms:

(a) participation in joint education, research, technological development and innovation projects;

(b) visits and exchanges of scientists and technical experts, as well as public, academic or private specialists;

(c) joint organization of seminars, congresses, workshops and scientific symposia, as well as participation of experts in these activities;

(d) promotion of scientific networks and training of researchers;

(e) concerted actions for the dissemination of results and the exchange of experiences on joint science and technology projects and for their coordination;

(f) exchange and loan of equipment and materials, including sharing of advanced equipment;

(g) exchange of information on procedures, laws, regulations and programs relating to cooperative activities carried out pursuant to this Agreement, including information on science and technology policy; and

(h) any other modality agreed upon by the Parties.

5. Likewise, the Parties may carry out cooperative activities regarding the exchange of:

(a) information and expertise on the legislative processes and legal frameworks related to intellectual property rights and the relevant regulations for protection and enforcement;

(b) experiences on the enforcement of intellectual property rights;

(c) personnel and training of the same in offices related to intellectual property rights;

(d) information and institutional cooperation on intellectual property policies and developments;

(e) information and experience on policies and practices t o promote the development of the handicrafts sector;

(f) experience in intellectual property management and knowledge management in higher education institutions and research centers; and

(g) training and qualification of the personnel of institutions related to public health, particularly in the regulatory aspect of inspection, surveillance and control of medicines and medical supplies.

6. The Parties shall cooperate, on mutually agreed terms, in the exchange of information and materials on:

(a) actions to prevent illegal access to genetic resources and traditional knowledge; and

(b) internal procedures regarding the fair and equitable sharing of benefits arising from the use of genetic resources and traditional knowledge, as well as prior informed consent as appropriate.

Likewise, the Parties may, through their national authorities, cooperate in t h e training of officials in the matters referred to in subparagraphs (a) and (b).

7. The Parties may carry out cooperative activities with respect to:

(a) training of personnel of the governing institutions related to the promotion of handicrafts, in order to promote the development of policies and management of handicrafts to improve capacities and potentialities;

(b) internship programs, scholarships, professional training, among others, for employees, artisans, professionals, technicians and specialists in the field of handicrafts;

(c) training and capacity building among artisans and artisan organizations of both countries, in craft lines of mutual interest;

(d) joint research programs on topics of mutual interest;

(e) exchange of information or experiences, to the extent possible, on how to market and position handicrafts in the national and international markets;

(f) technical training from artisan to artisan with the available resources, achieving maximum use in the different branches of the registered activity and improving the production and commercialization of their products, especially the quality, presentation and finishing of their products; and

(g) promote technical assistance and training for the implementation of innovation and technology transfer in handicrafts.

The specific cooperation plan will be developed jointly between:

(a) the Dirección General de Artesanías Nacionales del Ministerio de Comercio e Industrias, on behalf of Panama; and

(b) the National Directorate of Handicrafts of the Ministry of Foreign Trade and Tourism, on behalf of Peru.

These entities will define the activities of the cooperation plan, the financing and its implementation.

8. Each Party designates as contact entities responsible for the fulfillment of the objectives of this Article, and for facilitating the development of collaboration and cooperation projects in research, innovation and technological development, the following:

(a) in the case of Panama, the National Secretariat of Science, Technology and Innovation (SENACYT) and the National Authority for Government Innovation (AIG); and

(b) In the case of Peru, the National Council for Science, Technology and Technological Innovation (CONCYTEC), or their successors.

# Chapter 10. Public Procurement

## Article 10.1. Scope of Application

*Application of the Chapter*

1. This Chapter applies to any measure adopted by a Party relating to covered procurement.

2. For the purposes of this Chapter, covered procurement means a procurement of goods, services or both:

(a) not contracted with a view to commercial sale or resale, or with a view to use in the production or supply of goods or services for commercial sale or resale;

(b) The Company's operations are carried out through any contractual means, including purchase, lease, with or without an option to purchase, and public works concession contracts;

(c) for which the value, as estimated in accordance with paragraph 4, equals or exceeds the corresponding threshold value stipulated in Annex 10.1 (Coverage Annex);

(d) carried out by a contracting entity; and

(e) that is not expressly excluded from coverage.

3. This Chapter does not apply to:

(a) non-contractual arrangements or any form of assistance that a Party, including its contracting entities, provides, including cooperation agreements, grants, loans, subsidies, capital transfers, guarantees and tax incentives;

(b) the contracting or procurement of fiscal agency services or depository services, settlement and administration services for regulated financial institutions, or services related to the sale, redemption, and distribution of public debt, including government loans and bonds and other securities. For greater certainty, this Chapter does not apply to the procurement of banking, financial or specialized services relating to the following activities:

(i) public indebtedness; or

(ii) public debt management;

(c) procurement financed through grants, loans or other forms of international assistance;

(d) hiring of public employees and employment-related measures;

(e) procurement by a governmental entity or enterprise from another governmental entity or enterprise of that Party;

(f) the acquisition or lease of land, existing real estate or other real property or rights thereon;

(g) purchases made under exceptionally favorable conditions that only occur for a very short period of time, such as extraordinary disposals made by companies that are not normally suppliers or the disposal of assets of companies in liquidation or under judicial administration. For the purposes of this subparagraph, the provisions of Article 10.10.3 shall apply; and

(h) contracts entered into for the specific purpose of providing assistance to foreign countries.

*Valuation*

4. In estimating the value of a procurement for the purpose of determining whether it is a covered procurement, a procuring entity:

(a) shall not divide a procurement into separate procurements, or use a particular method for estimating the value of the procurement for the purpose of evading the application of this Chapter;

(b) shall take into account all forms of remuneration, including premiums, fees, dues, fees, commissions, interest, other revenue streams that may be stipulated in the procurement, and where the procurement provides for the possibility of option clauses, the total maximum value of the procurement, including optional purchases; and

(c) shall, where the procurement is to be conducted in multiple parts, and results in the award of contracts at the same time or over a given period to one or more suppliers, base its calculation on the total maximum value of the procurement over the entire period of its validity.

5. No procuring entity may prepare, design, structure or divide a public procurement for the purpose of evading the obligations of this Chapter.

6. Nothing in this Chapter shall prevent a Party from developing new procurement policies, procedures or means of contracting, provided that are compatible with this Chapter.

## Article 10.2. Safety and General Exceptions

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or refraining from disclosing any information deemed necessary for the protection of its essential national security interests or for national defense.

2. Nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining the measures:

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

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

(c) necessary to protect intellectual property; or

(d) related to the goods or services of disabled persons, charitable institutions or prison labor, provided that such measures are not applied in a discriminatory manner or constitute a disguised restriction on trade.

3. The Parties understand that subparagraph 2(b) includes environmental measures necessary to protect human, animal or plant life or health.

## Article 10.3. General Principles

*National Treatment and Non-Discrimination*

1. With respect to any measure covered by this Chapter, each Party shall accord immediately and unconditionally to goods and services of the other Party, and to suppliers of the other Party offering such goods or services, treatment no less favorable than the most favorable treatment accorded by that Party to its own goods, services and suppliers.

2. With respect to any measure covered by this Chapter, a Party may not:

(a) treat a locally established supplier less favorably than another locally established supplier because of its degree of foreign affiliation or ownership; or

(b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

*Use of Electronic Media*

3. When covered procurement is conducted through electronic means, a procuring entity shall:

(a) ensuring that procurement is conducted using information technology systems and software, including those related to authentication and cryptographic encryption of information, that are generally accessible and compatible with other

generally accessible information technology systems and software; and

(b) maintain mechanisms to ensure the integrity of requests for participation and bids, including determining the time of receipt and preventing inappropriate access.

*Execution of Public Procurement*

4. A procuring entity shall conduct covered procurement in a transparent and impartial manner, such that:

(a) is consistent with this Chapter;

(b) avoid conflicts of interest; and

(c) prevent corrupt practices.

*Rules of Origin*

5. Each Party shall apply to covered procurement of goods or services imported from or supplied by the other Party, the rules of origin that it applies in the normal course of trade in such goods or services.

*Special Compensatory Conditions*

6. A procuring entity shall not seek, consider, impose or use special countervailing terms and conditions at any stage of a covered procurement.

*Non-Specific Measures for Public Contracting*

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 collection of such duties and charges; other import regulations or formalities; or measures affecting trade in services, other than measures governing covered procurement.

## Article 10.4. Use of Electronic Means In Public Contracting

1. The Parties recognize the need and importance of the use of electronic means for the dissemination of information relating to covered procurement.

2. In order to facilitate business opportunities for suppliers of the other Party under this Chapter, each Party shall maintain or make best efforts to adopt an electronic single point of entry for the purpose of allowing access to complete information on procurement opportunities in its territory, as well as on procurement-related measures, especially those set out in Articles 10.5, 10.6.1, 10.6.3, 10.8.1, 10.8.7, and 10.13.2.

## Article 10.5. Publication of Procurement Information

Each Part:

(a) publish in a timely manner all regulations of general application with respect to covered procurement, and any amendments to such regulations, in an electronic medium listed in Exhibit 10.1 (Coverage Annex); and

(b) at the request of the other Party, provide an explanation concerning such information.

## Article 10.6. Publication of Notices

*Notice of Future Hire*

1. For each covered procurement, a procuring entity shall publish in a timely manner a notice inviting suppliers to submit tenders, or where appropriate, a request to participate in the procurement, except in the circumstances described in Article 10.10.2. Such notice shall be published in an electronic medium listed in Annex 10.1 (Coverage Annex).

2. Each notice of future hiring shall include:

(a) the description of future public procurement;

(b) the method of procurement to be used;

(c) any conditions that suppliers must satisfy in order to participate in public procurement;

(d) the name of the contracting entity publishing the notice;

(e) the address and/or point of contact where suppliers can obtain all relevant procurement documentation;

(f) where applicable, the address and final date for the submission of requests for participation in the procurement;

(g) the address and final date for submission of bids;

(h) the dates of delivery of the goods or services to be contracted or the duration of the contract; and

(i) an indication that the procurement is covered by this Chapter.

*Notice of Hiring Plans*

3. Each Party shall encourage its procuring entities to publish in an electronic medium listed in Annex 10.1 (Annex on Coverage), as early as practicable in each fiscal year, a notice regarding its future procurement plans. Such notices shall include the subject matter or category of goods and services to be procured and the estimated period in which the procurement will be conducted.

## Article 10.7. Conditions for Participation

1. Where a Party requires suppliers to comply with registration, qualification or any other requirement or condition of participation in a procurement, the procuring entity shall publish a notice inviting suppliers to apply for such participation. The procuring entity shall publish the notice sufficiently in advance to allow interested suppliers sufficient time to prepare and submit their applications and for the procuring entity to evaluate and make its determinations on the basis of such applications.

2. At the time of establishing the conditions of participation, a procuring entity:

(a) shall limit these conditions to those that are essential to ensure that the supplier possesses the legal and financial capabilities, and the commercial and technical skills, to meet the requirements and technical specifications of the procurement on the basis of the supplier's business activities conducted both within and outside the territory of the Party of the procuring entity;

(b) base its decision solely on the terms and conditions that the procuring entity has specified in advance in the procurement documents or notices;

(c) shall not make it a condition of participation in a procurement or the award of a procurement contract that the supplier has previously been awarded one or more procurement contracts by a procuring entity of the Party concerned;

(d) may require prior relevant experience when it is essential to comply with procurement requirements; and

(e) shall allow all domestic suppliers and suppliers of the other Party that have satisfied the conditions for participation to be recognized as qualified and to participate in the procurement.

3. Where there is evidence to justify it, a Party, including its procuring entities, may exclude a supplier from a procurement on grounds such as:

(a) bankruptcy;

(b) false statements;

(c) significant or persistent deficiencies in the fulfillment of any substantive requirement or obligation arising from one or more previous contracts;

(d) final sentences for felonies or other serious offenses;

(e) professional misconduct or acts or omissions that call into question the business integrity of the supplier; or

(f) non-payment of taxes.

4. Procuring entities shall not adopt or apply a registration system or qualification procedure with the purpose or effect of creating unnecessary obstacles to the participation of suppliers of the other Party in their respective procurement.

5. The process of, and the time required for, registration and qualification of suppliers shall not be used to exclude suppliers of the other Party from being considered for a particular procurement.

6. A procuring entity shall promptly inform any supplier that has applied for qualification of its decision with respect to that application. When a procuring entity rejects an application for qualification or ceases to recognize a supplier as one that meets the conditions for participation, the procuring entity shall promptly inform the supplier, and upon request, provide the supplier with a timely written explanation of the reasons for the entity's decision.

## Article 10.8. Information on Future Procurements

*Contracting Documents*

1. A procuring entity shall provide in a timely manner to suppliers interested in participating in a procurement procurement, procurement documents that include all necessary information to enable them to prepare and submit suitable bids in accordance with Annex 10.8.1 (Procurement Documents). These documents shall be published in an electronic medium listed in Annex 10.1 (Coverage Annex).

*Technical Specifications*

2. A contracting entity shall not prepare, adopt or apply any technical specification or require any conformity assessment procedure that has the purpose or effect of creating unnecessary obstacles to trade between the Parties.

3. In establishing any technical specifications for the goods or services to be procured, a procuring entity shall, where appropriate:

(a) state the technical specification in terms of performance and functional requirements, rather than descriptive or design characteristics; and

(b) base the technical specification on international standards, where applicable, or otherwise on national technical regulations, recognized national standards or building codes.

4. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements, and provided that, in such cases, expressions such as "or equivalent" shall also be included in the procurement documents.

5. A procuring entity shall not solicit or accept, in a manner that may have the effect of precluding competition, advice that could be used in preparing or adopting any technical specification for a specific procurement from any person that may have a commercial interest in that procurement.

6. For greater certainty, this Article is not intended to prevent a contracting entity from preparing, adopting or applying technical specifications to promote the conservation of natural resources or protect the environment.

*Modifications*

7. When, in the course of a covered procurement, a procuring entity modifies the criteria or technical requirements set forth in a notice or procurement document provided to participating suppliers, or modifies a notice or procurement document, it shall transmit such modifications in writing:

(a) to all suppliers that are participating at the time of the modification of the information, if the identification of such suppliers is known, and in all other cases, in the same manner as the original information was transmitted; and

(b) with sufficient time to allow suppliers to modify and resubmit their corrected bids, as appropriate.

## Article 10.9. Deadlines

1. A procuring entity shall provide suppliers with sufficient time to submit applications to participate in a procurement and to prepare and submit suitable tenders, taking into account the nature and complexity of the procurement. A procuring entity shall allow a period of not less than forty (40) days from the date on which the notice of intended procurement is published and the final date for submission of tenders.

2. Notwithstanding the provisions of paragraph 1, a procuring entity may establish a period of less than forty (40) days, but in no case less than ten (10) days, in the following circumstances:

(a) where the procuring entity has published a separate notice containing a description of the procurement, the approximate deadlines for submission of bids or, where appropriate, conditions for participation in a procurement and the address where documentation relating to the procurement may be obtained, at least forty (40) days and not more

than twelve (12) months in advance.

(b) in the case of a new, second or subsequent publication of notices for a public procurement of a recurring nature;

(c) when an emergency situation duly justified by a procuring entity makes it impracticable to meet the deadline stipulated in paragraph 1; or

(d) when the procuring entity purchases commercial goods or services.

3. A Party may provide that a procuring entity may reduce the deadline for submission of tenders set forth in paragraph 1 by five (5) days for each of the following circumstances:

(a) when the notice of intended procurement is published by electronic means;

(b) when all procurement documents that are made available to the public by electronic means are published as of the date of publication of the notice of intended procurement; and

(c) when the bids can be received by electronic means by the contracting entity.

The use of this paragraph, in conjunction with paragraph 2, may not result in reducing the bidding deadlines set forth in paragraph 1 to less than ten (10) days from the date of publication of the notice of intended procurement.

## Article 10.10. Procurement Procedures

*Open Bidding*

1. A procuring entity shall award its contracts through open tendering procedures, except where Article 10.10.2 applies.

*Other Procurement Procedures*

2. Provided that this provision is not used to prevent competition among suppliers or in a manner that discriminates against suppliers of the other Party, or protects domestic suppliers, a procuring entity may use other procurement procedures only in the following circumstances:

(a) provided that the requirements of the procurement documents are not substantially modified, when:

(i) no bid was submitted or no supplier has requested to participate;

(ii) no bid meeting the essential requirements of the bidding documents was submitted;

(iii) no supplier complied with the conditions of participation; or

(iv) there has been collusion in the submission of bids;

(b) when the goods or services can be supplied only by a particular supplier and there is no reasonable alternative or substitute goods or service due to any of the following reasons:

(i) the requirement is for the realization of a work of art;

(ii) the protection of patents, copyrights or other exclusive intellectual property rights; or

(iii) due to the absence of competition for technical reasons, as in the case of intuitu personae service contracting;

(c) for additional deliveries or services from the initial supplier of goods or services that were not included in the initial procurement, when the change of supplier of such additional goods or services:

(i) cannot be done for economic or technical reasons, such as interchangeability or compatibility requirements with existing equipment, software, services or facilities of the initial contracting; and

(ii) would cause significant inconvenience or substantial duplication of costs to the procuring entity,

in the case of construction services, the total value of contracts awarded for such additional services shall not exceed fifty (50) percent of the amount of the initial contract, provided that such services have been contemplated in the objectives contained in the procurement documents and have become necessary to complete the work due to unforeseen reasons;

(d) to the extent strictly necessary, when for reasons of extreme urgency caused by events unforeseen by the procuring

entity, the goods or services cannot be obtained in a timely manner through open or selective competitive bidding, and the use of such procedures would result in serious prejudice to the procuring entity;

(e) for purchases of goods made in a market of commodities;

(f) when a procuring entity procures a prototype or first commodity in limited quantity or contracts for a service that is developed upon request in the course of, and for, a particular contract for research, experiment, study or original development; or

(g) when a contract is awarded to the winner of a design competition, provided that:

(i) the competition has been organized in a manner that is consistent with the principles of this Chapter, in particular with respect to the publication of the notice of intended procurement; and

(ii) the participants are rated or evaluated by an independent jury or body with a view to the conclusion of a design contract that is awarded to a winner.

3. A procuring entity shall maintain records or prepare a written report for each procurement awarded under paragraph 2, in a manner consistent with Article 10.13.3. Where a Party prepares written reports under this paragraph, they shall include the name of the procuring entity, the value and nature of the goods or services procured, and a justification indicating the circumstances and conditions described in paragraph 2 that justify the use of alternative procurement procedures. Where a Party maintains records, the records shall indicate the circumstances and conditions described in paragraph 2 that justify the use of alternative procurement procedures.

## Article 10.11. Electronic Auctions

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the procuring entity shall provide each participant, before the electronic auction commences, with the following information:

(a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set forth in the procurement documents and that will be used in the automatic ranking or reclassification during the auction;

(b) the results of any initial evaluation of the elements of its bid when the contract is awarded on the basis of the most advantageous bid; and

(c) any other relevant information on the conduct of the auction.

## Article 10.12. Opening of Bids and Award of Contracts

*Treatment of Offers*

1. A procuring entity shall receive and process all bids under procedures that ensure the equality and fairness of the procurement process, and the confidentiality of bids.

2. Where a procuring entity provides suppliers with the opportunity to correct any unintentional errors of form between the bid opening period and the award of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

*Awarding of Contracts*

3. A procuring entity shall require that, in order to be considered for an award, the bid:

(a) is submitted in writing by a supplier that meets all the conditions for participation; and

(b) at the time of opening, shall be in accordance with the essential requirements specified in the notices and procurement documents.

4. Unless a procuring entity determines that the award of a procurement contract would be contrary to the public interest, the procuring entity shall award the contract to the supplier that the procuring entity has determined meets the conditions of participation and is fully capable of performing the contract and whose tender is considered the most advantageous based solely on the requirements and evaluation criteria specified in the procurement notices and documents, or, where price is the sole evaluation criterion, the lowest price.

5. When a procuring entity receives a tender whose price is abnormally lower than the prices of the other tenders

submitted, the entity may verify with the supplier whether the supplier complies with the conditions for participation and has the capacity to perform under the contract.

6. A procuring entity may not cancel a procurement or terminate or modify a procurement contract that has been awarded for the purpose of evading this Chapter.

## Article 10.13. Transparency of Procurement Information

*Information to be Provided to Suppliers*

1. A procuring entity shall promptly inform participating suppliers of its decision on the award of a procurement contract and, upon request, shall do so in writing. Subject to Article 10.14, a procuring entity shall, upon request, provide the supplier whose tender was not successful with the reasons for its decision and the relative advantages of the successful tender.

*Publication of Award Information*

2. As soon as practicable after an award, a procuring entity shall publish in an electronic medium listed in Exhibit 10.1 (Coverage Annex), a notice that includes, at a minimum, the following information about the contract award:

(a) the name of the contracting entity;

(b) a description of the goods or services contracted;

(c) the date of the award;

(d) the name of the supplier to whom the contract was awarded; and

(e) the value of the contract.

*Record Keeping*

3. A procuring entity shall maintain reports or records of procurement proceedings relating to covered procurement, including the reports referred to in Article 10.10.3, and shall maintain such reports or records for a period of at least three (3) years after the date of award of a contract.

## Article 10.14. Disclosure of Information

*Delivery of Information to the other Party*

1. On request of a Party, the other Party shall provide in a timely manner information necessary to determine whether a procurement has been conducted fairly, impartially and in accordance with this Chapter. Such information shall include information on the characteristics and relative advantages of the successful tender.

*Non-Disclosure of Information*

2. No Party, including its contracting entities, authorities or review bodies, may disclose information that the person who provided it has designated as confidential, in accordance with its national legislation, except with the authorization of that person.

3. Notwithstanding any other provision of this Chapter, no Party, including its procuring entities, shall provide to any particular supplier information that may prejudice fair competition between suppliers.

4. Nothing in this Chapter shall be construed to require a Party, including its contracting entities, authorities and review bodies, to disclose confidential information under this Chapter, if such disclosure would:

(a) prevent compliance with the law;

(b) harm fair competition among suppliers;

(c) prejudice the legitimate commercial interests of private parties, including the protection of intellectual property; or

(d) otherwise be contrary to the public interest.

## Article 10.15. Article 10.15: National Review Procedures for the Lodging of Appeals

1. Each Party shall ensure that its procuring entities give fair and timely consideration to any complaint by its suppliers regarding an allegation of noncompliance with this Chapter arising in the context of a covered procurement in which they have or have had an interest. Each Party shall encourage its suppliers to seek clarification from its procuring entities through consultations with a view to facilitating the resolution of any such complaints.

2. Each Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure, in accordance with the principle of due process, through which a supplier may file a complaint alleging a breach of this Chapter arising in the context of covered procurement in which the supplier has or has had an interest.

3. Each Party shall establish or designate at least one impartial administrative or judicial authority, independent of its procuring entities, to receive and review a challenge filed by a supplier in a covered procurement, and to issue appropriate determinations and recommendations.

4. Where a body other than the authority referred to in paragraph 3 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

5. Each Party shall adopt or maintain procedures that establish:

(a) rapid interim measures to preserve the supplier's ability to participate in the procurement that are applied by the procuring entity or by the impartial authority referred to in paragraph 3. The procedures may provide that the prevailing adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied. The reason for not taking such measures shall be stated in writing; and

(b) where a review body has determined the existence of a breach referred to in paragraph 2, corrective measures or compensation for loss or damage suffered, in accordance with the national legislation of each Party.

## Article 10.16. Modifications and Amendments to Coverage

1. When a Party modifies its procurement coverage under this Chapter, the Party:

(a) notify the other Party in writing; and

(b) shall include in the notification a proposal for appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification.

2. Notwithstanding subparagraph 1(b), a Party need not grant compensatory adjustments where:

(a) the modification in question is a minor amendment or a rectification of a purely formal nature; or

(b) the proposed modification covers an entity over which the Party has effectively eliminated control or influence.

3. If the other Party does not agree that:

(a) a proposed adjustment under the scope of subparagraph 1(b) is adequate to maintain a comparable level of mutually agreed coverage;

(b) the proposed modification is a minor amendment or rectification within the scope of subparagraph 2 (a); or

(c) the proposed modification covers a contracting entity over which the Party has effectively eliminated its control or influence under the scope of subparagraph 2(b), must object in writing within thirty (30) days of receipt of the notice referred to in paragraph 1 or agreement on the proposed change or modification shall be deemed to have been reached even for the purposes of Chapter 15 (Dispute Settlement).

4. When the Parties agree on the proposed modification, rectification or amendment, including when a Party has not objected within thirty (30) days of the date of the proposed modification, rectification or amendment, under the scope of paragraph 3, the Parties shall give effect to the agreement by immediately amending Annex 10.1 (Coverage Annex) through the Commission.

## Article 10.17. Integrity In Procurement Practices

Each Party shall establish or maintain procedures for declaring the ineligibility to participate in the Party's procurement, either indefinitely or for a prescribed period, of suppliers that the Party determines to have engaged in illegal or fraudulent activities relating to government procurement. Upon request of the other Party, the Party receiving the request shall identify

the suppliers determined to be ineligible under these procedures and, where appropriate, exchange information with respect to these suppliers or the fraudulent or illegal activity.

## Article 10.18. Additional Negotiations

At the request of a Party, the other Party may consider conducting additional negotiations for the purpose of expanding the scope and coverage of this Chapter. If as a result of such negotiations the Parties agree to modify the Annexes to this Chapter, the result shall be submitted to the Committee on Government Procurement established in Article 10.21 for implementation.

## Article 10.19. Participation of Micro, Small and Medium-Size Enterprises

1. The Parties recognize the importance of the participation of micro, small and medium-sized enterprises in public procurement.

2. The Parties also recognize the importance of business alliances between suppliers of each Party, and in particular micro, small and medium-sized enterprises, including joint participation in bidding procedures.

## Article 10.20. Cooperation

1. The Parties recognize the importance of cooperation as a way to achieve a better understanding of their respective government procurement systems, as well as improved access to their respective markets, particularly for micro, small and medium-sized enterprises.

2. The Parties shall make their best efforts to cooperate on issues such as:

(a) exchange of experiences and information, including regulatory framework, best practices and statistics;

(b) development and use of electronic means of information in public procurement systems;

(c) training and technical assistance to suppliers on access to the public procurement market; and

(d) institutional strengthening for compliance with this Chapter, including the training of public officials.

## Article 10.21. Public Procurement Committee

1. The Parties establish a Government Procurement Committee (hereinafter the Committee), composed of representatives of each Party.

2. The functions of the Committee shall include:

(a) monitor the implementation and administration of this Chapter, including its use, and recommend to the Commission the corresponding activities;

(b) report to the Commission on the implementation and administration of this Chapter, as appropriate;

(c) evaluate and follow up on cooperation activities;

(d) consider conducting additional negotiations with the objective of expanding the coverage of this Chapter; and

(e) to deal with any other matter related to this Chapter.

3. Unless otherwise agreed by the Parties, the Committee shall meet at least once (1) a year, on the date and according to the agenda previously agreed upon by the Parties. The Parties shall determine those cases in which extraordinary meetings may be held.

4. The meetings may be held by any means agreed upon by the Parties. When they are face-to-face, they shall be held alternately in the territory of each Party, and it shall be the responsibility of the host Party to organize the meeting. The first meeting of the Committee shall be held no later than one (1) year after the date of entry into force of this Agreement.

5. Unless otherwise agreed by the Parties, the Committee shall be of a permanent nature and shall develop its working rules.

6. All decisions of the Committee shall be made by mutual agreement.

### Article 10.22. Definitions

For the purposes of this Chapter:

notice of intended procurement means a notice published by the procuring entity inviting interested suppliers to submit a request for participation, a bid, or both;

conditions of participation means any registration, qualification or other prerequisites for participation in a public procurement;

special compensatory conditions means any conditions or commitments that encourage local development or improve a Party's balance of payments accounts, such as local content requirements, technology licensing, investment requirements, countertrade or similar requirements;

contracting entity means an entity listed in Schedule 10.1 (Schedule of Coverage);

written or in writing means any expression in words, numbers or other symbols, which can be read, reproduced and subsequently communicated. It may include information transmitted and stored electronically;

technical specification means a procurement requirement that:

(a) establishes the characteristics of the goods or services to be contracted, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or

(b) establish terminology, symbols, packaging, marking or labeling requirements as they apply to a good or service;

open bidding means a method of procurement in which all interested suppliers may submit a bid;

commercial goods or services means the goods or services of the type that are generally sold or offered for sale in the commercial market to, and usually purchased by, non-governmental buyers for non-governmental purposes;

standard means a document approved by a recognized body, which provides, for common and repeated use, rules, guidelines or characteristics for goods, or related services or processes and methods of production, compliance with which is not mandatory. It may also include or refer exclusively to requirements for terminology, symbols, packaging, markings or labeling as they apply to a product, service, process or method of production;

supplier means a person who provides or could provide goods or services to a contracting entity;

services include construction services, unless otherwise specified;

construction service means a service the object of which is the performance by whatever means of civil or construction work, based on Division 51 of the provisional version of the United Nations Central Product Classification (CPC); and

electronic auction means an iterative process in which suppliers use electronic means to submit new prices or new values for quantifiable non-price bid elements, or both, that are linked to the evaluation criteria, and which results in a ranking or reclassification of bids.

## Chapter 11. Competition Policy

### Article 11.1. Objectives

The purpose of this Chapter is to ensure that the benefits of trade liberalization under this Agreement are not undermined by anti-competitive practices, as well as to promote cooperation between the Parties in the application of their respective competition laws.

### Article 11.2. Legislation and Competent Authorities

1. Each Party shall adopt or maintain national competition legislation that comprehensively and effectively addresses anticompetitive practices in order to promote economic efficiency and consumer welfare.

2. Each Party shall establish or maintain an authority responsible for the enforcement of its respective competition laws.

3. Each Party shall maintain its autonomy to develop and apply its respective competition legislation.

4. Each Party shall ensure that its respective national competition authorities act in accordance with the principles of transparency, non-discrimination and due process in the application of their respective competition laws.

### Article 11.3. Cooperation

1. The Parties recognize the importance of cooperation and coordination between their respective national competition authorities to promote the effective enforcement of their respective competition laws.

2. Accordingly, the Parties shall cooperate in matters relating to the application of competition policy and law, including notification, exchange of information and consultations, in accordance with Articles 11.4, 11.5 and 11.6, respectively.

3. The Parties, through their competition authorities or competent competition authorities, may sign cooperation agreements or arrangements for the purpose of strengthening cooperation in competition matters.

### Article 11.4. Notifications

1. The competition authority of a Party shall notify the competition authority of the other Party.

The Parties shall not be bound by the competition law of the other Party with respect to any activity in the application of their competition law, if they consider that such activity may affect important interests of the other Party.

2. Provided that it is not contrary to the domestic law of the Parties, nor does it affect any ongoing investigation, notification shall be made at an early stage of the administrative proceeding. The competition authority of the Party conducting the enforcement activity of its competition law may take into consideration the comments received from the other Party in its determinations.

### Article 11.5. Exchange of Information

1. The Parties recognize the value of transparency in competition policies.

2. In order to facilitate the effective application of their respective competition laws, the Parties may exchange information at the request of one of them, provided that this is not contrary to their national laws and does not affect any ongoing investigation.

### Article 11.6. Consultations

To promote understanding between the Parties or to address specific matters arising under this Chapter, each Party shall, at the request of the other Party, initiate consultations. The requesting Party shall indicate how the matter affects trade between the Parties. The requested Party shall give the utmost consideration to the concerns of the other Party.

### Article 11.7. Settlement of Disputes

Neither Party may have recourse to the dispute settlement procedures set forth in Chapter 12 (Investment) and Chapter 18 (Dispute Settlement) with respect to any matter arising under this Chapter.

# Chapter 12. Investment

## Section A. Substantive Obligations

### Article 12.1. Scope of Application and Coverage (1)

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

(a) investors of the other Party;

(b) covered investments; and

(c) with respect to Articles 12.6 and 12.8, to all investments in the territory of the Party.

2. The obligations of a Party under this Section shall apply to a state enterprise or other person when it exercises regulatory, administrative or other governmental authority delegated to it by that Party, such as the authority to expropriate, grant

licenses, approve commercial transactions or impose dues, fees or other charges.

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

4. For greater certainty, nothing in this Chapter shall be construed to impose an obligation on a Party to privatize any investment that it owns or controls, or to prevent a Party from designating a monopoly.

5. Nothing in this Chapter shall require a Party to protect investments made with capital or assets derived from illegal activities, and shall not be construed t o prevent a Party from adopting or maintaining measures aimed at the preservation of public order, the performance of its duties to maintain or restore international peace and security, or the protection of its own essential security interests.

6. 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.

7. A Party's requirement that a service supplier of the other Party post a bond or other form of financial security as a condition for supplying a cross-border service does not, in itself, make this Chapter applicable to measures adopted or maintained by the Party with respect to the cross-border supply of the service. This Chapter applies to the measures adopted or maintained by the Party with respect to the bond or financial guarantee, to the extent that such bond or financial guarantee constitutes a covered investment.

8. This Chapter shall not apply to a measure adopted or maintained by a Party if such measure is covered by Chapter 14 (Financial Services).

(1) For greater certainty, this Chapter is subject to and shall be interpreted in accordance with Annexes 12.4 (Customary International Law), 12.10 (Expropriation), 12.15 (Delivery of Documents to a Party under Section B) and 12.21 (Communications from Non-Contending Parties).

## Article 12.2. National Treatment

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

## Article 12.3. Most-Favored-Nation Treatment

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

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

3. For greater certainty, the treatment with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments, referred to in paragraphs 1 and 2, does not include dispute settlement procedures, such as that provided for in Section B, that are set forth in international treaties, including trade or investment agreements.

## Article 12.4. Minimum Standard of Treatment (2)

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

2. For greater certainty, paragraph 1 prescribes that the minimum standard of treatment of aliens under customary international law is the minimum standard of treatment that may 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 required

by that standard and do not create significant additional rights. The obligation in paragraph 1 to provide:

(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil or administrative 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 that is required by customary international law.

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

(2) For greater certainty, Article 12.4 shall be interpreted in accordance with Annex 12.4 (Customary International Law).

## Article 12.5. Senior Management and Boards of Directors

1. No Party may require an enterprise of that Party that is a covered investment to appoint natural persons of a particular nationality to senior management positions.

2. A Party may require that a majority of the members 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 significantly impair the ability of the investor to exercise control over its investment.

## Article 12.6. Performance Requirements

1. No Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, 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 obligation or commitment of (3):

(a) export a certain level or percentage of goods or services;

(b) to reach a certain degree or percentage of domestic content;

(c) to purchase, use or give preference to goods produced in its territory, or to purchase goods from persons in its territory;

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

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

(f) transfer a particular technology, production process or other proprietary knowledge to a person in its territory, except where the requirement is imposed or the obligation or undertaking is enforced by a judicial or administrative tribunal or a competition authority, to remedy a practice that has been determined after judicial or administrative proceedings to be anticompetitive under the Party's competition laws (4) ; or

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

2. A measure that requires an investment to use a technology to comply with general regulations applicable to health, safety or the environment shall not be considered inconsistent with subparagraph 1(f).

3. Sub-paragraph 1 (f) does not apply where a Party authorizes the use of an intellectual property right pursuant to Article 31 (5) of the WTO 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 WTO TRIPS Agreement (6).

4. 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 a covered investment or an investment of an investor of a non-Party in its territory, from imposing or enforcing a requirement or enforcing an obligation or commitment to train workers in its territory.

5. No Party may condition the receipt of an advantage, or the continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, sale or other disposition of an investment in its territory by an investor of a Party or of a non-Party, on compliance with any of the following requirements:

(a) to reach a certain degree or percentage of domestic content;

(b) to purchase, use or grant preferences to goods produced in its territory or to purchase goods from persons in its territory;

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

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

6. Nothing in paragraph 5 shall be construed to prevent a Party from conditioning the receipt of an advantage, or the continued receipt of an advantage, in connection with an investment in its territory by an investor of a Party or of a non-Party on compliance with a requirement that it locate production, provide services, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

7. Paragraphs 1 and 5 shall not apply to any requirement other than the commitment, obligation or requirements set forth in those paragraphs.

8. The provisions of the:

(a) subparagraphs 1 (a), (b) and (c), and 5 (a) and (b) shall not apply to requirements for qualification of goods or services with respect to export promotion programs and foreign aid programs; and

(b) subparagraphs 5(a) and (b) shall not apply to requirements imposed by an importing Party with respect to the content of goods necessary to qualify for preferential duties or quotas.

9. Provided that such measures are not applied in an arbitrary or unjustified manner and provided that such measures do not constitute a disguised restriction on international trade or investment, nothing in subparagraphs 1(b), (c) and (f) and 5(a) and 5(a) shall be construed to prevent the application of such measures.

(b) shall be construed to prevent a Party from adopting or maintaining measures, including measures of an environmental nature:

(a) necessary to ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;

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

(c) related to the preservation of living or non-living non-renewable natural resources.

10. Subparagraphs 1 (b), (c), (f) and (g), and 5 (a) and (b) do not apply to public procurement.

11. This Article does not exclude the application of any commitment, obligation or requirement between private parties, where a Party did not impose or require the commitment, obligation or requirement.

(3) For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 5 does not constitute an "obligation or commitment" for purposes of paragraph 1.

(4) The Parties recognize that a patent does not necessarily confer market power.

(5) The reference to Article 31 of the WTO TRIPS Agreement includes footnote 7 of that Article.

(6) For greater certainty, the reference to the WTO TRIPS Agreement in this paragraph includes the provisions of the Protocol amending the TRIPS Agreement, signed in Geneva on December 6, 2005.

## Article 12.7. Nonconforming Measures

1. Articles 12.2, 12.3, 12.5 and 12.6 shall not apply to:

(a) any non-conforming measure existing or maintained by a Party in:

(i) the central or regional level of government, as specified by that Party in its Schedule to Annex I; or

(ii) a local level of government;

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

(c) the modification of any nonconforming measure referred to in subparagraph (a) provided that such modification does not diminish the degree of conformity of the measure, as in effect immediately before the modification, with Articles 12.2, 12.3, 12.5, and 12.6.

2. Articles 12.2, 12.3, 12.5 and 12.6 shall not apply to any measure that a Party adopts or maintains, in relation to sectors, subsectors or activities, as indicated in its Schedule to Annex II.

3. Articles 12.2 and 12.3 do not apply to any measure adopted under the exceptions under Articles 3, 4 and 5 of the WTO TRIPS Agreement.

4. Neither Party may require, pursuant to any measure adopted after the date of entry into force of this Agreement and included in its Schedule to Annex II, 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.

5. The provisions of Articles 12.2, 12.3 and 12.5 shall not apply to:

(a) subsidies or grants provided by a Party, including government-backed loans, guarantees and insurance; or

(b) public procurement.

## Article 12.8. Environmental Measures

1. The Parties recognize that it is inappropriate to promote investment by weakening or reducing the protections afforded by their domestic environmental laws. Accordingly, each Party shall endeavor to ensure that it shall not waive or derogate from, or offer to waive or derogate from, such legislation in a manner that weakens or reduces the protection afforded by that legislation, as a means of encouraging the establishment, acquisition, expansion or retention of an investment in its territory.

2. 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 investments in its territory are made taking into account environmental concerns.

## Article 12.9. Treatment In the Event of a Dispute

1. Without prejudice to Article 12.7.5(a), each Party shall accord investors of the other Party and covered investments non-discriminatory treatment with respect to any measures it adopts or maintains with respect to losses suffered by investments in its territory as a result of armed conflict or civil strife.

2. Paragraph 1 shall not apply to existing measures relating to grants or donations that would be inconsistent with the provisions of Article 12.2, with the exception of Article 12.7.5(a).

## Article 12.10. Expropriation and Compensation (7)

1. Neither Party shall nationalize or expropriate a covered investment, either directly or indirectly, through measures tantamount to expropriation or nationalization ("expropriation"), unless it is:

(a) for reasons of public utility (8), in the case of Panama; and

(b) for reasons of public necessity or national security, in the case of Peru,

in accordance with due process, in a non-discriminatory manner and through the payment of prompt, adequate and effective compensation.

2. The compensation shall be paid without delay and shall be fully liquidable and freely transferable. Such compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place.

The expropriation date will not reflect any change in value because the intention to expropriate was known in advance of the expropriation date.

3. If the fair market value is denominated in a freely usable currency, the compensation referred to in paragraph 1 shall not be 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 to the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation referred to in paragraph 1 - converted into the currency of payment, at the market rate of exchange prevailing on the date of payment - shall not be less than:

(a) the fair market value at the date of expropriation, converted into a freely usable currency at the market exchange rate prevailing on that date, plus;

(b) interest at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation to the date of payment.

5. The affected investor shall be entitled, under the national law of the Party executing the expropriation, to a review of his case by a judicial or other independent authority of that Party, and to the valuation of his investment in accordance with the principles set forth in this Article.

6. The provisions of this Article shall not apply to the issuance of compulsory licenses granted in connection with intellectual property rights, or to the revocation, limitation or creation of intellectual property rights to the extent that such issuance, revocation, limitation or creation is consistent with Chapter 9 (Intellectual Property).

(7) For greater certainty, Article 12.10 shall be interpreted in accordance with the provisions of Annex 12.10 on the explanation of indirect expropriation.

(8) The concept of public utility includes public order or social interest.

## Article 12.11. Transfers

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

(a) capital contributions;

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

(c) proceeds from the sale or total or partial liquidation of the covered investment;

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

(e) payments made under paragraph 1 of Articles 12.9 and 12.10; and

(f) payments arising from the application of Section B.

2. Each Party shall permit transfers related to a covered investment to be made in freely usable currency at the market rate of exchange prevailing on the date of the transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer in cash or in kind through the equitable, non-discriminatory and good faith application of its laws relating to:

(a) bankruptcy, insolvency or protection of creditors' rights (9) ;

(b) issuance, trading or operations of securities, futures, options or derivatives;

(c) criminal offenses;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; and

(e) guarantee compliance with awards or judgments issued in judicial or administrative proceedings.

(9) For greater certainty, creditor rights include, among others, rights derived from social security, public pensions or mandatory savings programs.

### Article 12.12. Denial of Benefits

A Party may deny the benefits of this Agreement to:

(a) an investor of the other Party that is an enterprise of that other Party and the investments of such investor if a person of a non-Party owns or controls the enterprise and the enterprise does not engage in substantial business activities in the territory of the other Party; or

(b) an investor of the other Party that is an enterprise of that other Party and to the investments of such investor if the enterprise does not carry on substantial business activities in the territory of any Party, other than the denying Party, and a person of the denying Party owns or controls the enterprise.

### Article 12.13. Special Formalities and Information Requirements

1. Nothing in Article 12.2 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 requirement that investors be residents of the Party or that covered investments be constituted pursuant to the legislation or regulation of the Party, provided that such formalities do not significantly impair the protection afforded by a Party to investors of the other Party and to investments covered under this Agreement.

2. Notwithstanding Articles 12.2 and 12.3, a Party may require a n 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 information that is confidential from any disclosure that could adversely affect the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from obtaining or disclosing information relating to the equitable and good faith application of its domestic law.

### Article 12.14. Subrogation

1. If a Party or a designated agency of the Party makes a payment to any of its investors under a guarantee, insurance contract or any other form of compensation provided in respect of an investment of an investor of that Party, the other Party shall recognize the subrogation or transfer of any right or claim of such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.

2. Where a Party or a designated agency of the Party has made a payment to an investor of that Party and has assumed the rights and claims of the investor, that investor may not, unless it has been authorized to act on behalf of the Party or the designated agency of the Party that has made the payment, assert such rights and claims against the other Party.

## Section B. Investor-State Dispute Settlement

### Article 12.15. Consultation and Negotiation

1. In the event of an investment dispute, the disputing parties shall first seek to resolve the dispute through consultations and negotiation, which may include the use of non-binding third-party procedures. The consultation and negotiation procedure shall be initiated by the request sent to the address designated in Annex 12.15. Such a request shall be sent to the respondent prior to the notice of intent referred to in Article 12.16 and shall include the information set out in subparagraphs 12.16.2(a), (b) and (c).

2. Consultations shall be held for a minimum period of six (6) months and may include face-to-face meetings in the respondent's capital city.

### Article 12.16. Submission of a Claim to Arbitration

1. After the minimum period referred to in Article 12.15.2 has elapsed, if a disputing party considers that an investment dispute cannot be resolved through consultation and negotiation:

(a) the claimant, at its own expense, may submit to arbitration a claim alleging:

(i) that the Respondent has breached an obligation u n d e r Section A, other than an obligation under Article 12.8; and

(ii) that the claimant has suffered loss or damage by reason of or as a result of such breach.

(b) the claimant, on behalf of an enterprise of the respondent that is a legal person owned or controlled directly or indirectly by the claimant, may, in accordance with this Section, submit to arbitration a claim alleging:

(i) that the Respondent has breached an obligation u n d e r Section A, other than an obligation under Article 12.8; and

(ii) that the company has suffered loss or damage by reason of, or as a result of, such violation.

2. At least ninety (90) days before a claim is submitted to arbitration pursuant to this Section, the claimant shall deliver to the respondent a written notice of its intent to submit the claim to arbitration ("notice of intent"). The notice shall specify:

(a) the name and address of the claimant and, if the claim is submitted on behalf of a company, the name, address and place of incorporation of the company;

(b) for each claim, the provision of Section A alleged to have been violated and any other applicable provision;

(c) the legal and factual basis of each claim, including the measures at issue; and

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

3. The claimant must also submit, together with its notice of intent, evidence establishing that it is an investor of the other Party.

4. Provided that at least six (6) months have elapsed since the events giving rise to the claim took place and provided that the claimant has

If the conditions set out in Article 12.18 are fulfilled, the claimant may submit the claim referred to in paragraph 1:

(a) in accordance with the ICSID Convention and the ICSID Rules of Procedure for Arbitral Proceedings, provided that both the respondent and the Party of the claimant are parties to the ICSID Convention;

(b) in accordance with the ICSID Additional Facility Rules, provided that either the respondent or the Party of the claimant is a party to the ICSID Convention;

(c) in accordance with the UNCITRAL Arbitration Rules; or

(d) if the disputing parties so agree, before an ad hoc arbitration institution, or before any other arbitration institution or under any other arbitration rules.

5. A claim shall be deemed to be submitted to arbitration under this Section when the claimant's notice or request for arbitration ("notice of arbitration"):

(a) referred to in Article 36(1) of the ICSID Convention, is received by the Secretary-General;

(b) referred to in Article 2 of Annex C of the ICSID Additional Facility Rules, is received by the Secretary-General;

(c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules, is received by the respondent; or

(d) referred to any other arbitration institution or under any arbitration rules selected under subparagraph 4(d), is received by the respondent.

Where, subsequent to the submission of a claim to arbitration, an additional claim is submitted under the same arbitration procedure, it shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitration rules and the time limitation set forth in Article 12.18 shall apply.

6. The arbitration rules applicable pursuant to paragraph 4, and in effect on the date of the claim or claims submitted to arbitration under this Section, shall govern the arbitration except to the extent modified or supplemented by this Agreement.

7. Liability between the disputing parties for the bearing of expenses, including, where appropriate, the award of costs pursuant to Article 12.21, arising out of their participation in the arbitration shall be established:

(a) by the arbitration institution before which the claim has been submitted to arbitration, in accordance with its rules of procedure; or

(b) according to the rules of procedure agreed upon by the disputing parties, when applicable.

8. The claimant shall deliver together with the notice of arbitration referred to in paragraph 5:

(a) the name of the arbitrator appointed by the claimant; or

(b) the written consent of the claimant to the appointment of such arbitrator by the Secretary General.

## Article 12.17. Consent of Each Party to Arbitration

1. Each Party consents to submit a claim to arbitration under this Section in accordance with this Agreement.

2. The consent referred to in paragraph 1 and the submission of the claim to arbitration under this Section shall comply with the requirements set forth in:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules, which require the written consent of the parties to the dispute;

(b) Article II of the New York Convention, which requires an "agreement in writing"; and

(c) Article I of the Inter-American Convention, which requires an "agreement".

## Article 12.18. Conditions and Limitations on Consent of Each Party

1. No claim may be submitted to arbitration under this Section if more than three (3) years have elapsed from the date on which the claimant knew or should have known of the alleged breach under Article 12.16.1, and knowledge that the claimant, for claims brought under Article 12.16.1(a), or the enterprise, for claims brought under Article 12.16.1(b), suffered loss or damage.

2. No claim may be submitted to arbitration under this Section unless:

(a) the claimant consents in writing to arbitration in accordance with the procedures provided for in this Agreement; and

(b) the notice of arbitration referred to in Article 12.16.5 is accompanied:

(i) for claims submitted to arbitration under Article 12.16.1 (a), of the claimant's written waiver; and, where the claim is made for loss or damage to its interest in an enterprise of the respondent Party that is a juridical person that the investor owns or controls directly or indirectly, at the time notice is given, of the claimant's written waiver and the enterprise's written waiver; and

(ii) for claims submitted to arbitration under Article12.16.1 (b), of the written waivers of the claimant and the company, of any right to initiate before any judicial or administrative tribunal under the law of any Party, or other dispute settlement procedures, any action with respect to any measure alleged to constitute a breach referred to in Article 12.16.

3. Notwithstanding subparagraph 2(b), the claimant, for claims brought under Article 12.16.1(a), and the claimant or the enterprise, for claims brought under Article 12.16.1(b), may initiate or continue an interim measure of protection, not involving the payment of monetary damages, before a judicial or administrative tribunal of the respondent, provided that such measure is brought for the sole purpose of preserving the rights and interests of the claimant or the enterprise while the arbitration is pending (10).

4. The waiver of an enterprise set forth in subparagraph 2(b)(i) or 2(b)(ii) shall not be required only when it is alleged that the defendant deprived the plaintiff of control of the enterprise.

5. No claim may be submitted to arbitration under this Section if the claimant (in the case of claims submitted under Article 12.16.1(a)) or the claimant or the enterprise (in the case of claims submitted under Article 12.16.1(b)) has previously submitted the same alleged violation to an administrative or judicial tribunal of the respondent, or to any other binding dispute resolution procedure.

6. For greater certainty, if the claimant elects to submit a claim described under this Section to an administrative or judicial tribunal of the respondent or to any other binding dispute resolution mechanism, that election shall be final and the claimant may not submit the same claim under this Section.

7. Failure to comply with any of the conditions precedent described in paragraphs 1 through 6 shall nullify the consent given by the Parties in Article 12.17.

(10) In an interim measure, including measures seeking to preserve evidence and property pending the resolution of the claim submitted to arbitration, a court or administrative tribunal of the respondent in a dispute submitted to arbitration pursuant to Section B shall apply the national law of that Party.

## Article 12.19. Procedure Regarding Prudential Measures

1. Where an investor submits a claim to arbitration under this Section and the respondent invokes as a defense Article 12.11.3, or Article 21.5 (Measures to Safeguard the Balance of Payments), the tribunal established under Article 12.20 shall, at the request of the respondent, request a written report from the Parties, or from each Party, on the issue of whether and to what extent the provisions indicated are a valid defense to the investor's claim. The tribunal may not proceed until it receives the report or reports pursuant to this paragraph, except as provided in paragraph 2.

2. When within ninety (90) days of the request, the court has not received the report(s), the court may proceed to resolve the matter.

## Article 12.20. Selection of Arbitrators

1. Unless otherwise agreed by the disputing parties, the tribunal shall be composed of three (3) arbitrators, one (1) arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, shall be appointed by agreement of the disputing parties.

2. The Secretary General shall serve as appointing authority for arbitrators in arbitration proceedings pursuant to this Section.

3. The arbitrators shall:

(a) have experience or specialized knowledge in public international law, international investment rules, or in the resolution of disputes arising from international investment agreements;

(b) not be dependent on any of the Parties or the Claimant, nor be bound by or receive instructions from any of them.

4. Where a tribunal other than the tribunal established under Article 12.26 is not constituted within ninety (90) days from the date on which the claim is submitted to arbitration pursuant to this Section, the Secretary-General shall, at the request of either disputing party, appoint, after consultation with the disputing parties, the arbitrator or arbitrators not yet appointed. Unless otherwise agreed by the Parties, the presiding arbitrator or arbitrators shall not be a national of either Party.

5. For the purposes of Article 39 of the ICSID Convention and Article 7 of Part C of the ICSID Additional Facility Rules, and without prejudice to objecting to an arbitrator on grounds other than nationality:

(a) the respondent accepts the appointment of each of the members of the tribunal established in accordance with the ICSID Convention or the ICSID Additional Facility Rules;

(b) the claimant referred to in Article 12.16.1(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 consents in writing to the appointment of each member of the tribunal; and

(c) the claimant referred to in Article 12.16.1(b) may submit a claim to arbitration under this Section, or pursue a claim under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise consent in writing to the appointment of each of the members of the tribunal.

## Article 12.21. Conduct of the Arbitration

1. The disputing parties may agree on the legal place where any arbitration is to be held in accordance with the applicable arbitral rules pursuant to Article 12.16.4. In the absence of agreement between the disputing parties, the tribunal shall determine such place in accordance with the applicable arbitral rules, provided that the place is in the territory of a State that is a party to the New York Convention.

2. The tribunal shall have the authority to accept and consider amicus curiae written submissions from a person or entity

that is a non-disputing party. Any non-disputing party that wishes to make written submissions to a tribunal (the applicant) may apply to the tribunal for permission in accordance with Annex 12.21.

3. Without prejudice to the tribunal's power to hear other objections as preliminary questions, such as an objection that the dispute is not within the tribunal's jurisdiction, a tribunal shall hear and decide as a preliminary question any objection by the respondent that, as a matter of law, the claim submitted is not a claim upon which an award in favor of the claimant may be made under Article 12.27.

(a) Such objection shall be submitted to the tribunal as soon as possible after the constitution of the tribunal, and in no event later than the date the tribunal fixes for the respondent to file its statement of defense (or in the case of an amendment to the notice of arbitration referred to in Article 12.16.5, the date the tribunal fixes for the respondent to file its response to the amendment).

(b) Upon receipt of an objection under this paragraph, the court shall stay any action on the merits of the dispute,

establish a timetable for the consideration of the objection that shall be consistent with any timetable that has been established for the consideration of any other preliminary matter and issue a decision or award on the objection, setting forth the grounds therefor.

(c) In deciding an objection under this paragraph, the tribunal shall take as true the factual allegations submitted by the claimant in support of any claim contained in the notice of arbitration (or any amendment thereto) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules. The tribunal may also consider any other relevant facts not in dispute.

(d) The respondent does not waive any objection with respect to jurisdiction or any substantive argument, merely because it has or has not raised an objection under this paragraph, or avails itself of the expedited procedure set forth in paragraph 4.

4. If the respondent so requests, the tribunal shall, within forty-five (45) days after the date of the constitution of the tribunal, decide, in an expeditious manner, an objection under paragraph 3 and any other objection that the dispute is not within the tribunal's jurisdiction. The tribunal shall suspend any action on the merits of the dispute and shall issue a decision or award on such objection, stating the basis therefor, not later than one hundred and fifty (150) days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional thirty (30) days to issue the decision or award. Regardless of whether a hearing has been requested, the tribunal may, upon a showing of extraordinary cause, delay the issuance of its decision or award for an additional brief period, which may not exceed thirty (30) days.

5. When the tribunal decides a respondent's objection under paragraph 3 or 4, it may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in raising or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether the claimant's claim or the respondent's objection was frivolous, and shall give the disputing parties a reasonable opportunity to comment.

6. The defendant shall not assert as a defense, counterclaim or right of set-off or for any other reason that the plaintiff has received or will receive indemnity or other compensation for all or any part of the alleged damages pursuant to an insurance or surety agreement.

7. The tribunal may recommend an interim measure of protection to preserve the rights of a disputing party, or for the purpose of ensuring the full exercise of the tribunal's jurisdiction, including an order to preserve evidence in the possession or under the control of a disputing party or to protect the jurisdiction of the court. The court may not order the attachment or prevent the enforcement of a measure alleged to be a violation referred to in Article 12.16.

8. In any arbitration conducted pursuant to this Section, at the request of any disputing party, the tribunal shall, before rendering a decision or award on liability, communicate its proposed decision or award to the disputing parties and to the Party of the claimant. Within sixty (60) days after such proposed decision or award is communicated, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider such comments and render its decision or award not later than forty-five (45) days after the expiration of the sixty (60) day comment period. This paragraph shall not apply to any arbitration in which an appeal is available under paragraph 9.

9. If a separate multilateral treaty enters into force between the Parties establishing an appellate body for the purpose of reviewing awards rendered by tribunals constituted under international trade or investment agreements to hear investment disputes, the Parties shall endeavor to reach an agreement that would cause such an appellate body to review awards rendered pursuant to Article 12.27 in arbitrations commenced after the multilateral treaty enters into force between the Parties.

## Article 12.22. Transparency In Arbitration Proceedings

1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, make them available to the non-disputing party and the public:

(a) the notice of intent referred to in Article 12.16.2;

(b) the notice of arbitration referred to in Article 12.16.5;

(c) the pleadings, statements of claim and explanatory notes submitted to the tribunal by a disputing party and any written communications submitted pursuant to Article 12.21 and Article 12.26;

(d) orders, awards and decisions of the court; and

(e) minutes or transcripts of court hearings, when available.

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information classified as protected information in a hearing shall so inform the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

3. Nothing in this Section requires a Respondent to make available protected information or to provide or permit access to information that would withhold in accordance with Article 21.2 (Essential Security) and Article 21.4 (Disclosure of Information).

4. Any protected information that is submitted to the court will be protected from disclosure in accordance with the following procedures:

(a) pursuant to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to the Party of the claimant or to the public any protected information, where the disputing party providing the information clearly designates it as such in accordance with subparagraph (b);

(b) any disputing party claiming that certain information constitutes protected information shall clearly designate it at the time it is submitted to the tribunal;

(c) a disputing party shall, at the same time it submits a document containing information claimed to be protected information, submit a redacted version of the document that does not contain the information. Only the redacted version shall be provided to non-disputing parties and shall be made public in accordance with paragraph 1; and

(d) the tribunal shall decide any objection to the designation of information claimed to be protected information. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may:

(i) remove all or part of the presentation containing such information; or

(ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the court's determination and subparagraph (c).

In any event, the other disputing party shall, where necessary, resubmit complete and redacted documents, which either omit the information withdrawn pursuant to subparagraph (d)(i) by the disputing party that first submitted the information or redesignate the information in a manner consistent with the designation made pursuant to subparagraph (d)(ii) of the disputing party that first submitted the information.

5. Nothing in this Section requires a respondent to deny the public access to information that, under its national law, must be disclosed.

## Article 12.23. Applicable Law

1. Subject to paragraph 2, where a claim is brought under Article 12.16.1(a) or 12.16.1(b), the tribunal shall decide the issues in dispute in accordance with this Agreement and the rules of international law prevailing and, where applicable, with the national law of the Party in whose territory the investment was made.

2. A decision of the Commission declaring the interpretation of a provision of this Agreement under Article 20.1.3(c) (The Free Trade Commission) shall be binding on a tribunal established under this Section and any decision or award rendered

by a tribunal shall be consistent with that decision.

## Article 12.24. Interpretation of Exhibits

1. Where the respondent raises as a defense that the measure alleged to be in breach is within the scope of Annex I or Annex II, the tribunal shall, at the request of the respondent, request the Commission for an interpretation of the matter. Within sixty (60) days after delivery of the request, the Commission shall submit in writing to the tribunal any decision stating its interpretation under Article 20.1.3(c) (The Free Trade Commission).

2. The decision rendered by the Commission under paragraph 1 shall be binding on the tribunal, and any decision or award rendered by the tribunal shall be consistent with that decision. If the Commission fails to issue such a decision within sixty (60) days, the tribunal shall decide the matter.

## Article 12.25. Expert Reports

Without prejudice to the appointment of other types of experts where authorized by the applicable arbitration rules, the tribunal, at the request of a disputing party or, on its own initiative, unless the disputing parties do not agree, may appoint one or more experts to report in writing on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing party in a proceeding, on such terms and conditions as the disputing parties may agree.

## Article 12.26. Consolidation of Proceedings

1. Where two or more separate claims have been submitted to arbitration under Article 12.16.1, and the claims raise in common a question of law or fact and arise out of the same facts or circumstances, any disputing party may seek a consolidation order, pursuant t o t h e agreement of all disputing parties in respect of which the consolidation order is sought or in accordance with the terms of paragraphs 2 through 10.

2. A disputing party seeking a joinder order pursuant to this Article shall deliver a written request to the Secretary-General and to all disputing parties in respect of which the joinder order is sought and shall specify in the request the following:

(a) the name and address of all disputing parties in respect of whom the joinder order is sought;

(b) the nature of the requested consolidation order; and

(c) the basis on which the request is supported.

3. Unless the Secretary-General determines, within thirty (30) days after receipt of a request pursuant to paragraph 2, that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless otherwise agreed by all the disputing parties in respect of which the consolidation order is sought, the tribunal to be established pursuant to this Article shall consist of three (3) arbitrators:

(a) an arbitrator appointed by agreement of the claimants;

(b) an arbitrator appointed by the respondent; and

(c) the presiding arbitrator appointed by the Secretary General, who shall not be a national of either Party.

5. If, within sixty (60) days after receipt by the Secretary-General of the request made pursuant to paragraph 2, the respondent or the claimants fail to appoint an arbitrator pursuant to paragraph 4, the Secretary-General shall, at the request of any disputing party in respect of which the order for consolidation is sought, appoint the arbitrator or arbitrators not yet appointed. If the respondent fails to appoint an arbitrator, the Secretary-General shall appoint a national of the respondent and, if the claimants fail to appoint an arbitrator, the Secretary-General shall appoint a national of a Party of the claimants.

6. Where the tribunal established under this Article has found that two or more claims under Article 12.16.1, raising a common question of law or fact, and arising out of the same facts or circumstances, have been submitted to arbitration, the tribunal may, in the interest of reaching a fair and efficient resolution of the claims and after hearing the disputing parties, by order:

(a) assume jurisdiction, hear and determine jointly all or part of the claims;

(b) assume jurisdiction over, hear and determine one or more claims, the determination of which it believes would

contribute to the resolution of the other claims; or

(c) instruct a court established under Article 12.20 to assume jurisdiction over, hear and determine jointly, all or part of the claims, provided that:

(i) that tribunal, at the request of any claimant who was not previously a disputing party before that tribunal, be reinstated with its original members, except that the arbitrator on the claimants' side shall be appointed pursuant to subparagraph 4(a) and paragraph 5; and

(ii) that court decides whether to repeat any previous hearing.

7. Where a tribunal has been established under this Article, a claimant who has submitted a claim to arbitration under Article 12.16.1, and whose name is not mentioned in a request made under paragraph 2, may make a written request to the tribunal to the effect that such claimant be included in any order made under paragraph 6 and shall specify in the request:

(a) the name and address of the plaintiff;

(b) the nature of the order requested; and

(c) the grounds on which the request is based.

The claimant shall deliver a copy of its request to the Secretary General and to the disputing parties listed in the request in accordance with paragraph 2.

8. A tribunal established under this Article shall conduct the proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A tribunal established under Article 12.20 shall not have jurisdiction to decide a claim, or part of a claim, in respect of which a tribunal established or instructed under this Article has assumed jurisdiction.

10. At the request of a disputing party, a tribunal established under this Article may, pending its decision under paragraph 6, order that the proceedings of a tribunal established under Article 12.20 be adjourned, unless the latter tribunal has already adjourned its proceedings.

## Article 12.27. Awards

1. When a court makes a final award unfavorable to the defendant, the court may award, separately or in combination, only:

(a) pecuniary damages and interest; and

(b) restitution of the property, in which case the award shall provide that the respondent may pay monetary damages, plus interest in lieu of restitution.

The tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.

2. Subject to paragraph 1, where a claim is submitted to arbitration under Article 12.16.1(b):

(a) the award providing for restitution of the property shall provide that restitution shall be granted to the enterprise;

(b) the award of pecuniary damages and interest shall provide that the sum of money be paid to the company; and

(c) the award shall provide that the award is without prejudice to any right of any person to relief under applicable domestic law.

3. A court is not authorized to order the payment of punitive damages.

4. For greater certainty, a court shall not have jurisdiction to rule on the legality of the measure under domestic law.

## Article 12.28. Finality and Enforcement of an Award

1. For greater certainty, an award rendered by a tribunal shall not be binding except upon the disputing parties and then only in respect of the particular case.

2. Subject to paragraph 3 and to the review procedure applicable to an interim award, the disputing party shall comply with and carry out the award without delay.

3. The disputing party may not request enforcement of the final award until:

(a) in the case of a final award rendered under the ICSID Convention:

(i) one hundred and twenty (120) days have elapsed from the date on which the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) the review or annulment proceedings have been concluded; and

(b) in the case of a final award rendered under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules or the rules selected pursuant to Article 12.16.4 (d):

(i) ninety (90) days have elapsed since the date on which the award was rendered and no proceeding to revise, set aside or annul the award has been initiated by any disputing party; or

(ii) a court has dismissed or allowed an application for revision, setting aside or annulment of the award and this decision cannot be appealed.

4. Each Party shall provide for the proper enforcement of an award in its territory.

5. Where the respondent fails to comply with or abide by a final award, upon delivery of a request by the Party of the claimant, a panel shall be established in accordance with Article 18.5 (Establishment of a Panel). The requesting Party may request in such proceedings:

(a) a determination that non-compliance or disregard of the terms of the final award is contrary to the obligations of this Agreement; and

(b) in accordance with the procedures set forth in Article 18.9 (Report of the Panel) a recommendation that the respondent abide by or comply with the final award.

6. A disputing party may seek enforcement of an arbitral award under the ICSID Convention, the New York Convention or the Inter-American Convention, whether or not proceedings under paragraph 5 have been instituted.

7. For the purposes of Article I of the New York Convention and Article I of the Inter-American Convention, a claim submitted to arbitration under this Section shall be deemed to arise out of a commercial relationship or transaction.

### Article 12.29. Delivery of Documents

Delivery of the notification and other documents to a Party shall be made at the place designated by it in Annex 12.15.

## Section C. Definitions

### Article 12.30. Definitions

For the purposes of this Chapter:

ICSID means the International Centre for Settlement of Investment Disputes;

UNCITRAL means the United Nations Commission on International Trade Law;

New York Convention means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, concluded in New York on June 10, 1958;

Inter-American Convention means the Inter-American Convention on International Commercial Arbitration, concluded in Panama on January 30, 1975;

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;

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

claimant means the investor of a Party that is a party to an investment dispute with the other Party;

company means a company as defined in Article 1.5 (Definitions of General Application) and a branch of a company;

enterprise of a Party means an enterprise incorporated or organized under the domestic law of a Party, and a branch office located in the territory of a Party and carrying on substantial business activities in that territory;

protected information means:

(a) confidential business information; or

(b) information that is privileged or otherwise protected from disclosure under the Party's domestic law;

investment means any asset owned or controlled by an investor, directly or indirectly, that has the characteristics of an investment, including characteristics such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. The forms that an investment may take include:

(a) a company;

(b) shares, capital and other forms of participation in the equity of a company;

(c) debt instruments of a company:

(i) when the company is a subsidiary of the investor; or

(ii) when the original maturity date of the debt instrument is at least three (3) years;

but does not include an obligation of a Party or a State enterprise, regardless of the original maturity date;

(d) a loan to a company:

(i) when the company is a subsidiary of the investor; or

(ii) when the original maturity date of the loan is at least three (3) years;

but does not include a loan to a Party or a State enterprise, regardless of the original maturity date;

(e) futures, options and other derivatives;

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

(g) intellectual property rights;

(h) licenses, authorizations, permits and similar rights granted in accordance with national legislation (11); and

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

but investment does not include:

(j) an order or judgment entered in a judicial or administrative action;

(k) loans granted by one Party to the other Party;

(l) public debt operations and debt of public institutions;

(m) pecuniary claims arising exclusively from:

(i) commercial contracts for the sale of goods or services by a national or company in the territory of a Party to a national or company in the territory of the other Party; or

(ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by the provisions of subparagraph (d); or

(n) any other pecuniary claim, which does not carry the interest rates set forth in subparagraphs (a) through (i),

a modification in the manner in which the assets have been invested or reinvested does not affect their investment status under this Agreement, provided that such modification falls within the definitions of this Article and is made in accordance with the domestic law of the Party into whose territory the investment has been admitted;

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

investor of a non-Party means, with respect to a Party, an investor that intends to make, through specific actions (12), that 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 an enterprise of the State of the Party, or a national or enterprise of the Party, that intends to make, through specific actions (13), is making or has made an investment in the territory of the other Party; provided, however, that a natural person who has dual nationality shall be considered exclusively a national of the State of his or her dominant and effective nationality;

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

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

national means a natural person who has the nationality of a Party in accordance with Annex 1.5 (Country-Specific Definitions);

disputing party means the plaintiff or the defendant;

disputing parties means the plaintiff and the defendant;

non-disputing party means a person of a Party, or a person of a non-Party with a significant presence in the territory of a Party, that is not a party to an investment dispute under Section B;

UNCITRAL Arbitration Rules means the Arbitration Rules of the United Nations Commission on International Trade Law, adopted by the General Assembly of the United Nations on December 15, 1976;

ICSID Additional Facility Rules means the ICSID Additional Facility Rules for the Administration of Proceedings by the ICSID Secretariat;

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

tribunal means an arbitral tribunal established pursuant to Articles 12.20 ó 12.26.

(11) Whether a type of license, authorization, 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 factors such as the nature and extent of the holder's rights under the Party's domestic law. Licenses, authorizations, permits or similar instruments that do not have the characteristics of an investment include those that do not create rights protected by domestic law. For greater certainty, the foregoing is without prejudice to whether an asset associated with such a license, authorization, permit or similar instrument has the characteristics of an investment.

(12) It is understood that an investor intends to make an investment when it has carried out the essential and necessary actions to make the referred investment, such as the provision of funds to constitute the capital of the company, obtaining permits and licenses, among others.

(13) It is understood that an investor intends to make an investment when it has carried out the essential and necessary actions to make the referred investment, such as the provision of funds to constitute the capital of the company, obtaining permits and licenses, among others.

## Annex 12.4. Customary International Law

The Parties confirm their common understanding that customary international law, generally and as specifically referred to in Article 12.4, results from a general and consistent practice of States, followed by them in the sense of a legal obligation. With respect to Article 12.4, the minimum standard of treatment accorded to aliens by customary international law refers to all principles of customary international law that protect the economic rights and interests of aliens.

## Annex 12.10. Expropriation

The Parties confirm their common understanding that:

(a) a measure or series of measures of a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or with the essential attributes or powers of ownership of an investment;

(b) Article 12.10 addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise

directly expropriated through the formal transfer of title or right of ownership;

(c) the second situation addressed by Article 12.10 is indirect expropriation, where a measure or series of measures by a Party has an effect equivalent to that of a direct expropriation without the formal transfer of title or right of ownership;

(d) the determination of whether a measure or series of measures of a Party, in a specific factual situation, constitutes an indirect expropriation requires a factual, case-by-case inquiry that considers, among other factors:

(i) the economic impact of a Party's measure or series of measures, although the mere fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which a Party's measure or series of measures interferes with unambiguous and reasonable expectations of the investment; and

(iii) the nature of a Party's measure or series of measures;

(e) except in exceptional circumstances, such as where a measure or series of measures are disproportionate in light of their objective such that they cannot reasonably be considered to have been adopted and applied in good faith, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety and the environment, do not constitute an indirect expropriation (14).

(14) For greater certainty, the list of legitimate public welfare objectives in this subparagraph is not exhaustive.

## Annex 12.15. Delivery of Documents to a Party under Section B (Investor-State Dispute Settlement)

Notices and other documents in disputes under Section B shall be served by delivery to:

(a) Panama:

Dirección Nacional de Administración de Tratados Comerciales Internacionales y de Defensa Comercial (DINATRADEC) of the Ministry of Commerce and Industries of Panama, or its successor.

Plaza Edison Building, Second Floor, Avenida El Paical,

Panama, Republic of Panama; and

(b) Peru:

Directorate General for International Economic, Competition and Private Investment Affairs

Ministry of Economy and Finance Jirón Lampa # 277 5th Floor Lima 1, Peru,

or their successors.

## Annex 12.21. Communications from Non-Disputing Parties

1. An application for leave to file the written submissions of a non-disputing party shall be filed within the time limit set by the tribunal and shall:

(a) be in writing, dated and signed by the applicant, and include the applicant's address and other contact details;

(b) be no longer than five (5) pages;

(c) describe the applicant, including, where relevant, its membership status, as well as its legal status (e.g., corporation, trade association or other non- governmental organization), its general objectives, the nature of its activities, and any parent organization (including any organization that the applicant directly or indirectly controls);

(d) disclose whether the applicant has any affiliation, directly or indirectly, with any disputing party;

(e) identify any government, person or organization that provided financial or other assistance during the preparation of the submission;

(f) specify the nature of the applicant's interest in the arbitration;

(g) identify the specific factual or legal issues in the arbitration to which the applicant will refer in its written communication;

(h) be drafted in the language of the arbitration.

2. The written communication from a non-disputing party shall:

(a) The deadline set by the court is the deadline set by the court;

(b) dated and signed by the applicant;

(c) be concise and in no case shall exceed twenty (20) pages, including annexes and appendices;

(d) duly substantiate its position; and

(e) only make reference to the subjects indicated in its application, in accordance with subparagraph 1 (g).

# Chapter 13. Cross-Border Trade In Services

## Article 13.1. Scope of Application

1. This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services supplied by service suppliers of the other Party. Such measures include measures affecting:

(a) the production, distribution, marketing, sale and supply of a service;

(b) the purchase or use of, or payment for, a service;

(c) access to and use of distribution and transportation systems, or telecommunications networks and services related to the supply of a service;

(d) the presence in its territory of a service supplier of the other Party; and

(e) the provision of a bond or other form of financial guarantee as a condition for the provision of a service.

2. For the purposes of this Chapter, measures adopted or maintained by a Party means measures adopted or maintained by:

(a) central, regional or local governments or authorities; and

(b) non-governmental institutions in the exercise of powers delegated to them by central, regional or local governments or authorities.

3. This Chapter does not apply to:

(a) air services (1), including domestic and international air transport services, scheduled and non-scheduled, as well as related support services for air services, except:

(i) aircraft repair and maintenance services while the aircraft is out of service;

(ii) the sale and marketing of air transportation services; and

(iii) computerized reservation system (CRS) services;

(b) public procurement;

(c) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance; and

(d) financial services, as defined in Chapter 14 (Financial Services).

4. Articles 13.2, 13.5, 13.9 and 13.10 shall apply to measures of a Party that affect the supply of a service in its territory by a covered investment (2).

5. This Chapter does not impose any obligation on a Party with respect to a national of the other Party seeking to enter its labor market or to have permanent employment in its territory, or to confer any rights on that national with respect to such access or employment, nor shall it apply to measures relating to citizenship or residence on a permanent basis.

6. Nothing in this Chapter shall be construed to impose any obligation on a Party with respect to its immigration measures.

7. This Chapter does not apply to services supplied in the exercise of governmental authority. A service supplied in the exercise of governmental authority means any service that is supplied neither on a commercial basis nor in competition with one or more service suppliers.

(1) For greater certainty, the term air services includes traffic rights.

(2) The Parties understand that nothing in this Chapter, including this paragraph, is subject to Section B (Investor-State Dispute Settlement) of Chapter 12 (Investment).

## Article 13.2. Subsidies

Notwithstanding Article 13.1.3(c), if the results of the negotiations related to Article XV.1 of the WTO GATS enter into force for each Party, this Article shall be reviewed jointly, as appropriate, with a view to determining whether this Article should be modified so that those results are incorporated into this Agreement. The Parties agree to coordinate such negotiations, as appropriate.

## Article 13.3. National Treatment

Each Party shall accord to service suppliers of the other Party treatment no less favorable than that it accords, in like circumstances, to its service suppliers.

## Article 13.4. Most-Favored-Nation Treatment

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

## Article 13.5. Market Access

No Party may adopt or maintain, on the basis of a regional subdivision or its entire territory, measures that:

(a) impose limitations on:

(i) the number of service providers, either in the form of numerical quotas, monopolies or exclusive service providers or by requiring an economic needs test;

(ii) the total value of assets or service transactions in the form of numerical quotas or by requiring an economic needs test;

(iii) the total number of service operations or the total amount of service output, expressed in designated numerical units, in the form of quotas or by requiring an economic needs test (3) ;

(iv) the total number of natural persons who may be employed in a given service sector or who may be employed by a service supplier and who are necessary for and directly related to the supply of a specific service, in the form of numerical quotas or through the requirement of an economic needs test; or

(b) restrict or prescribe the specific types of legal entity or joint venture through which a service supplier may supply a service.

(3) Subparagraph (iii) does not cover measures of a Party that limit inputs for the supply of services.

## Article 13.6. Local Presence

No Party may require a service supplier of the other Party to establish or maintain a representative office or other form of enterprise, or to reside in its territory, as a condition for the cross-border supply of a service.

## Article 13.7. Nonconforming Measures

1. Articles 13.3, 13.4, 13.5 and 13.6 do not apply to:

(a) any existing non-conforming measure maintained by a Party in:

(i) the central level of government, as stipulated by that Party in its Schedule to Annex I;

(ii) a regional level of government, as specified by that Party in its Schedule to Annex I; or

(iii) a local level of government;

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

(c) the modification of any non-conforming measure referred to in subparagraph (a), provided that such modification does not diminish the conformity of the measure, as in effect immediately before the modification, with Articles 13.3, 13.4, 13.5 or 13.6.

2. Articles 13.3, 13.4, 13.5 and 13.6 do not apply to any measures that a Party adopts or maintains in relation to sectors, subsectors or activities as set out in its Schedule to Annex II.

## Article 13.8. Notification (4)

1. In the event that a Party makes an amendment or modification to any existing non-conforming measure set out in its Schedule to Annex I, in accordance with Article 13.7.1(c), the Party shall notify the other Party, as soon as practicable, of such amendment or modification.

2. In the event that a Party adopts a measure after the entry into force of this Agreement with respect to the sectors, subsectors or activities set out in its Schedule to Annex II, the Party shall, to the extent possible, notify the other Party of such measure.

(4) The Parties understand that nothing in this Article is subject to the dispute settlement procedure of this Agreement set forth in Chapter 18 (Dispute Settlement).

## Article 13.9. Transparency In the Development and Application of the Regulations (5)

In addition to Chapter 19 (Transparency):

(a) each Party shall establish or maintain appropriate mechanisms for responding to inquiries from interested persons concerning its regulations relating to matters covered by this Chapter (6) ;

(b) at the time of adopting final regulations relating to the subject matter of this Chapter, each Party shall respond in writing, to the extent practicable, including upon request, to substantive comments received from interested persons with respect to the proposed regulations; and

(c) to the extent possible, each Party shall allow a reasonable period of time between the publication of final regulations and the date on which they enter into force.

(5) For greater certainty, regulations include regulations that establish or apply licensing criteria or authorizations.

(6) The implementation of the obligation to establish appropriate mechanisms for small administrative bodies may need to take into account budgetary and resource constraints.

## Article 13.10. National Regulations

1. The Parties shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective and impartial manner. This obligation shall not apply to measures covered by Annex I or to measures covered by Annex II of each Party.

2. Where a Party requires authorization for the supply of a service, the competent authorities of that Party shall, within a reasonable period of time after the submission of an application considered complete in accordance with its domestic laws

and regulations, inform the applicant of the decision regarding its application. At the request of such applicant, the competent authorities of the Party shall, without undue delay, provide information concerning the status of the application. This obligation shall not apply to authorization requirements covered by Article 13.7.2.

3. In order to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall endeavor to ensure, in a manner appropriate to each individual sector, that such measures do not constitute unnecessary barriers to trade in services:

(a) based on objective and transparent criteria, such as competence and ability to provide the service;

(b) are not more burdensome than necessary to ensure quality of service; and

(c) in the case of licensing procedures, do not in themselves constitute a restriction on the supply of the service.

4. The Parties recognize their mutual obligations relating to domestic regulation in Article VI.4 of the WTO GATS and affirm their commitment to the development of any necessary disciplines under Article VI.4. To the extent that any such disciplines are adopted by WTO Members, the Parties shall jointly review them, as appropriate, with a view to determining whether this Article should be modified so that such results are incorporated into this Agreement.

## Article 13.11. Mutual Recognition

1. For the purposes of complying, in whole or in part, with its standards or criteria for the authorization or certification of service suppliers or the licensing of service suppliers, and subject to the requirements of paragraph 4, a Party may recognize education or experience obtained, requirements met, or licenses or certificates granted in a particular country. Such recognition, which may be effected through harmonization or otherwise, may be based on an agreement or arrangement with the country concerned or may be granted autonomously.

2. Where a Party recognizes, autonomously or by means of an agreement or arrangement, education or experience obtained, qualifications completed, or licenses or certificates granted in the territory of a non-Party, nothing in Article 13.4 shall be construed to require the Party to grant such recognition to education or experience obtained, qualifications completed, or licenses or certificates granted in the territory of the other Party.

3. A Party that is a party to an existing or future agreement or arrangement of the type referred to in paragraph 1 shall provide adequate opportunities for the other Party, if the other Party is interested, to negotiate its accession to such an agreement or arrangement or to negotiate comparable agreements or arrangements with it. Where a Party grants recognition autonomously, it shall provide adequate opportunities for the other Party to demonstrate that education, experience, licenses or certificates obtained or requirements fulfilled in the territory of that other Party should be subject to recognition.

4. No Party shall grant recognition in a manner that would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization or certification of service suppliers or the licensing thereof, or a disguised restriction on trade in services.

5. The Parties shall endeavor, to the extent possible, to encourage relevant professional services bodies in their territory to consider the use of standards and criteria in Annex 13.11 (Professional Services) in discussions for a potential agreement or arrangement referred to in paragraph 1.

## Article 13.12. Transfers and Payments

1. Each Party shall allow all transfers and payments related to the cross-border supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall allow all transfers and payments related to the cross-border supply of services to be made in freely circulating currency at the market rate of exchange prevailing on the date of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay the completion of the transfer or payment, through the equitable, non-discriminatory and good faith application of its national law with respect to:

(a) bankruptcy, insolvency or protection of creditors' rights;

(b) issuance, trading or operation of 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 infractions; or

(e) guarantee of compliance with judicial or administrative orders or rulings.

## Article 13.13. Denial of Benefits

Subject to prior notification in accordance with Article 19.3 (Provision of Information) and consultations (7), a Party may deny the benefits of this Chapter to:

(a) 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 enterprise does not have substantial business activities in the territory of the other Party; or

(b) a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of the denying Party and the enterprise has no substantial business activities in the territory of the other Party.

(7) The term consultations in this Article does not refer to consultations under Article 18.4 (Consultations).

## Article 13.14. Implementation

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

## Article 13.15. Definitions

For the purposes of this Chapter:

cross-border trade in services or cross-border supply o f services means the supply of a service:

(a) from the territory of one Party to the territory of the other Party;

(b) in the territory of a Party, by a person of that Party, to a person of the other Party; or

(c) by a national of a Party in the territory of the other Party;

but does not include the supply of a service in the territory of a Party by a covered investment or by an investor of the other Party, as defined in Article 12.30 (Definitions);

company means a company as defined in Article 1.5 (Definitions of General Application) and a branch of a company;

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

service supplier of a Party means a person of that Party that intends to supply or does supply a service (8);

aircraft repair and maintenance services means activities performed on an aircraft or part of an aircraft while the aircraft is out of service and does not include so-called line maintenance;

computer reservation system (CRS) services means services provided through computerized systems that contain information about air carriers' schedules, seat availability, fares and fare-setting rules, and through which reservations can be made or tickets issued;

professional services means services that require higher education (9) or equivalent training or experience for their supply and the exercise of which is authorized or restricted by a Party, but does not include services supplied by persons engaged in a trade or to crew members of merchant ships and aircraft; and

sale or marketing of an air transport service means the opportunities for the air carrier concerned to freely sell and market its air transport services, and all aspects of marketing, such as market research, advertising and distribution, but does not include the pricing of air transport services or the applicable terms and conditions.

(8) The Parties understand that for the purposes of Articles 13.3, 13.4 and 13.5, service suppliers have the same meaning as services and service suppliers as used in Articles XVII, II and XVI of the WTO GATS, respectively.

(9) For greater certainty, higher education shall be understood to mean what is established by the national legislation of the Parties.

## Appendix 13.11. Professional Services

Development of Professional Services Standards

1. Each Party shall encourage the relevant bodies in its respective territory to develop mutually acceptable standards and criteria for the licensing and certification of professional service suppliers, as well as to submit to the Commission recommendations on their mutual recognition.

2. The standards and criteria referred to in paragraph 1 may be developed in relation to the following aspects:

(a) education: accreditation of educational institutions or academic programs;

(b) examinations: qualifying examinations for licensing, including alternative methods of evaluation, such as oral examinations and interviews;

(c) experience: duration and nature of experience required to obtain a license;

(d) conduct and ethics: standards of professional conduct and the nature of disciplinary measures in the event of a breach of these standards;

(e) professional development and certification renewal: continuing education and the corresponding requirements to maintain professional certification;

(f) scope of action: scope or limits of authorized activities; and

(g) local knowledge: requirements on knowledge of aspects such as laws, regulations, language, geography or local climate.

3. Upon receipt of a recommendation referred to in paragraph 1, the Commission shall review it within a reasonable period of time to decide whether it is consistent with this Agreement. On the basis of the Commission's review, each Party shall encourage its respective competent authorities to implement that recommendation, where appropriate, within a mutually agreed period of time.

Temporary Licenses

4. For mutually agreed individual professional services, each Party shall encourage the competent bodies in its territory to develop procedures for the granting of temporary licenses to professional service suppliers of the other Party.

Professional Services Working Groups

5. The Parties, by mutual agreement, may form working groups on professional services, including representatives of relevant professional bodies of each Party, to facilitate the activities listed in paragraphs 1 and 4.

6. Working groups may consider, for individual professional services, the following issues:

(a) developing workable procedures on standards for licensing and certification of professional service providers; and

(b) other matters of mutual interest related to the provision of professional services.

7. The working groups should report to the Commission on their progress and future direction with respect to their work.

Review

8. The Commission shall review the implementation of this Annex at least once every three (3) years.

# Chapter 14. Financial Services

## Article 14.1. Scope of Application and Coverage

1. This Chapter applies to a measure adopted or maintained by a Party relating to:

(a) a financial institution of the other Party;

(b) an investor of the other Party, or an investment of such investor, in a financial institution in the territory of the Party; and

(c) cross-border trade in financial services.

2. Chapters 12 (Investment) and 13 (Cross-Border Trade in Services) shall apply to the measures described in paragraph 1 only to the extent that such Chapters or Articles of such Chapters are incorporated into this Chapter.

3. Articles 12.8 ( Environmental Measures), 12.10 ( Expropriation and Indemnification), 12.11 (Transfers), 12.12 (Denial of Benefits), 12.13 (Special Formalities and Reporting Requirements) and 13.13 (Denial of Benefits) are incorporated into and made an integral part of this Chapter (1).

4. Section B (Investor-State Dispute Settlement) of Chapter 12 (Investment) is incorporated into this Chapter and is an integral part of this Chapter only for those cases in which a Party is alleged to be in breach of Articles 12.10 (Expropriation and Compensation), 12.11 (Transfers), 12.12 (Denial of Benefits) or 12.13 (Special Formalities and Disclosure Requirements), as incorporated into this Chapter.

5. Article 13.12 (Transfers and Payments) is incorporated into and made an integral part of this Chapter to the extent that cross-border trade in financial services is subject to the obligations under Article 14.6.

6. This Chapter does not apply to measures adopted or maintained by a party relating to:

(a) activities or services that are part of social security systems and/or pension plans and/or schemes established by law, whether public or private; or

(b) activities or services performed for the account or with the guarantee of the Party, or with the use of financial resources of the Party, including its public entities.

Likewise, this Chapter shall not prevent a Party, including its public entities, from carrying out or supplying such activities exclusively in its territory.

(1) For greater certainty, Peru may deny the benefits of this Chapter to a Panamanian financial institution owned or controlled by a person of a non-Party and operating under an international license.

## Article 14.2. National Treatment

1. Each Party shall accord to an investor of the other Party treatment no less favorable than the treatment 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 or an investment in financial institutions in its territory.

2. Each Party shall accord to a financial institution of the other Party and to an investment of an investor of the other Party in financial institutions treatment no less favorable than the treatment it accords to its own financial institutions and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of financial institutions and investments.

3. For purposes of the national treatment obligations in Article 14.6.1, a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

4. Differences in market share, profitability or size do not in themselves establish a breach of obligations under this Article.

## Article 14.3. Most-Favored-Nation Treatment

Each Party shall accord to an investor of the other Party, a financial institution of the other Party, an investment of an investor in a financial institution and a cross-border financial service supplier of the other Party treatment no less favorable than the treatment it accords, in like circumstances, to investors, financial institutions, investments of investors in financial institutions and cross-border financial service suppliers of a non-Party.

## Article 14.4. Recognition

1. A Party may recognize a prudential measure of a non-Party in the application of a measure covered by this Chapter. Such recognition may be:

(a) granted autonomously;

(b) achieved by harmonization or other means; or

(c) based on a convention or agreement with a non-Party.

2. A Party granting recognition of a prudential measure under paragraph 1 shall provide adequate opportunity for the other Party to demonstrate that circumstances exist in which there is or will be equivalent regulation, supervision and enforcement and, if appropriate, that there are or will be procedures relating to the exchange of information between the Parties.

3. Where a Party grants recognition of prudential measures in accordance with subparagraph 1(c) and the circumstances set out in paragraph 2 exist, the Party shall provide adequate opportunity for the other Party to negotiate accession to the convention or agreement, or to negotiate a comparable convention or agreement.

## Article 14.5. Right of Establishment

1. A Party shall permit an investor of the other Party that does not own or control a financial institution in the territory of the Party to establish, without the imposition of numerical restrictions or requirements of specific types of legal form, a financial institution that is permitted to provide a financial service that a similar institution of the Party could provide under the Party's domestic law at the time of establishment. The obligation not to impose a requirement to adopt a specific legal form does not preclude a Party from imposing a condition or requirement in connection with the establishment of a particular type of entity chosen by an investor of the other Party.

2. A Party shall permit an investor of the other Party that owns or controls a financial institution in the territory of the Party to establish such additional financial institutions as may be necessary to enable the supply of the full range of financial services permitted under the Party's domestic law at the time of the establishment of the additional financial institutions. Subject to Article 14.2, a Party may impose a term or condition on the establishment of additional financial institutions and determine the institutional and legal form to be used for the supply of a specified financial service or the conduct of a specified activity.

3. The right of establishment under paragraphs 1 and 2 shall include the acquisition of an existing entity.

4. Subject to Article 14.2, a Party may prohibit a particular financial service or activity. Such a prohibition may not apply to all financial services or to an entire sub- sector of financial services such as banking activities.

5. For purposes of this Article, without prejudice to other forms of prudential regulation, a Party may require that an investor of the other Party be engaged in the business of supplying financial services in the territory of that other Party.

6. For the purposes of this Article, "numerical restrictions" means limitations imposed on the number of financial institutions whether in the form of a numerical quota, a monopoly, an exclusive service provider or the requirements of an economic needs test.

## Article 14.6. Cross-Border Trade

1. Each Party shall permit, on terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the services specified in Annex 14.6.

2. Each Party shall permit a person 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 does not oblige a Party to allow such suppliers to do business or advertise in its territory. Each Party may define "doing business" and "advertising" for the purposes of this Article provided that such definitions are not inconsistent with the obligations in 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 authorization of cross- border financial service suppliers of the other Party and of financial instruments.

## Article 14.7. New Financial Services

1. A Party shall permit a financial institution of the other Party established in its territory to supply a new financial service that the first Party would permit to be supplied, in like circumstances, by its own financial institutions in accordance with its law.

2. A Party may determine the legal and institutional form through which the new financial service may be supplied and may require authorization for the supply of the new financial service. Where a Party permits the new financial service and authorization is required to supply it, the decision shall be made within a reasonable period of time and the authorization may only be refused for prudential reasons.

3. This Article does not preclude a financial institution of a Party from requesting the other Party to authorize the supply of a financial service that is not supplied within the territory of either Party. Such a request shall be subject to the domestic law of the Party to which the request is made and, for greater certainty, shall not be subject to the obligations of this Article.

4. Nothing in this Article prohibits a Party from requesting the issuance of a decree, resolution or regulation by the Executive, regulatory agencies or central bank, to authorize new financial services not specifically authorized in its legislation.

## Article 14.8. Treatment of Certain Information

Nothing in this Chapter obligates a Party to disclose or allow access to:

(a) information relating to the financial affairs and accounts of an individual customer of a financial institution or cross-border financial service provider; or

(b) any confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular company.

## Article 14.9. Senior Management and Boards of Directors

1. A Party may not require a financial institution of the other Party to employ persons of a particular nationality for senior executive positions or other key personnel.

2. A Party may not 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, residents of its territory, or a combination of both.

## Article 14.10. Nonconforming Measures

1. Articles 14.2, 14.3, 14.5 and 14.9 do not apply to:

(a) any existing non-conforming measure maintained by one of the Parties at the level:

(i) of the national government, as indicated in Section I of its list in Annex III;

(ii) of the sub-national government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) provided that such amendment does not diminish the conformity of the measure, as in effect immediately before the amendment, with Articles 14.2, 14.3, 14.5 and 14.9.

2. Article 14.6 does not apply to:

(a) any existing non-conforming measure that is maintained by a Party at the level of the:

(i) national government, as set forth in Section I of its Schedule to Annex III; or

(ii) sub-national government;

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

(c) a modification of any non-conforming measure referred to in subparagraph (a) provided that such modification does not diminish the conformity of the measure, as in effect immediately prior to the entry into force of this Agreement, with Article 14.6.

3. Articles 14.2, 14.3, 14.5, 14.6 and 14.9 do not apply to a non-conforming measure that a Party adopts or maintains in accordance with Section II of its Schedule to Annex III.

4. Where a Party has entered a reservation to Article 12.2 (National Treatment),12.3 (Most-Favored-Nation Treatment), 13.3 (National Treatment), or 13.4 (Most- Favored-Nation Treatment) in its Schedule to Annex I or II, the reservation also constitutes a reservation to Article 14.2 or 14.3, insofar as the measure, sector, sub- sector, or activity set out in the reservation is covered by this Chapter.

## Article 14.11. Exceptions

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures for prudential reasons (2) including for the protection of investors, depositors, policy holders or persons to whom a financial institution or cross-border financial service supplier owes a fiduciary duty, or to ensure the safety, soundness, integrity and stability of the financial system, as well as the financial liability of individual financial institutions or cross-border financial service suppliers. Where such measures are not in accordance with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's obligations and commitments under this Agreement.

2. Nothing in this Agreement applies to non-discriminatory measures of a general nature taken by any public entity in pursuance of monetary and related credit or exchange rate policies and macroprudential policies.

3. Notwithstanding Article 12.11 (Transfers) and Article 13.12 (Transfers and Payments), a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to or for the benefit of a person affiliated or related to such institution or supplier through the equitable, non-discriminatory, and good faith application of measures relating to the maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph is without prejudice to any other provision of this Agreement that permits the Party to restrict transfers.

4. A Party may adopt or apply measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including measures relating to the prevention of deceptive and fraudulent practices or to address the effects of a breach of financial service contracts. A Party shall not apply such measures in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in a financial institution or on cross-border trade in financial services.

(2) The term prudential reasons includes maintaining the safety, soundness, integrity or financial responsibility of individual financial institutions or cross-border financial service providers.

## Article 14.12. Transparency

1. The Parties recognize that transparent regulations and policies governing the activities of financial institutions and financial service suppliers are important to facilitate the access of financial institutions and financial service suppliers and their operations in the market of the other Party. Each Party undertakes to promote regulatory transparency in financial services.

2. Each Party shall ensure that a measure of general application to which this Chapter applies is administered in a reasonable, objective and impartial manner.

3. Each Party shall ensure that its regulatory authorities shall make publicly available the requirements, including any necessary documentation, for completing applications relating to the supply of a financial service.

4. At the request of the applicant, the regulatory authority shall inform the applicant of the status of its application. When such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

5. The regulatory authority of a Party shall make an administrative decision on a complete application by an investor in a financial institution, a cross-border financial service supplier or a financial institution of the other Party relating to the supply of a financial service within one hundred and twenty (120) days, and shall notify the applicant of the decision in a timely manner. An application shall not be considered complete until all relevant hearings have been held and all necessary information has been received, in accordance with the regulatory requirements established for that purpose. When it is not feasible to make a decision within one hundred and twenty (120) days, the regulatory authority shall notify the interested party without undue delay and attempt to make the decision thereafter within a reasonable period of time.

6. Each Party shall maintain or establish appropriate mechanisms to respond to inquiries from interested parties regarding a measure of general application covered by this Chapter.

7. At the request of an applicant whose application has been denied, the regulatory authority that has denied an application

shall, to the extent practicable, inform the applicant of the reasons for the denial of the application.

8. In lieu of Article 19.2 (Publication), each Party shall, to the extent practicable:

(a) publish in advance any regulations of general application relating to matters in this Chapter that it proposes to adopt and the purpose of the regulation; and

(b) provide interested persons and the Parties a reasonable opportunity to comment on the proposed regulations.

9. In adopting final regulations, the Party shall, to the extent practicable, consider in writing substantive comments received from interested parties with respect to the proposed regulations (3).

10. To the extent practicable, each Party shall allow a reasonable period of time to elapse between the publication of the final regulations and their entry into force.

11. Each Party shall ensure that standards of general application adopted or maintained by self-regulatory organizations of the Party are published in a timely manner or otherwise made available so that interested persons may become aware of them.

(3) For greater certainty, a Party may consolidate its responses to comments received from interested persons and publish them in a separate document from the final regulation.

## Article 14.13. Self-Regulatory Organizations

Where a Party requires a financial institution or cross-border financial service supplier of the other Party to be a member of, participate in, or have access to a self- regulatory organization in order to provide a financial service in or into its territory, the Party shall ensure that such self-regulatory organization complies with the obligations of Articles 14.2 and 14.3.

## Article 14.14. Payment and Clearing Systems

Subject to terms and conditions that accord national treatment, each Party shall grant to a financial institution of the other Party established in its territory access to payment and clearing systems administered by public entities and to official financing and refinancing facilities available in the normal course of business. This Article does not confer access to the Party's lender of last resort facilities.

## Article 14.15. Financial Services Committee

1. The Parties establish the Financial Services Committee (hereinafter the Committee). The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 14.15.

2. The Committee:

(a) supervise the implementation of this Chapter and its further development;

(b) consider financial services matters referred to it by a Party; and

(c) participate in dispute settlement proceedings in accordance w i t h Article 14.18.

3. The Committee shall meet annually, or as otherwise agreed, to evaluate the operation of this Agreement as it relates to financial services. The Committee shall report to the Commission on the results of each meeting.

## Article 14.16. Consultations

1. A Party may request consultations with the other Party with respect to any matter related to this Agreement that affects a financial service. The other Party shall give due consideration to the request. The Parties shall inform the Committee of the results of the consultations.

2. Consultations under this Article shall include officials of the authority specified in Annex 14.15.

3. Nothing in this Article shall be construed to require a regulatory authority participating in consultations under paragraph 1 to disclose information or to act in a manner that would interfere with specific regulatory, supervisory, administrative or enforcement matters.

4. Where a Party requires information for a supervisory purpose concerning a financial institution in the territory of the other Party or a cross-border financial service supplier in the territory of the other Party, the Party may approach the competent regulatory authority in the territory of the other Party to request the information.

5. A Party shall not be required to derogate from its legislation relating to the exchange of information between financial regulators or the requirements of an agreement or arrangement between the Parties' financial authorities.

## Article 14.17. Settlement of Disputes

1. Chapter 18 (Dispute Settlement), as amended by this Article, applies to the settlement of disputes arising under this Chapter.

2. Consultations held pursuant to Article 14.16 with respect to a measure or matter constitute consultations pursuant to Article 18.4 (Consultations), unless the Parties agree otherwise. If the matter has not been resolved within forty-five (45) days after the commencement of consultations under Article 14.16, or ninety (90) days after the delivery of the request for consultations under Article 14.16, whichever is earlier, the complaining Party may request in writing the establishment of a panel.

3. The following procedures will replace Article 18.5 (Establishment of a Panel):

(a) the panel will be composed of three members;

(b) each Party shall, within thirty (30) days of receipt of the request for the establishment of the panel, appoint a panelist, who may be a national of that Party, and notify the other Party in writing of such appointment. If a Party fails to designate a panelist within thirty (30) days, the other Party may request that the designating authority designate, at its discretion, the panelist not designated under paragraph 4;

(c) the Parties shall endeavor to agree on the designation of the third panelist who shall chair the panel and, unless the Parties agree otherwise, such panelist shall not be a national of a Party. If the chair of the panel has not been designated within thirty (30) days of the most recent designation under subparagraph (b), any Party may request the designating authority to designate, at its discretion, and subject to paragraph 4, a chair of the panel who shall not be a national of a Party; and

(d) subparagraphs (b) and (c) shall apply, mutatis mutandis, when a panelist or the chair of the panel retires, is removed, or is otherwise unable to serve on the panel. In such a case, a term applicable to the panel proceeding shall be suspended for a period beginning on the date on which a panelist ceases to serve and ending on the date on which his or her replacement is appointed.

4. Each panelist on panels constituted for disputes arising under this Chapter shall have the qualifications required by Article 18.6 (Qualifications of Panelists) with the exception of subparagraph (d) of that Article. In addition, each panelist shall have expertise or experience in financial law or financial services practice, which may include the regulation of financial institutions.

5. In any dispute, if a panel finds that a measure is inconsistent with the obligations of this Agreement and the measure affects:

(a) only to a financial services sector, the complaining Party may suspend benefits only in the financial services sector;

(b) to the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure on the Party's financial services sector; or

(c) only to a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

## Article 14.18. Financial Services Investment Disputes

1. Where an investor of a Party submits a claim to arbitration under Section B (Investor-State Dispute Settlement) of Chapter 12 (Investment) and the respondent Party invokes an exception under Article 14.11, the Tribunal shall refer the matter in writing to the Committee for a decision pursuant to paragraph 2. The Tribunal may not proceed until it receives a decision or a report pursuant to this Article.

2. In a referral under paragraph 1, the Committee shall decide the issue of the extent to which Article 14.11 is a valid defense to the investor's claim. The Committee shall transmit a copy of its decision to the Tribunal and to the Commission.

The decision shall be binding on the Tribunal.

3. Where the Committee has not decided the matter within sixty (60) days after receipt of the referral under paragraph 1, any Party may request, within ten (10) days thereafter, the establishment of a panel under Article 18.5 (Establishment of a Panel) to decide the matter. The panel shall be constituted in accordance with Article 14.17. In addition to Article 18.9 (Report of the Panel), the panel shall transmit its final report to the Committee and the Tribunal. The report shall be binding on the Tribunal.

4. Where a request for the establishment of a panel under paragraph 3 has not been filed within ten (10) days after the expiration of the sixty (60) day period referred to in paragraph 3, the Tribunal may proceed to decide the matter.

## Article 14.19. Definitions

For the purposes of this Chapter:

Designating authority means the Secretary-General or the Assistant Secretary- General or the next most senior member of the Center's staff.

International Centre for Settlement of Investment Disputes, other than a national of one of the Parties;

cross-border trade or supply of financial services means the supply of a financial service:

(a) from the territory of one Party to the territory of the other Party;

(b) in the territory of a Party by a person of that Party to a person of the other Party; or

(c) by a national of a Party in the territory of the other Party;

but does not include the supply of a financial service in the territory of a Party for an investment in that territory;

public entity means a central bank, a monetary authority of a Party or any financial institution owned or controlled by a Party. For greater certainty, a public entity shall not be considered a designated monopoly or a state enterprise for purposes of Chapter 11 (Competition Policy);

investment means "investment" as defined in Article 12.30 (Definitions), except that:

(a) a loan to, or debt instrument issued by, a financial institution is an investment only when it is treated as capital for regulatory purposes by the Party in whose territory the financial institution is located; and

(b) a loan granted by a financial institution or a debt instrument owned by a financial institution is not an investment unless covered by subparagraph (a); and

for greater certainty:

(a) a loan to or debt instrument issued by a Party or a State enterprise of that Party is not an investment, regardless of the original maturity date; and

(b) a loan made by, or a debt instrument owned by, a cross-border financial service supplier, other than a loan to, or a debt instrument issued by, a financial institution, is an investment if such loan or debt instrument meets the criteria for investments set out in Article 12.30 (Definitions);

investor of a Party means "investor of a Party" as defined in Article 12.30 (Definitions);

financial institution means a financial intermediary or other enterprise that is authorized to do business and that is 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 a person of the other Party;

new financial service means a financial service not supplied in the territory of the Party, but which is supplied in the territory of the other Party, and includes a new form of supply of a financial service or the sale of a financial product that is not sold in the territory of the Party;

self-regulatory organization means a non-governmental entity that exercises proprietary or delegated regulatory or supervisory authority over financial service providers or financial institutions, including a securities or futures exchange or market, clearing house or other body or association. For greater certainty, a self-regulatory entity shall not be considered a

designated monopoly for purposes of Chapter 11 (Competition Policy);

person of a Party means a national or company of a Party. For greater certainty, it does not include a branch of a company of a non-Party;

financial service supplier of a Party means a person of a Party engaged in the business of supplying a financial service in the territory of that Party;

cross-border financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service in the territory of the Party and that seeks to supply or does supply a financial service through the cross-border supply of such service; and

financial service means a service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (except insurance), as well as all 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 coinsurance):

(i) life insurance;

(ii) non-life insurance;

(b) reinsurance and retrocession;

(c) insurance intermediation activities, such as those of insurance brokers and agents; and

(d) auxiliary insurance services, e.g. consultants, actuaries, risk assessment and loss adjusting;

*Banking and other financial services (excluding insurance):*

(e) acceptance of deposits and other repayable funds from the public;

(f) loans of all types, including personal loans, mortgage loans,

factoring and financing of commercial transactions;

(g) leasing services;

(h) all payment and money transfer services, including credit, charge and debit cards, traveler's checks and money orders;

(i) guarantees and commitments;

(j) trading for its own account or for the account of customers, whether on an exchange, in an over-the-counter market or otherwise, of the following:

(i) money market instruments (including checks, bills and certificates of deposit);

(ii) currencies;

(iii) derivative products, including but not limited to futures and options;

(iv) instruments in the foreign exchange and interest rate markets, including products such as swaps and forward rate agreements;

(v) transferable securities;

(vi) other negotiable instruments and financial assets, including metal;

(k) participation in issues of all kinds of securities, including underwriting and placement as agents (publicly or privately), and the provision of services related to such issues;

(l) foreign exchange brokerage;

(m) asset management, such as cash or portfolio management, collective investment management in all its forms, pension fund management, depository and custodial services, and trust services;

(n) payment and clearing services in respect of financial assets, including securities, derivative products and other negotiable instruments;

(o) provision and transfer of financial information, and processing of financial data and related software by providers of other financial services; and

(p) advisory, intermediation and other auxiliary financial services with respect to any of the activities indicated in subparagraphs (e) through (o), including credit reports and analyses, investment and portfolio research and advice, and advice on acquisitions and on corporate restructuring and strategy.

### Annex 14.6. Cross Border Trade

# Section A. Panama

*Insurance and Insurance-Related Services*

1. Article 14.6.1 applies to cross-border trade or supply of financial services, as defined in subparagraph (a) of the definition of cross-border trade or supply of financial services in Article 14.19, with respect to:

(a) insurance covering the following risks:

(i) international maritime transport and launching and space transport (including satellites), including any or all of the following elements: the goods being transported, the vehicle transporting the goods and the civil liability that may arise therefrom;

(ii) goods in international transit;

(b) reinsurance and retrocession;

(c) consulting, risk assessment, actuarial and claims adjustment; and

(d) insurance brokerage included in subparagraphs (a) and (b).

2. Article 14.6.1 applies to the cross-border supply or cross-border trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services in Article 14.19, with respect to insurance and insurance-related services listed in paragraph 1.

*Banking and Other Financial Services (excluding insurance)*

3. For Panama, Article 14.6.1 applies only with respect to:

(a) provision and transfer of financial information referred to in subparagraph (o) of the definition of financial service in Article 14.19 ;

(b) financial data processing and related software referred to in subparagraph

(o) of the definition of financial service in Article 14.194 ; and

(c) advisory and other auxiliary financial services,5 excluding credit intermediation and credit reporting and analysis, with respect to banking and other financial services referred to in subparagraph (o) of the definition of financial service in Article 14.19.

4 It is understood that when the financial information or the processing of financial data referred to in subparagraphs (a) and (b) contains personal information, its treatment shall be in accordance with the Panamanian law regulating the protection of such information.

5 It is understood that advisory and other auxiliary financial services do not include those services referred to in subparagraphs (e) through (o) of the definition of financial service in Article 14.19.

# Section B. Peru

*Insurance and Insurance-Related Services*

1. Article 14.6.1 applies to the cross-border supply or trade in financial services, as defined in subparagraph (a) of the definition of cross-border trade or supply of services in Article 14.19, with respect to:

(a) insurance against risks related to:

(i) maritime transport, commercial aviation and space launch and transport (including satellites), covering any or all of the following: the goods being transported, the vehicle transporting the goods and a n y liability arising therefrom; and

(ii) goods in international transit.

(b) reinsurance and retrocession services;

(c) consultants, actuarial, risk assessment and claims settlement services;

(d) insurance intermediation, such as agents or brokers, as referred to in subparagraph (c) of the definition of financial service in Article 14.19, of insurance of risks related to the services listed in subparagraphs (a) and (b);

2. Article 14.6.1 applies to cross-border trade or supply of financial services, as defined in subparagraph (c) of the definition of cross-border trade or supply of financial services in Article 14.19, with respect to services listed in paragraph 1.

*Banking and Other Financial Services (Excluding Insurance)*

3. Article 14.6.1 applies only with respect to the provision and transfer of financial information, and financial data processing and related software, referred to in subparagraph (o) of the definition of financial service in Article 14.19 (6) , subject to prior authorization by the relevant regulator, where required, and advisory and other auxiliary financial services (7) , excluding intermediation, related to banking and financial services, and other financial services referred to in subparagraph (p) of the definition of financial service in Article 14.19 (8).

(6) It is understood that when the financial information or the processing of financial data referred to in this paragraph 3 contains personal information, its treatment shall be in accordance with Peruvian legislation regulating the protection of such information.

(7) It is understood that advisory and other auxiliary financial services do not include those services referred to in subparagraphs (e) through (o) of the definition of financial services in Article 14.19.

(8) It is understood that a trading platform, whether electronic or physical, is not included within the range of services specified in this paragraph 3.

### Appendix 14.15. Authorities Responsible for Financial Services

The authority of each Party responsible for financial services shall be:

a) In the case of Peru, the Ministry of Economy and Finance, in coordination with the regulatory agencies;

b) in the case of Panama, the Dirección Nacional de Administración de Tratados Comerciales Internacionales y Defensa Comercial del Ministerio de Comercio e Industrias in consultation with the Superintendencia de Bancos, the Superintendencia de Seguros y Reaseguros and the Comisión Nacional de Valores,

or their respective successors.

## Chapter 15. Maritime Services

### Article 15.1. Scope of Application

1. This Chapter applies to measures adopted or maintained by any Party affecting maritime cargo transport services and maritime auxiliary services supplied by a maritime transport service supplier of a Party and by related maritime transport service suppliers or maritime auxiliary services of a Party.

2. Measures affecting the supply of maritime transport services are within the scope of the obligations contained in the relevant provisions of Chapters 12 (Investment) and 13 (Cross-Border Trade in Services), and subject to any exceptions or non-conforming measures provided for in this Agreement that are applicable to those obligations.

3. Except as provided in paragraph 2, in case of incompatibility between this Chapter and another Chapter, this Chapter

shall prevail to the extent of the incompatibility.

4. Without prejudice to the provisions of this Chapter, the Parties recognize their rights and obligations contracted by virtue of international conventions emanating from the different United Nations organizations, subscribed and ratified by each o f t h e Parties, which regulate the international maritime transportation of goods as well as auxiliary maritime services or activities related to maritime transportation. (1)

(1) For greater certainty, the obligations of the Parties under the international conventions referred to in this paragraph are not subject to the dispute settlement mechanism of this Agreement.

## Article 15.2. Participation In Transportation

1. The Parties agree to cooperate in order to remove any obstacles that may impede the development of maritime trade between a port of one Party and a port of the other Party and that may interfere with the various activities connected with such trade.

2. The Parties shall endeavor to ensure the safety and/or security of their ships and port facilities, the protection of the marine environment, the safety of life at sea and the work of seafarers.

## Article 15.3. National Treatment

A Party shall accord in its ports to vessels of the other Party treatment no less favorable than that accorded to its own vessels with respect to free access to ports, stay and departure from ports, the use of port facilities and all facilities provided by it in connection with commercial and navigational operations, for vessels, their crew and cargo. This provision shall also apply to the assignment of docks and loading and unloading facilities.

## Article 15.4. Agents and Representatives

A maritime transportation service supplier of a Party operating in the territory of the other Party shall have the right to establish representations in the territory of that other Party, in accordance with its national legislation.

## Article 15.5. Recognition of Vessel Documentation

1. A Party shall recognize the nationality of a vessel of the other Party, upon verifying by means of the shipboard documents, that they have been issued by the competent authority of the other Party or by an organization recognized by said other Party, in accordance with its national legislation. For such purposes, it shall be understood that:

(a) in the case of Peru, the competent authority for issuing onboard documents is the Dirección General de Capitanías y Guardacostas or an organization recognized by Peru;

(b) In the case of Panama, the competent authority for issuing onboard documents is the Panama Maritime Authority or an organization recognized by Panama.

2. Vessel documents issued or recognized by one Party shall be recognized by the other Party.

## Article 15.6. Recognition of Travel Documents of the Crew Members O F a Party's Vessel

The Parties shall recognize as travel documents of the crew members of a vessel of a Party the valid passport and seaman's book.

## Article 15.7. Jurisdiction

Any dispute arising out of the contract of employment between a shipowner of one Party and a crew member of the other Party shall be referred for settlement to the respective judicial or administrative authorities of the Party to whose flag the vessel belongs.

## Article 15.8. Cooperation

Recognizing the global nature of maritime transport, the Parties affirm the importance of:

(a) work together to overcome obstacles faced by companies when using the maritime transport service and share knowledge of best practices;

(b) to share information and experiences on laws, regulations and programs that make the provision of port, maritime and navigation services efficient, as well as to promote study and training opportunities for personnel related to port, maritime and navigation services, which are developed in specialized centers for this purpose;

(c) work to maintain cross-border information flows, as an essential element to promote a dynamic environment that improves the options in the offers for contracting maritime transport services;

(d) actively participate in congresses, symposiums, business meetings, fairs, hemispheric and multilateral forums to promote maritime and port development; and

(e) promote the exchange of students from the Parties' merchant marine schools.

## Article 15.9. Points of Contact

1. The Parties establish the following points of contact,

(a) in the case of Peru: the General Directorate of Water Transportation of the Ministry of Transportation and Communications through the Ministry of Foreign Trade and Tourism;

(b) in the case of Panama: the Panama Maritime Authority through the National Directorate for the Administration of International Trade Treaties and Commercial Defense.

or their successors.

2. The points of contact shall meet as necessary to exchange information and to consider matters related to this Chapter, such as:

(a) implementation and administration of this Chapter;

(b) the development and adoption of common criteria, definitions and interpretations for the implementation of this Chapter; or

(c) the proposed amendments to this Chapter.

## Article 15.10. Definitions

For the purposes of this Chapter:

vessel of a Party means any vessel flying the flag of a Party and registered in its registry in accordance with the legal provisions of that Party. This term does not include:

(a) vessels used exclusively by the armed forces;

(b) hydrographic, oceanographic and scientific research vessels;

(c) fishing vessels, vessels for research and inspection and for fish processing; and

(d) vessels intended to provide services in harbor traffic and port areas including pilotage, towing, assistance and rescue at sea;

crew members of a vessel of a Party means all persons, including the master and employees, who are currently under contract for activities on board the vessel during a voyage and included on the vessel's crew list or crew roster;

recognized organization means any Classification Society or other organization, which acts on behalf of the competent authority in respect of surveys, surveys, issue of certificates and documents, marking of ships and other statutory work required under the conventions of the International Maritime Organization (IMO);

supplier of services related to maritime transport or maritime auxiliary services of a Party means a person of a Party that seeks to provide or provides an activity related to maritime transport or a maritime auxiliary service;

maritime transport service supplier of a Party means a natural or juridical person of a Party, or a vessel of a Party, that seeks

to provide or provides a maritime transport service;

port of a Party means a seaport, including roadsteads, in the territory of that Party that has been approved and opened for international trade; and

auxiliary maritime services or activities related to maritime transport means the supply of complementary services to the maritime activity inside or outside the port area destined to attend the cargo, the vessel or crew, in accordance with the provisions of the legislation of each Party.

# Chapter 16. Telecommunications

## Article 16.1. Scope of Application

1. This Chapter applies to:

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

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

(c) other measures adopted or maintained by a Party relating to public telecommunications networks or services (1).

2. This Chapter does not apply to measures that a Party adopts or maintains in relation to the broadcasting or cable distribution of radio or television programming, unless such measures are intended to ensure that persons operating broadcasting stations and cable systems have access to and use of public telecommunications networks and services.

3. This Chapter does not obligate a Party to:

(a) authorize a service supplier of the other Party to establish, construct, acquire, lease, operate or supply public telecommunications networks or services, except as specifically provided in this Chapter;

(b) establishing, constructing, acquiring, leasing, operating or providing public telecommunications networks or services not offered to the general public; or

(c) obligate a service provider to establish, construct, acquire, lease, operate or supply public telecommunications services or services that are not offered to the general public.

4. Likewise, this Chapter shall not be construed to prevent a Party from prohibiting persons operating private networks from using their networks to provide public telecommunications networks or services to third parties.

(1) For greater certainty, this Chapter does not impose obligations with respect to value-added services, which shall be subject to the domestic legislation of each Party. Value-added services may be defined by each Party in its territory.

## Article 16.2. Access to and Use of Public Telecommunication Networks and Services (2)

1. Subject to a Party's right to restrict the supply of a service in accordance with the reservations set out in its Schedules to Annexes I and II, a Party shall ensure that enterprises of the other Party have access to and may use public telecommunications networks or services on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 6.

2. Each Party shall ensure that enterprises of the other Party have access to and may use any public telecommunications networks or services offered within or across its borders, including private leased circuits, and, to that end, shall ensure, subject to paragraphs 5 and 6, that such enterprises are permitted to do so:

(a) purchase or lease and connect terminals or other equipment interfacing with public telecommunications networks;

(b) interconnect private leased or owned circuits with that Party's public telecommunications networks and services, or with circuits leased or owned by another enterprise;

(c) use operating protocols of your choice; and

(d) perform switching, signaling and processing functions.

3. Each Party shall ensure that an enterprise of the other Party may use public telecommunications networks and services to move information in its territory or on a cross-border basis, including for intra-enterprise communications of such enterprise and to access information contained in databases or otherwise stored in a machine-readable form in the territory of any Party.

4. In addition to the provisions of Article 21.1 (General Exceptions), a Party may take measures necessary to:

(a) ensuring the security and confidentiality of messages; or

(b) protect the privacy of personal data of telecommunications end users;

provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

5. Each Party shall ensure that no conditions are imposed on access to and use of public telecommunications networks or services, except those deemed necessary for:

(a) safeguard the public service responsibilities of providers of public telecommunications networks or services, in particular their ability to make their networks or services available to the general public;

(b) protect the technical integrity of public telecommunications networks or services; or

(c) ensure that service suppliers of the other Party do not supply services that are limited by the reservations listed by the Parties in their Schedules to Annexes I and II.

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

(a) the requirement to use specific technical interfaces, including interface protocols, for interconnection with such networks and services;

(b) requirements, when necessary, for the interoperability of such services;

(c) the approval of terminal equipment or other equipment interfacing with the network and technical requirements related to the connection of such equipment to these networks;

(d) restrictions on the interconnection of privately owned or leased circuits with such networks or services, or with circuits owned or leased by another company; and

(e) notification, registration and licensing.

(2) For greater certainty, this Article does not prohibit any Party from requiring a license, concession or other type of authorization for an enterprise to supply any public telecommunications service in its territory.

## Article 16.3. Procedures Relating to Licenses or Concessions

1. Where a Party requires a supplier to have a license, concession, permit, registration or other type of authorization to provide public telecommunications networks or services, the Party shall make such license, concession, permit, registration or other type of authorization publicly available:

(a) all applicable criteria and procedures for the granting of the license or concession, permit, registration or other type of authorization;

(b) the period of time normally required to reach a decision on an application for a license, concession, permit, registration or other type of authorization; and

(c) the terms and conditions of all licenses, concessions, permits, registrations or other types of authorizations it has issued.

2. The Party shall ensure that, if the application is denied, the applicant is informed of the reasons for its decision in accordance with each Party's procedures.

## Article 16.4. Behavior of Dominant or Significant Suppliers

*Treatment of Dominant or Significant Suppliers*

1. Each Party shall ensure that dominant or major suppliers in its territory accord to public telecommunications service suppliers of another Party treatment no less favorable than that accorded by such major suppliers to their subsidiaries, their affiliates or non-affiliated service suppliers with respect to:

(a) the availability, supply, rates or quality of similar public telecommunications networks or services; and

(b) the availability of technical interfaces necessary for interconnection.

*Competitive Safeguards*

2. Each Party shall maintain appropriate measures to prevent suppliers that, individually or jointly, are dominant or important suppliers in its territory, from employing or continuing to employ anti-competitive practices.

3. The anticompetitive practices referred to in paragraph 1 include:

(a) engage in anticompetitive cross-subsidization activities;

(b) using information obtained from competitors with anticompetitive results; and

(c) failure to make available to other service providers, in a timely manner, technical information on essential facilities and commercially relevant information needed by them to provide services.

*Interconnection*

4. Subject to a Party's reservations in Annexes I and II, each Party shall ensure that a dominant or major supplier provides interconnection:

(a) at any technically feasible point in the network;

(b) on terms, conditions (including technical standards and specifications) and rates that do not discriminate against other suppliers;

(c) of a quality no less favorable than that supplied to its own similar services, to similar services of unaffiliated service providers or their subsidiaries or other affiliates;

(d) in a timely manner, on terms, conditions (including technical standards and specifications) and cost-oriented rates that:

(i) transparent and reasonable, taking into account economic feasibility; and

(ii) are sufficiently unbundled so that the provider need not pay for network components or facilities that are not required for the services to be provided; and

(e) upon request, at points in addition to the network termination points offered to most users, subject to charges reflecting the cost of constructing the necessary additional facilities.

## Article 16.5. Universal Service

1. Each Party has the right to define the kind of universal service obligations it wishes to adopt or maintain.

2. Each Party shall administer any universal service obligation adopted or maintained in a transparent, non-discriminatory, competitively neutral manner and shall ensure that the universal service obligation is no more burdensome than necessary for the type of universal service defined by the Party.

## Article 16.6. 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. A Party's measures relating to spectrum allocation and assignment and frequency management shall not be considered measures inconsistent with Article 13.5 (Market Access), which applies to cross-border trade in services, and Chapter 12 (Investment) through Article 13.1.4 (Scope of Application).

Accordingly, each Party retains the right to maintain, establish and implement spectrum and frequency management policies that may limit the number of suppliers of public telecommunications services, provided that this is done in a manner consistent with other provisions of this Agreement. In addition, each Party retains the right to allocate frequency

bands taking into account present and future needs.

## Article 16.7. Regulatory Body

1. Each Party shall ensure that its regulatory body is separate from and not accountable to any supplier of public telecommunications networks or services.

2. Each Party shall ensure that the decisions and procedures of its regulatory body are impartial with respect to all market participants.

## Article 16.8. Compliance

Each Party shall maintain appropriate procedures and authority to enforce its domestic measures relating to the obligations set forth in Articles 16.2 and 16.4. Such procedures shall include the ability to impose appropriate sanctions, which may include, in accordance with each Party's legislation, fines, corrective orders, injunctions, or the modification, suspension or revocation of licenses or other authorizations.

## Article 16.9. Settlement of Domestic Telecommunication (3)

*Disputes Recourse to Regulatory Bodies*

1. In addition to Article 19.4 (Administrative Procedures) and Article 19.5 (Review and Challenge), each Party shall ensure that:

(a) a supplier of public telecommunications networks or services of the other Party may have timely recourse to its regulatory body or other relevant body of the Party to resolve disputes concerning measures of the Party that relate to matters covered in Articles 16.2 and 16.4, and that, in accordance with the Party's domestic law, are within the competence of such bodies; and

(b) suppliers of public telecommunications networks or services of the other Party requesting interconnection with a dominant or major supplier in the territory of the Party have recourse, within a reasonable and public period of time after the supplier requests interconnection, to the Party's regulatory body for resolution of interconnection disputes regarding the terms, conditions, and rates for interconnection with such dominant or major supplier.

*Reconsideration* (4)

2. Each Party shall ensure that any supplier of public telecommunications networks or services adversely affected, or whose interests are adversely affected, by a determination or decision of its regulatory body may request reconsideration of the determination or decision by that body (5) .

*Judicial Review*

3. Any supplier of public telecommunications networks or services that is adversely affected or whose interests have been adversely affected by a determination or decision of the Party's telecommunications regulatory body may obtain judicial review of such determination or decision by an independent judicial authority in accordance with the domestic law of each Party. A request for judicial review shall not constitute a basis for non-compliance with such ruling or decision unless stayed by the competent judicial body.

(3) For greater certainty, in the case of Panama, the regulatory agency will be the Autoridad Nacional de los Servicios Públicos or its successor.

(4) No Party may request reconsideration of administrative rulings of general application, as defined in Article 19.7 (Definitions), unless permitted by national legislation.

(5) With respect to Peru, the request for reconsideration shall not be grounds for non-compliance with the resolution or decision of the regulatory agency unless a competent authority suspends such resolution or decision.

## Article 16.10. Transparency

In addition to Articles 19.2 (Publication) and 19.3 (Provision of Information), and the other provisions in this Chapter relating to the publication of information, each Party shall ensure that:

(a) the current status of allocated frequency bands shall be made available to the public, but detailed identification of frequencies allocated for specific government use shall not be required;

(b) the regulatory body's regulations, including the basis for such regulations, are promptly published or made available to the public;

(c) interested persons are provided, to the extent practicable, with adequate advance public notice, the opportunity to comment on any proposed regulation by the telecommunications regulatory body; and

(d) measures relating to public telecommunications networks or services are made available to the public, including measures relating to:

(i) rates and other terms and conditions of service;

(ii) technical interface specifications;

(iii) conditions for connecting terminals or other equipment to the public telecommunications network; and

(iv) notification, permit, registration or licensing requirements, if applicable; and

(e) information on the bodies responsible for the development, modification and adoption of measures related to standards affecting access and use is publicly available.

## Article 16.11. Abstention

The Parties recognize the importance of relying on market forces to achieve a wide range of alternatives in the supply of telecommunications services. To this end, each Party may refrain from applying a regulation to a telecommunications service where:

(a) compliance with such regulation is not necessary to prevent unjustified or discriminatory practices;

(b) compliance with such regulation is not necessary for the protection of consumers; or

(c) is compatible with the public interest, including the promotion and strengthening of competition among suppliers of public telecommunications networks or services.

## Article 16.12. Relation to other Chapters

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

## Article 16.13. International Standards and Organizations

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

## Article 16.14. Definitions

For the purposes of this Chapter:

leased circuits means telecommunications facilities between two (2) or more designated points that are intended for the dedicated use or availability of a particular customer or for other users chosen by that customer;

intra-company communications means telecommunications by which a company communicates internally with or between its subsidiaries, branches and, subject to a Party's domestic laws and regulations, its affiliates, but does not include commercial or non-commercial services provided to companies that are not related subsidiaries, branches or affiliates or that are offered to customers or potential customers; for such purposes, the terms "subsidiaries, branches" and, where appropriate, "affiliates" shall be interpreted in accordance with each Party's definition in its domestic law;

company means a "company" as defined in Article 1.5 (Definitions of General Application) and includes a branch of a company;

essential facilities means facilities of a public telecommunications network or service which:

(a) are supplied exclusively or predominantly by a single supplier or a limited number of suppliers; and

(b) it is not economically or technically feasible to substitute them in order to provide a service;

interconnection means the link between providers of public telecommunications services for the purpose of enabling the users of one provider to communicate with the users of another provider and to access the services provided by another provider;

non-discriminatory means treatment no less favorable than that accorded to any other user of similar public telecommunications networks or services, in like circumstances;

regulatory agency means the national agency responsible for telecommunications regulation;

cost-oriented means cost-based, which includes reasonable profitability, and may involve different costing methodologies for different facilities or services;

dominant or major supplier (6), (7) means a supplier of public telecommunications services, which has the ability to significantly affect the conditions of participation from the point of view of price and supply in the relevant market for public telecommunications networks or services, as a result of:

(a) control of essential facilities; or

(b) the use of its position in the market;

network termination point means the final demarcation of the public telecommunications network at the user's premises;

public telecommunications network means the public telecommunications infrastructure (8) that allows telecommunications between two (2) or more defined points of a network;

public telecommunications service means any telecommunications service that a Party requires, either explicitly or in fact, to be offered to the general public and that generally involves real-time transmission. Such services may include, inter alia, telephony and data transmission typically involving user-provided information between two (2) or more points without any end-to-end change in the form or content of the user's information;

telecommunications means the transmission and reception of signals by an electromagnetic medium;

user means an end user or a provider of public telecommunications services; and

end user means an end consumer or a subscriber of a public telecommunications service, including a service provider that is not a provider of public telecommunications services.

(6) With respect to Peru, rural telephone companies that have at least eighty percent (80%) of their total fixed lines in service in rural areas may not be considered as major providers.

(7) In the case of Panama, the concept of dominant supplier will be applied.

(8) For greater certainty in this Chapter, public infrastructure is that used to provide public telecommunications services.

# Chapter 17. Temporary Entry of Business Persons

## Article 17.1. General Principles

1. In addition to the provisions of Article 1.2 (Objectives), this Chapter reflects the preferential trading relationship that exists between the Parties, the mutual objective of facilitating the temporary entry of business persons in accordance with their national legislation, and the provisions of Annexes 17.3 (1) (Categories of Business Persons) and 17.3 (2) (Permanency Periods), based on the principle of reciprocity and the need to establish transparent criteria and procedures for the

temporary entry of business persons. It also reflects the need to ensure border security and protect the national labor force and permanent employment in their respective territories.

2. This Chapter shall not apply to measures affecting natural persons of a Party seeking access to the labor market of the other Party (1) , nor to measures relating to citizenship, nationality, permanent residence, or employment on a permanent basis.

(1) For greater certainty, this paragraph does not override or impair the obligations under Section C (Transfers of Personnel Within an Enterprise) of Schedule 17.3 (1) (Categories of Business Persons).

## Article 17.2. General Obligations

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 17.1, and in particular shall apply them expeditiously to avoid undue delay or impairment in trade in goods or services or in the conduct of investment activities in accordance with this Agreement.

2. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of its borders and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in a manner that unduly delays or impairs trade in goods or services or the conduct of investment activities in accordance with this Agreement. The mere fact of requiring a visa for natural persons shall not be deemed to unduly impair or impede trade in goods or services or investment activities pursuant to this Agreement.

## Article 17.3. Temporary Entry Authorization

1. Each Party shall authorize temporary entry for business persons who comply with the immigration measures applicable to temporary entry and other measures related to public health and safety and national security, in accordance with the provisions of this Chapter, including the provisions contained in Annex 17.3 (1) (Categories of Business Persons) and in Annex 17.3 (2) (Permanency Periods).

2. Each Party shall establish the amount of fees for processing applications for temporary entry of business persons in a manner that does not unduly delay or impair trade in goods or services or the conduct of investment activities in accordance with this Agreement and does not exceed the approximate administrative costs.

3. The authorization of temporary entry under this Chapter does not replace the requirements for the exercise of a profession or activity in accordance with the specific regulations in force in the territory of the Party authorizing the temporary entry.

## Article 17.4. Exchange of Information

1. In addition to Article 19.2 (Publication), and recognizing the importance to the Parties of transparency of information on the temporary entry of business persons, each Party shall:

(a) provide the other Party with relevant materials to enable it to become acquainted with its measures relating to this Chapter; and

(b) no later than six (6) months after the date of entry into force of this Agreement, prepare, publish and make available materials explaining the requirements for the temporary entry of business persons, including references to applicable national legislation, in accordance with this Chapter, so that business persons of the other Party may be aware of them.

2. Each Party shall collect, maintain and make available to the other Party, upon request and in accordance with its respective national legislation, information regarding the granting of temporary entry authorizations for business persons, in accordance with this Chapter, to business persons of the other Party to whom immigration documentation has been issued, to include specific information regarding each category authorized in Annex 17.3 (1) (Categories of Business Persons).

## Article 17.5. Committee on Temporary Entry of Business Persons

1. The Parties establish a Committee on Temporary Entry of Business Persons (hereinafter the Committee), composed of representatives of each Party (2).

2. The functions of the Committee shall include, among other matters of mutual interest:

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

(c) report to the Commission on the implementation and administration of this Chapter, as appropriate;

(d) establish procedures for the exchange of information on measures affecting the temporary entry of business persons pursuant to this Chapter;

(e) consider developing measures to further facilitate the temporary entry of business people;

(f) the observance of the matters established in accordance with Article 17.6 ; and

(g) to deal with any other matter related to this Chapter.

3. Unless otherwise agreed by the Parties, the Committee shall meet at least once (1) every three (3) years, on the date and according to the agenda previously agreed upon by the Parties. The Parties shall determine those cases in which extraordinary meetings may be held.

4. The meetings may be held by any means agreed upon by the Parties. When they are face-to-face, they shall be held alternately in the territory of each Party, and it shall be the responsibility of the host Party to organize the meeting.

5. Unless otherwise agreed by the Parties, the Committee shall be of a permanent nature and shall develop its working rules.

6. All decisions of the Committee shall be made by mutual agreement.

(2) In the case of Panama, the representatives will be the National Immigration Service through the Office of International Trade Negotiations of the Ministry of Commerce and Industries or its successors.

## Article 17.6. Cooperation

Taking into consideration the principles set forth in Article 17.1, the Parties shall endeavor to the extent possible:

(a) cooperate to strengthen institutional capacity and promote technical assistance among migration authorities;

(b) exchange information and experiences on regulations and implementation of programs and technology in the framework of immigration matters, including those related to the use of biometric technology, advance passenger information systems, frequent flyer programs and travel document security; and

(c) strive to actively coordinate in multilateral fora to promote the facilitation of temporary entry of business people.

## Article 17.7. Settlement of Disputes

1. A Party may not initiate proceedings under Chapter 18 (Dispute Settlement) of this Agreement with respect to a denial of temporary entry authorization under this Chapter unless:

(a) the matter concerns a recurring practice; and

(b) the business person concerned has exhausted, in accordance with applicable national law, the administrative remedies available to it in respect of that particular matter.

2. The remedies referred to in subparagraph 1(b) shall be deemed exhausted when the competent authority has not issued a final resolution within one (1) year from the initiation of an administrative proceeding, and the resolution has been delayed for causes that are not attributable to the business person concerned.

## Article 17.8. Relationship with other Chapters

1. Nothing in this Agreement shall be construed to impose any obligation on the Parties with respect to their migration measures; however, the provisions of this Chapter and the relevant provisions of Chapter 1 (Initial Provisions and General Definitions), Chapter 18 (Dispute Settlement), Chapter 19 (Transparency), Chapter 20 (Administration of the Agreement), Chapter 21 (Exceptions) and Chapter 22 (Final Provisions) shall apply.

2. Nothing in this Chapter shall be construed as imposing any obligations or commitments with respect to other Chapters of this Agreement.

## Article 17.9. Transparency In the Processing of Applications

1. In addition to Chapter 19 (Transparency), each Party shall establish or maintain appropriate mechanisms to respond to inquiries from interested persons on applications and procedures relating to the temporary entry of business persons.

2. Each Party shall endeavor, within a reasonable time in accordance with its national law, after considering that the application for temporary entry is complete under its national law, to inform the applicant of the decision taken on his application. At the request of the applicant, the Party shall endeavor to provide, without undue delay, information concerning the status of his application.

## Article 17.10. Definitions

For the purposes of this Chapter:

business activities means those legitimate activities of a commercial nature created and operated for the purpose of making a profit in the marketplace. No

includes the possibility of obtaining employment, salary or remuneration from a labor source in the territory of a Party;

executive means a business person in an organization who primarily directs the management of the organization, exercises broad decision-making, and receives only general supervision or direction from senior executives, the board of directors and/or shareholders of the business;

temporary entry means entry into the territory of a Party by a business person of the other Party, without the intention of establishing permanent residence;

specialist means an employee who possesses specialized knowledge of the company's products or services, technical expertise or an advanced level of experience or knowledge of the company's processes and procedures;

manager means a business person in an organization who primarily directs the organization or a department or subdivision of the organization, supervises and controls the work of other supervisory, professional or managerial employees, has the authority to hire and fire, or take other personnel actions (such as authorizing promotions or leaves), and exercises discretionary authority in day- to-day operations;

national means "national" as defined in Article 1.5 (Definitions of General Application), but does not include permanent residents; and

business person means a national of a Party engaged in trade in goods or the supply of services, or in investment activities.

## Annex 17.3(1). Categories of Business Persons

# Section A. Business Visitors

1. Each Party shall authorize temporary entry to a business person who intends to carry out any of the business activities referred to in Appendix 1 of this Section, without requiring him to obtain a work permit or employment authorization, provided that such person, in addition to complying with existing immigration measures applicable to temporary entry, exhibits:

(a) evidence attesting to the nationality of a Party;

(b) documentation evidencing that the business person will engage in any business activity set forth in Appendix 1 to this Section and stating the purpose of entry; and

(c) proof of the international character of the business activity proposed to be undertaken and that the business person does not intend to enter the local labor market.

2. Each Party shall provide that a business person meets the requirements of subparagraph 1(c) when it demonstrates that:

(a) the principal source of remuneration for the proposed business activity is outside the territory of the Party authorizing temporary entry; and

(b) the principal place of business of that person and where the profits are actually earned is predominantly outside the territory of the Party granting temporary entry.

Normally, a Party will accept a statement as to the principal place of business and the actual place where profits are actually earned. In the event that the Party requires any additional verification in accordance with its legislation, it will normally consider a letter from the employer or the organization it represents stating such circumstances to be sufficient proof.

3. No Party may:

(a) require, as a condition for authorizing temporary entry under paragraph 1, prior approval procedures or other procedures having similar effect; or

(b) impose or maintain any numerical restrictions on temporary entry pursuant to paragraph 1.

4. A Party may require a business person requesting temporary entry under this Section to obtain a visa prior to entry.

## Appendix 1. Business Visitors

Business activities covered under Section A include:

1. Meetings and Consulting:

Business people attending meetings, seminars or conferences, or conducting consultations with business partners and consultants.

2. Research and Design:

Technical, scientific and statistical researchers conducting independent research or research for an enterprise established in the territory of the other Party.

3. Cultivation, Manufacturing and Production:

Procurement and production personnel, at management level, who conduct business operations for an enterprise established in the territory of the other Party.

4. Marketing:

(a) Market researchers and analysts who conduct research or analysis independently or for a company established in the territory of the other Party.

(b) Trade show and promotional staff attending trade conventions.

5. Sales:

(a) Sales representatives and sales agents who take orders or negotiate contracts for goods or services for an enterprise established in the territory of the other Party, but who do not deliver the goods or supply the services.

(b) Purchasers making purchases for an enterprise established in the territory of the other Party.

6. After Sales Services:

Installation, repair, maintenance, and supervisory personnel, who have the specialized technical knowledge essential to fulfill the seller's contractual obligation; and who provide services or train workers to provide such services pursuant to a warranty or other service contract related to the sale of commercial or industrial equipment or machinery, including computer software purchased from an enterprise established outside the territory of the Party from which temporary entry is requested, during the term of the warranty or service contract.

7. General Services:

(a) Management and supervisory personnel engaged in business operations for an enterprise located in the territory of the other Party.

(b) Public relations and advertising personnel, who provide advice to clients or attend or participate in conventions.

(c) Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions.

(d) Specialized kitchen personnel, who attend or participate in gastronomic events or exhibitions, train or provide advice to

customers, related to gastronomy in the territory of the other Party.

(e) Translators or interpreters providing services as employees of an enterprise located in the territory of the other Party, except for those services which, in accordance with the legislation of the Party authorizing temporary entry, must be provided by authorized translators.

(f) Information and communications technology service providers who attend meetings, seminars or conferences or who carry out consultancies.

(g) Marketers and franchise development consultants wishing to offer their services in the territory of the other Party.

## Section B. Merchants and Investors

1. Each Party shall authorize the entry temporary y issue immigration documentation to the business person who intends to enter the country temporarily:

(a) to engage in substantial trade in goods or services, principally between the territory of the Party of which it is a national and the territory of the Party from which entry is sought; or

(b) to establish, develop or manage an investment, in which the business person or its enterprise has committed or is in the process of committing a significant amount of capital, in accordance with national legislation,

provided that the business person also complies with existing immigration measures applicable to temporary entry.

2. No Party may:

(a) require proof of labor certification or other procedures of similar effect, as a condition for authorizing temporary entry under paragraph 1; or

(b) impose or maintain numerical restrictions in connection with temporary entry pursuant to paragraph 1.

3. A Party may require a business person requesting temporary entry under this Section to obtain a visa prior to entry.

## Section C. Intracompany Transfers of Personnel

1. Each Party shall authorize temporary entry and issue supporting documentation to a business person employed by an enterprise, who is transferred to serve as an executive, manager, or specialist in such enterprise or in one of its subsidiaries or affiliates, provided that such person and such enterprise comply with existing immigration measures applicable to temporary entry. Each Party may require that the person must have been employed by the enterprise continuously for one (1) year within the three (3) years immediately preceding the date of submission of the application.

2. Each Party may require the approval of the employment contract by the competent authority as a prerequisite for the authorization of temporary entry.

3. For greater certainty, nothing in this Section shall be construed to affect the labor or practice law of either Party.

4. For greater certainty, in accordance with its national legislation, a Party may require that the transferred business person perform the services under a subordinate relationship in the receiving enterprise.

5. A Party may require a business person requesting temporary entry under this Section to obtain a visa prior to entry.

### Annex 17.3(2). Section C: Intracompany Transfers of Personnel

### Panama

In the case of Panama, the length of stay is established a t t h e discretion of the National Immigration Service within the following time periods:

## Section A. Business Visitors

Term of up to ninety (90) days, renewable up to the maximum possible duration in accordance with the applicable provisions in force.

## Section B. Merchants and Investors

1. Term of up to ninety (90) days, renewable up to the maximum possible duration in accordance with the applicable provisions in force.

2. In the case of Investors seeking to develop or manage an investment, they will be granted the term of stay established by the applicable national immigration legislation.

## Section C. Intracompany Transfers of Personnel

Term of up to one (1) year, renewable up to the maximum possible duration in accordance with the applicable provisions in force.

**Peru**

## Section A. Business Visitors

A period of stay of up to one hundred eighty-three (183) days is granted (Migratory Status: Business).

## Section B. Merchants and Investors

1. Merchants:

A period of stay of up to one hundred eighty-three (183) days is granted (Migratory Status: Business).

2. Investors:

(a) investors in the process of committing an investment: they are granted a period of stay of up to one hundred eighty-three (183) days (Migratory Status: Business).

(b) independent: they are granted the period of stay established by the applicable immigration legislation (Migratory Quality: Independent).

## Section C. Intracompany Transfers of Personnel

A period of stay of up to one (1) year is granted, renewable for consecutive periods as many times as requested, as long as the conditions that motivated its granting are maintained (Migratory Quality: Worker).

# Chapter 18. Dispute Resolution

### Article 18.1. Cooperation

The Parties shall at all times endeavor to reach agreement on the interpretation and application of this Agreement and shall make every effort, through cooperation, consultation or other means, to reach a mutually satisfactory resolution of any matter that may affect its operation.

### Article 18.2. Scope of Application

Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply to the prevention or settlement of disputes between the Parties concerning the interpretation or application of this Agreement, or where a Party considers that:

(a) an existing or proposed measure of the other Party may be inconsistent with the obligations of this Agreement; or

(b) the other Party has failed in any way to comply with its obligations under this Agreement.

### Article 18.3. Election of the Forum

1. In the event of any dispute arising under this Agreement and under another free trade agreement to which the disputing Parties are party or the WTO Agreement, the complaining Party may choose the forum for resolving the dispute.

2. Once the complaining Party has requested the establishment of a panel under one of the treaties referred to in paragraph 1, the forum selected shall be exclusive of the others.

## Article 18.4. Consultations

1. A Party may request in writing to the other Party consultations with respect to any existing or proposed measure or any other matter that may affect the operation of this Agreement, in accordance with Article 18.2.

2. The requesting Party shall seek to initiate consultations by means of a written request to the other Party, and shall state the reasons for its request, including identification of the measure or other matter at issue and an indication of the legal basis for the complaint.

3. The other Party shall respond in writing, and except as provided in paragraph 4, shall consult with the requesting Party no later than thirty (30) days from the date of receipt of the request, unless the Parties agree otherwise.

4. In cases of urgency, including those involving perishable goods or goods or services that rapidly lose their commercial value, such as certain seasonal goods or services, consultations shall commence within fifteen (15) days from the date of receipt of the request by the other Party.

5. The requesting Party may require the other Party to make available the personnel of its governmental institutions or other regulatory agencies having technical knowledge of the subject matter of the consultations.

6. The Parties shall make every effort to arrive at a mutually satisfactory solution of any matter through consultations, in accordance with the provisions of this Article. For these purposes, each Party:

(a) provide sufficient information to permit a full review of the existing or proposed measure or any other matter that may affect the operation and implementation of this Agreement; and

(b) shall treat confidential or proprietary information received during consultations in the same manner as that accorded to it by the Party that provided it.

7. Consultations shall be confidential and without prejudice to the rights of the Parties in proceedings under this Chapter.

8. Consultations may be held in person or by any technological means agreed upon by the Parties. In the event that the consultation is face-to-face, it shall be held in the capital of the consulted Party, unless otherwise agreed by the Parties.

## Article 18.5. Establishment of a Panel

1. Unless otherwise agreed by the Parties, and without prejudice to paragraph 5, if a matter referred to in Article 18.4 has not been resolved within:

(a) forty (40) days after receipt of the request for consultation;

(b) twenty-five (25) days after receipt of the request for consultations in the case of matters referred to in Article 18.4.4; or

(c) such other period as the consulting Parties may agree, the complaining Party may refer the matter to a panel.

2. The complaining Party shall send to the other Party a written request for the establishment of a panel, stating the reason for the request, identifying the specific measures or other matter that are the subject of the complaint and providing a brief summary of the legal basis of the complaint with sufficient information to present the problem clearly.

3. With the submission of the application, it will be understood that the panel has been established.

4. Unless otherwise agreed by the Parties, the panel shall be composed and perform its functions in accordance with the provisions of this Chapter.

5. A panel may not be established to review a draft measure.

## Article 18.6. Qualifications of Panelists

All panelists shall:

(a) have specialized knowledge or experience in law, international trade, other matters related to this Agreement or in the settlement of disputes arising from international trade agreements;

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

(c) be independent, not be related to, and not receive instructions from, any of the Parties; and

(d) comply with the Code of Conduct to be established by the Commission, in accordance with Article 20.1.2(d) (The Free Trade Commission).

## Article 18.7. Selection of the Panel

1. The panel shall be composed of three (3) members.

2. Each Party shall, within fifteen (15) days after the date of receipt of the request for the establishment of the panel, appoint one (1) panelist, propose up to four (4) non- national candidates of the Parties for the position of chairperson of the panel and notify the other Party in writing of the appointment of its panelist and its proposed candidates for the position of chairperson of the panel.

3. If a Party fails to appoint one (1) panelist within the stipulated period, the panelist shall be selected by the other Party within five (5) days thereafter from among the candidates who have been proposed for the chairmanship.

4. The Parties shall, within thirty (30) days from the date of receipt of the request for the establishment of a panel, endeavor to reach an agreement and appoint a chairman from among the candidates that have been proposed. If within that time the Parties are unable to agree on the chairman, the chairman shall be selected by lot from among the candidates that have been proposed, within seven (7) days after the expiration of the thirty (30) day period.

5. If a panelist appointed by a Party resigns, is removed or is unable to serve, that Party shall appoint a new panelist within fifteen (15) days, failing which the appointment of the new panelist shall be made in accordance with paragraph 3. If the chair of the panel resigns, is removed or is unable to serve, the Parties shall agree on the appointment of a replacement within fifteen (15) days, failing which the replacement shall be appointed in accordance with paragraph 4. If no other candidates remain, each Party shall propose up to three (3) additional candidates within an additional twenty (20) days and the panelist or chairperson shall be selected by lot within seven (7) days thereafter from among the proposed candidates. In either case, any term shall be suspended from the date on which the panelist or chairperson resigns, is removed or is unable to s e r v e , and the suspension shall terminate on the date of selection of the replacement.

## Article 18.8. Rules of Procedure

1. The Commission shall establish the Rules of Procedure, in accordance with Article 20.1.2(d) (The Free Trade Commission).

2. Any panel established under this Chapter shall follow the Rules of Procedure. A panel may establish, in consultation with the Parties, supplementary rules of procedure that do not conflict with the provisions of this Chapter.

3. Unless otherwise agreed by the Parties, the Rules of Procedure shall ensure:

(a) that the procedures shall guarantee the right to at least one hearing before the panel, as well as the opportunity to present written pleadings and rebuttals;

(b) that the hearings before the panel, the deliberations, as well as all written submissions and communications made in the proceeding, shall b e confidential;

(c) that all submissions and comments made by a Party to the panel shall be made available to the other Party;

(d) the protection of information that either Party designates as confidential information; and

(e) the possibility of using technological means to carry out the procedures, as long as the means used does not diminish the right of a Party to participate in the proceedings and that its authenticity can be guaranteed.

4. Unless otherwise agreed by the Parties within fifteen (15) days after the establishment of the panel, the terms of reference of the panel shall be:

"To examine, in an objective manner and in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of the panel and to make findings, rulings and recommendations as provided in Article 18.9."

5. If a Party wishes the panel to make findings on the level of adverse trade effects on a Party as a result of any measure found to be inconsistent with the obligations of the Agreement, the terms of reference should so state.

6. At the request of a Party or on its own initiative, the panel may seek information and technical advice from such experts as it deems necessary, provided that the Parties so agree, and on such terms and conditions as those Parties may agree, in accordance with the Rules of Procedure.

7. The panel may delegate to the chairperson the authority to make administrative and procedural decisions.

8. The panel may, in consultation with the Parties, modify any time limit for its proceedings and make such other administrative or procedural adjustments as may be required for the transparency and efficiency of the proceeding.

9. The findings, determinations and recommendations of the panel, as provided in Article 18.9, shall be adopted by a majority of its members.

10. Panelists may submit separate opinions on matters on which a unanimous decision was not reached. The panel may not disclose the identity of the panelists who have expressed a majority or minority opinion.

11. Unless otherwise agreed by the Parties, the expenses of the panel, including the remuneration of its members, shall be borne equally, in accordance with the Rules of Procedure.

## Article 18.9. Report of the Panel

1. Unless the Parties agree otherwise, the panel shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the Parties, or any information received by it pursuant to Article 18.8.

2. Unless otherwise agreed by the Parties, the panel shall submit the report to the Parties within one hundred and twenty (120) days or ninety (90) days in cases of urgency, counted from the appointment of the last panelist.

3. Only in exceptional cases, if the panel considers that it cannot issue its report within one hundred and twenty (120) days or ninety (90) days for urgent cases, it shall inform the Parties in writing of the reasons justifying the delay, together with an estimate of the time within which it will issue its report. Any delay shall not exceed an additional thirty (30) days, unless otherwise agreed by the Parties.

4. The report will contain:

(a) conclusions, with factual and legal grounds;

(b) determinations as to whether or not a Party has complied with its obligations under this Agreement and any other determinations requested in the mandate; and

(c) its recommendations for the implementation of the decision, when requested by any of the Parties.

5. The panel shall not disclose confidential information in its report, but may state conclusions derived from such information.

6. Unless otherwise agreed by the Parties, the Parties shall make the report available to the public within fifteen (15) days of its receipt, subject to the protection of confidential information.

## Article 18.10. Compliance with the Report

1. Upon receipt of a panel report, the Parties shall reach an agreement on the settlement of the dispute, which shall be in accordance with the findings and recommendations of the panel, if any, unless the Parties agree otherwise.

2. If possible, the solution shall consist of the elimination of any measure that does not comply with the provisions of this Treaty.

3. If the Parties do not agree on a solution within thirty (30) days after the submission of the report, or within such other period as the Parties may agree, the Party complained against shall, at the request of the complaining Party, enter into negotiations with a view to agreeing on compensation. Such compensation shall be of a temporary nature and shall be granted until the dispute is settled.

## Article 18.11. Noncompliance - Suspension of Benefits

1. If the Parties:

(a) have not reached an agreement on the settlement of the dispute and compensation has not been requested in accordance with Article 18.10 within thirty (30) days after the submission of the report; or

(b) do not agree on compensation in accordance with Article 18.10, within thirty (30) days after the filing of the request by the complaining Party; or

(c) have reached an agreement on dispute settlement or compensation in accordance with Article 18.10 and the complaining Party considers that the Party complained against has not complied with the terms of the agreement,

the complaining Party may, upon notification to the Party complained against, suspend benefits of equivalent effect to such Party complained against. In the notification, the complaining Party shall specify the level of benefits it proposes to suspend.

2. In considering the benefits to be suspended pursuant to paragraph 1:

(a) the complaining Party shall first seek to suspend benefits within the same sector or sectors that are affected by the measure or other matter that the panel has concluded is inconsistent with the obligations under this Agreement; and

(b) a complaining Party that considers it impracticable or ineffective to suspend benefits within the same sector or sectors may suspend benefits in other sectors.

3. The suspension of benefits shall be of a temporary nature and shall only be applied by the complaining Party until:

(a) the measure found to be inconsistent with the obligations of this Agreement is brought into conformity with this Agreement; or

(b) the time at which the Parties reach an agreement on the settlement of the dispute; or

(c) that the panel described in Article 18.12 concludes in its report that the Party complained against has complied.

## Article 18.12. Compliance Review and Suspension of Benefits

1. A Party may, by written notice to the other Party, request that the panel established under Article 18.5 be reconvened to make a determination:

(a) if the level of suspension of benefits applied by the complaining Party in accordance with Article 18.11.1 is manifestly excessive; or

(b) on any disagreement as to the existence of measures taken to comply with the originally established panel report or as to the compatibility of such measures with this Agreement.

2. In the written communication, the Party shall indicate the specific measures or issues in dispute and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

3. If the original panel or any of its members cannot be reconvened, the provisions of Article 18.7 shall apply mutatis mutandis.

4. The provisions of Articles 18.8 and 18.9 apply mutatis mutandis to procedures adopted and reports issued by a panel that is reconstituted under the terms of this Article, except that, as provided in Article 18.8.8, the panel shall submit a report within sixty (60) days from the appointment of the last panelist, if the request refers to subparagraph 1 (a) and within ninety (90) days, if the request refers to subparagraph 1 (b).

5. A panel reconvened under subparagraph 1(b) shall determine whether it is appropriate to terminate any suspension of benefits. If the panel is reconstituted under subparagraph 1(a) and determines that the level of suspended benefits is manifestly excessive, it shall set the level of benefits it considers to be of equivalent effect.

## Article 18.13. Matters Relating to Judicial and Administrative Proceedings

1. If a dispute arises as to the interpretation or application of this Agreement in any internal judicial or administrative proceeding of a Party that either Party considers merits its intervention, or if a court or administrative body requests the opinion of a Party, that Party shall so notify the other Party. The Commission shall endeavor to agree, as soon as possible, on an appropriate response.

2. The Party in whose territory the court or administrative body is located shall submit the interpretation agreed upon by the

Commission to the court or administrative body, in accordance with the procedures of the court or administrative body concerned.

3. If the Commission is unable to reach agreement, each Party may submit its own views to the court or administrative body, in accordance with the procedures of that body.

### Article 18.14. Rights of Individuals

Neither Party may grant a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

### Article 18.15. Alternative Means of Dispute Resolution

1. To the greatest extent possible, each Party shall promote and facilitate recourse to arbitration and other alternative means of settling international commercial disputes between private parties in the free trade area.

2. For these purposes, each Party shall provide for appropriate procedures to ensure the enforcement of arbitration agreements and the recognition and enforcement o f arbitral awards rendered in such disputes.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958, and conforms to its provisions.

### Article 18.16. Suspension and Termination of Proceedings

1. The Parties may agree to suspend the work of the panel at any time for a period not exceeding twelve (12) months following the date of such agreement. If the work of the panel remains suspended for more than twelve (12) months, the authority of the panel shall lapse, unless the Parties agree otherwise. If the authority of the panel lapses and the Parties have not reached an agreement on the settlement of the dispute, nothing in this Article shall prevent a Party from requesting a new proceeding regarding the same matter.

2. The Parties may agree to terminate the panel proceedings by joint notification to the chairperson of the panel at any time prior to the notification of the report.

## Chapter 19. Transparency

### Article 19.1. Points of Contact

1. Each Party shall designate within sixty (60) days after the date of entry into force of this Agreement, a point of contact to facilitate communications between the Parties on any matter covered by this Agreement.

2. At the request of the other Party, the contact point shall indicate the office or official responsible for the matter and provide such support as may be necessary to facilitate communication with the requesting Party.

### Article 19.2. Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application that relate to any matter covered by this Agreement are promptly published or otherwise made available for the information of interested persons and the other Party.

2. To the extent possible, each Party:

(a) publish any measure referred to in paragraph 1 which it proposes to adopt relating to matters covered by this Agreement; and

(b) shall afford interested persons and the other Party the opportunity to comment on such measures.

### Article 19.3. Provision of Information

1. At the request of a Party, and to the extent permitted by its domestic law, the other Party shall provide information and respond promptly to questions concerning any matter that could materially affect this Agreement.

2. Any provision of information provided under this Article shall be without prejudice to whether or not the measure is consistent with this Agreement.

### Article 19.4. Administrative Procedures

In order to administer in a consistent, impartial and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that, in its administrative procedures applying the measures referred to in Article 19.2.1 with respect to particular persons, goods or services of the other Party in specific cases:

(a) whenever possible, persons of the other Party who are directly affected by a proceeding shall, in accordance with domestic law, be given reasonable notice of the commencement of the proceeding, including a description of its nature, a statement of the legal basis under which the proceeding is initiated, and a general description of all matters in dispute;

(b) where time, the nature of the proceeding and the public interest permit, such persons are given a reasonable opportunity to present facts and arguments in support of their claims prior to any final administrative action; and

(c) its procedures are in accordance with national legislation.

### Article 19.5. Review and Challenge

1. Each Party shall establish or maintain courts or tribunals or procedures of a judicial or administrative nature for the purpose of the prompt review and, where warranted, correction of final administrative actions relating to matters covered by this Agreement. Such tribunals shall be impartial and not connected with the administrative enforcement agency or authority, and shall have no substantial interest in the outcome of the matter.

2. Each Party shall ensure that, before such courts or in such proceedings, the Parties have the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and arguments or, in cases where required by national legislation, on the record compiled by the administrative authority.

3. Each Party shall ensure that, subject to the means of challenge or subsequent review available under its domestic law, such rulings are implemented by its agencies or authorities and govern the practice of such agencies or authorities with respect to the administrative action in question.

### Article 19.6. Specific Standards

The provisions of this Chapter are without prejudice to the specific rules established in other Chapters of this Treaty.

### Article 19.7. Definitions

For the purposes of this Chapter:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and factual situations that generally fall within its scope, and that establishes a standard of conduct, but does not include:

(a) rulings or decisions in an administrative proceeding that applies to a particular person, good or service of the other Party in a specific case; or

(b) a resolution that resolves with respect to a particular act or practice.

## Chapter 20. Administration of the Treaty

### Article 20.1. The Free Trade Commission

1. The Parties establish the Free Trade Commission, composed of representatives at the Ministerial level of each Party, in accordance with Annex 20.1 (The Free Trade Commission), or their designees.

2. The Commission shall:

(a) supervise the implementation of the Treaty;

(b) supervise the further development of the Treaty;

(c) oversee the work of all bodies established under this Treaty, including committees and working groups;

(d) approve at its first meeting, unless otherwise agreed by the Parties, the Rules of Procedure and Code of Conduct referred to in Chapter 18 (Dispute Settlement), and modify them as necessary;

(e) fix the amount of remuneration and expenses to be paid to the members of the panels referred to in Chapter 18 (Dispute Settlement);

(f) to hear any other matter that may affect the operation of the Treaty; and

(g) establish and modify its rules of procedure.

3. The Commission may:

(a) establish and delegate responsibilities to the bodies established under this Treaty;

(b) modify in compliance with the objectives of this Treaty:

(i) the Schedules set out in Annex 2.3 (Tariff Elimination Program) by improving the tariff conditions for market access, including the possibility of accelerating tariff elimination and including one or more excluded goods in the Tariff Elimination Program;

(ii) the rules of origin set out in Annex 3 (Specific Rules of Origin), Annex 3.16 (Certificate of Origin), Annex 3.17 (Declaration of Origin); and

(iii) Annex 10.1 (Coverage Annex);

(c) issue interpretations of the provisions of this Agreement;

(d) analyze any proposed amendments to this Agreement in order to make a recommendation to the Parties;

(e) review the impacts of the Treaty on the micro, small and medium-sized enterprises of the Parties;

(f) seek the advice of non-governmental individuals or groups; and

(g) take any other action for the exercise of its functions as agreed by the Parties.

4. Each Party shall implement, in accordance with its national legislation, any modification referred to in subparagraph 3(b), within the period agreed by the Parties.

5. All decisions of the Commission shall be adopted by mutual agreement.

6. The Commission shall meet at least once (1) a year in regular session, unless the Commission decides otherwise. The regular sessions of the Commission shall be held alternately in the territory of the Parties or by any technological means.

## Article 20.2. Free Trade Agreement Coordinators

1. Each Party shall designate a Free Trade Agreement Coordinator, in accordance with Annex 20.2 (Free Trade Agreement Coordinators).

2. The Coordinators will work together in the development of agendas, as well as in other preparations for the meetings of the Commission and will give appropriate follow-up to the decisions of the Commission.

## Article 20.3. Administration of Dispute Settlement Procedures

1. Each Party shall:

(a) designate an office to provide administrative support to the panels contemplated in Chapter 18 (Dispute Resolution) and perform other functions at the direction of the Commission; and

(b) notify the other Party of the address of its designated office.

2. Each Party shall be responsible for the operation and costs of its designated office.

### Annex 20.1. The Free Trade Commission

The Free Trade Commission shall be composed of:

(a) in the case of Panama, the Minister of Commerce and Industry; and

(b) in the case of Peru, the Minister of Foreign Trade and Tourism, or his successors.

### Annex 20.2. Free Trade Agreement Coordinators

The Free Trade Agreement Coordinators will be for:

(a) in the case of Panama, the Office of the Chief of International Trade Negotiations of the Ministry of Commerce and Industries or its designee; and

(b) in the case of Peru, the agency designated by the Vice Minister of Foreign Trade,

or their successors.

## Chapter 21. Exceptions

### Article 21.1. General Exceptions

1. For the purposes of Chapter 2 (Market Access for Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Trade Facilitation and Customs Procedures), Chapter 5 (Cooperation and Mutual Assistance in Customs Matters), Chapter 6 (Sanitary and Phytosanitary Measures) and Chapter 7 (Technical Barriers to Trade), Article XX of GATT 1994 and its interpretative notes are incorporated into and form an integral part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living or non-living exhaustible natural resources.

2. For the purposes of Chapter 13 (Cross-Border Trade in Services), Chapter 15 (Maritime Services), Chapter 16 (Telecommunications) and Chapter 17 (Temporary Entry of Business Persons), Article XIV of the WTO GATS (including the footnotes) are incorporated into and form an integral part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XIV(b) of the WTO GATS include environmental measures necessary to protect human, animal or plant life or health.

### Article 21.2. Essential Security

Nothing in this Agreement shall be construed to mean:

(a) oblige a Party to provide or give access to information the disclosure of which it considers contrary to its essential security interests; or

(b) prevent a Party from applying measures it considers necessary to fulfill its obligations with respect to the maintenance or restoration of international peace or security, or to protect its essential security interests.

### Article 21.3. Taxation

1. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention. In the event of any inconsistency between this Agreement and any such treaty, the treaty shall prevail to the extent of any such inconsistency.

of inconsistency. In the case of a tax treaty between the Parties, the competent authorities under that treaty shall have sole responsibility for determining whether there is any inconsistency between this Agreement and that treaty.

3. Notwithstanding the provisions of paragraph 2:

(a) Article 2.2 (National Treatment) and such other provisions in this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as Article III of GATT 1994; and

(b) Article 2.11 (Export Taxes) shall apply to tax measures.

4. Subject to the provisions of paragraph 2:

(a) Articles 13.3 (National Treatment) and 14.2 (National Treatment) shall apply to taxation measures on income, capital gains, or on the taxable capital of enterprises relating to the acquisition or consumption of specified services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage related to the acquisition or consumption of specified services on the requirement to supply the service in its territory; and

(b) Articles 12.2 (National Treatment) and 12.3 (Most-Favored Nation Treatment), 13.3 (National Treatment) and 13.4 (Most-Favored Nation Treatment), and 14.2 (National Treatment) and 14.3 (Most-Favored Nation) shall apply to all tax measures, except those on income, capital gains, or on the taxable capital of corporations, estate, inheritance, gift, and generation-skipping transfers.

5. Paragraph 4 may not:

(a) impose any most-favored-nation obligation with respect to the benefit granted by a Party pursuant to any tax convention;

(b) apply to any non-conforming provision of any existing tax measure;

(c) apply to the continuation or prompt renewal of a non-conforming provision of any existing tax measure;

(d) apply to an amendment to a non-conforming provision of any existing tax measure, to the extent that such amendment does not, at the time it is made, reduce its degree of conformity with any of the articles referred to in paragraph 4;

(e) apply to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective application or collection of taxes (as permitted under Article XIV(d) of the WTO GATS); or

(f) apply to a provision that conditions the receipt, or continued receipt, of an advantage in relation to contributions to, or income from, pension trusts or pension plans on the requirement that the Party maintain continuing jurisdiction over the pension trust or pension plan.

6. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties under paragraph 3, paragraphs 3, 5, 6, 7, 8, 9 and 10 of Article 12.6 (Performance Requirements) shall apply to taxation measures.

7. (a) Article 12.10 (Expropriation and Compensation) and 12.16 (Submission of a Claim to Arbitration) shall apply to a taxation measure that is claimed to be expropriatory. However, no investor may invoke Article 12.10 (Expropriation and Compensation) as a basis for a claim where it has been determined pursuant to this paragraph that the measure does not constitute an expropriation (1). An investor seeking to invoke Article 12.10 (Expropriation and Compensation) with respect to a taxation measure shall first submit the matter to the competent authorities of the respondent and claimant Party referred to in subparagraph (b) at the time it delivers written notice of its intention to submit a claim to arbitration under Article 12.16 (Submission of a Claim to Arbitration) for those authorities to determine whether the taxation measure constitutes an expropriation. If the competent authorities do not agree to examine the matter or if, having agreed to examine the matter, they do not agree that the measure does not constitute an expropriation, within six (6) months after the matter has been submitted to them, the investor may submit its claim to arbitration in accordance with Article 12.16 (Submission of a Claim to Arbitration).

(b) For the purposes of this paragraph, competent authorities means:

(i) in the case of Panama, the Dirección General de Ingresos del Ministerio de Economía y Finanzas; and

(ii) in the case of Peru, the Ministry of Economy and Finance, or its successors.

8. For the purposes of this Article:

tax convention means a convention for the avoidance of double taxation or other international tax convention or arrangement; and

taxes and tax measures do not include:

(a) a customs duty as defined in Article 1.5 (Definitions of General Application); or

(b) the measures listed in exceptions (b) and (c) of the definition of customs duty in Article 1.5 (Definitions of General Application).

(1) With reference to Article 12.10 (Expropriation and Compensation) in assessing whether a tax measure constitutes expropriation, the following considerations are relevant: (a) the imposition of taxes does not generally constitute expropriation. The mere introduction of new tax measures or the imposition of taxes in more than one jurisdiction in respect of an investment does not constitute, and is not in itself, expropriation. (b) tax measures consistent with internationally recognized tax policies, principles and practices do not constitute expropriation, and in particular, tax measures aimed at preventing tax avoidance or evasion should generally not be considered expropriatory; and (c) tax measures applied on a non-discriminatory basis, as opposed to being targeted at investors of a particular nationality or at specific individual taxpayers, are less likely to constitute expropriation. A tax measure should not constitute expropriation if, when the investment is made, it was already in effect, and information about the measure was made public or otherwise publicly available.

### Article 21.4. Disclosure of Information

Nothing in this Agreement shall be construed to require a Party to furnish or give access to confidential information, the disclosure of which would impede the enforcement of its domestic law, or which would be contrary to the public interest, or which would prejudice the legitimate commercial interest of particular enterprises, whether public or private.

### Article 21.5. Balance of Payments Safeguard Measures

In accordance with the WTO Agreement and consistent with the Articles of Agreement of the International Monetary Fund, a Party may adopt or maintain temporary, non-discriminatory safeguard measures with respect to payments and capital movements that it considers necessary:

(a) in the event of the existence or threat of serious external financial or balance of payments difficulties; or

(b) in cases where, under exceptional circumstances, payments and capital movements cause or threaten to cause serious difficulties for macroeconomic management, particularly in monetary and exchange rate policy.

## Chapter 22. Final Provisions

### Article 22.1. Annexes, Appendices and Footnotes

The Annexes, Appendices, and footnotes to this Agreement constitute an integral part of this Agreement.

### Article 22.2. Amendments

1. The Parties may agree to any amendment to this Agreement.

2. When the amendment is agreed and approved in accordance with the legal procedures of each Party, the amendment shall constitute an integral part of this Agreement and shall enter into force on the date on which the Parties so agree.

### Article 22.3. Article 22.3: Amendments to the WTO Agreement

If any provision of the WTO Agreement that has been incorporated into this Agreement is amended, the Parties shall consult with a view to amending the corresponding provision of this Agreement, as appropriate, in accordance with Article 22.2.

### Article 22.4. Reservations and Interpretative Statements (1)

This Treaty shall not be subject to reservations or unilateral interpretative declarations.

(1) Peru understands that this provision does not affect its position on reservations and interpretative declarations in relation to treaties other than this one.

### Article 22.5. Entry Into Force

This Agreement shall enter into force sixty (60) days after the date on which the Parties exchange written notifications confirming that they have complied with their respective legal procedures or on the date on which the Parties so agree.

### Article 22.6. Denunciation

Either Party may denounce this Agreement. The denunciation shall take effect one hundred and eighty (180) days after written notification to the other Party, notwithstanding that the Parties may agree on a different period of time to give effect to the denunciation.

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

DONE at Panama, Republic of Panama, in two equally authentic and valid copies, this 25th day of May, 2011.

BY THE GOVERNMENT OF THE REPUBLIC OF PANAMA:

Roberto C. Henríquez Minister of Commerce and Industries

BY THE GOVERNMENT OF THE REPUBLIC OF PERU:

Eduardo Ferreyros Küppers Minister of Foreign Trade and Tourism

AS A WITNESS OF HONOR:

Ricardo Martinelli Berrocal President of the Republic of Panama

## Annex I. Nonconforming Measures

## Annex I. Explanatory Note

1. A Party's Schedule to this Annex sets forth, in accordance with Articles 12.7 (Nonconforming Measures) and 13.7 (Nonconforming Measures), the non- conforming aspects of a Party's existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 12.2 (National Treatment) or 13.3 (National Treatment);

(b) Article 12.3 (Most-Favored-Nation Treatment) or 13.4 (Most-Favored- Nation Treatment);

(c) Article 12.5 (Senior Executives and Boards of Directors);

(d) Article 12.6 (Performance Requirements);

(e) Article 13.5 (Market Access); or

(f) Article 13.6 (Local Presence).

2. Each reservation in the Party's Schedule sets forth the following elements:

(a) Sector refers to the general sector for which the reservation has been made;

(b) Subsector refers to the specific sector for which the reservation has been made;

(c) Obligations Affected specifies the obligation(s) referred to in paragraph 1 that, in accordance with Articles 12.7 (Non-Conforming Measures) and 13.7 (Non-Conforming Measures), do not apply to the non-conforming aspects of the measure(s) listed as provided for in paragraph 3;

(d) Level of Government indicates the level of government that maintains the measure(s) listed;

(e) Measures identifies the laws, regulations or other measures, for which the reservation has been made. A measure cited in the Measures element:

(i) means the measure as modified, continued or renewed, as of the date of entry into force of this Agreement; and

(ii) includes any subordinate action taken or maintained u n d e r the authority of, and consistent with, such action; and

(f) Description sets forth the liberalization commitments, if any, at the date of entry into force of this Agreement and the remaining non-conforming aspects of the existing measures on which the reservation has been made.

3. In interpreting a reservation to the List, all elements of the reservation shall be considered. A reservation shall be interpreted in the light of the relevant obligations of the Chapters in respect of which the reservation has been made. To the extent that:

(a) the Measures element is qualified by a liberalization commitment of the Description element, the Measures element so qualified shall prevail over any other element; and

(b) the Measures element is not qualified, the Measures element shall prevail over any other element, except where any discrepancy between the Measures element and the other elements considered as a whole is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case, the other elements shall prevail to the extent of the discrepancy.

4. Pursuant to Articles 12.7 and 13.7, the Articles of this Agreement specified in the Affected Obligations element of a reservation do not apply to the non-conforming aspects of the measures identified in the Measures element of that reservation.

5. Where a Party maintains a measure requiring a service supplier to be a national, permanent resident, or resident in its territory as a condition for the supply of a service in its territory, a reservation made for that measure with respect to Article 13. 3 (National Treatment), 13.4 (Most-Favored-Nation Treatment), or 13.6 (Local Presence), shall operate as a reservation with respect to Article 12.2 (National Treatment), 12.3 (Most-Favored-Nation Treatment), or 12.6 (Performance Requirements) with respect to such measure.

6. For greater certainty, Article 13.5 (Market Access) refers to non-discriminatory measures.

7. The Parties understand that the requirement to appoint proxies, representatives or agents, whether national, local or resident, is not incompatible with the obligations of Chapter 13 (Cross-Border Trade in Services).

## Annex I. Schedule of Panama

1. Sector: Retail Trade

Subsector:

Obligations Affected: National Treatment (Article 12.2) Senior Executives and Boards of Directors (Article 12.5)

Level of government: Central

Measures: Article 293 of the 1972 Constitution

Article 5 and 10 of Law No. 5 of January 11, 2007

Article 12 of Executive Decree No. 26 of July 12, 2007

Description: Investment

1. Only the following persons may have a retail business in Panama:

(a) a Panamanian national by birth;

(b) a natural person who, at the date of the entry into force of the 1972 Constitution, was a naturalized Panamanian national, the spouse of a Panamanian national or a natural person who had a child with a Panamanian national;

(c) a natural person who has been a naturalized Panamanian national for at least three (3) years;

(d) a foreign national or a foreign juridical person subject to the national legislation of a foreign country that had a legal retail trade business in Panama at the date of entry into force of the 1972 Constitution; and

(e) a juridical person, organized under the national legislation of Panama or of any other country, if the ownership of such person corresponds to a person included in subparagraphs (a), (b),(c) or (d), as provided in Article 293, paragraph 5 of the 1972 Constitution.

2. However, a foreign national not authorized to engage in the retail trade business may participate in those companies that sell products manufactured by such companies.

For greater certainty, it is understood by:

Wholesale trade: The activity exercised by engaging in:

(a) the rendering of services, except for those classified as retail trade by the legislation in force;

(b) sales to the State and to companies;

(c) the exercise of all kinds of commercial activities that do not constitute retail trade.

Retail trade: The activity exercised by engaging in:

(a) the sale of goods to the consumer;

(b) representation or agency of production or commercial companies;

(c) any other activity that the law qualifies as such.

2. Sector: Real Estate

Subsector:

Obligations Affected: National Treatment (Article 12.2)

Level of government: Central

Measures: Articles 290 and 291 of the 1972 Constitution.

Description: Investment

1. No foreign government, foreign official or foreign state enterprise may own real property in Panama, except for those properties used as embassies.

2. A foreign national, or a foreign company incorporated under the laws of Panama and owned in whole or in part by foreign nationals, may not own real property within ten (10) kilometers of the borders of Panama.

3. Sector: Utilities

Subsector:

Obligations Affected: National Treatment (Article 12.2)

Level of government: Central

Measures: Article 285 of the 1972 Constitution

Description: Investment

The majority of the capital of a private company participating in public utilities operating in Panama must be owned by a Panamanian person, except when permitted by national legislation. For clarity, public utilities are understood as potable water supply services, sanitary sewage, electricity, telecommunications, radio and television, and transmission and distribution of natural gas.

4. Sector: All Sectors

Subsector:

Obligations Affected: National Treatment (Article 13.3) Senior Executives and Boards of Directors (Article 12.5)

Level of government: Central

Measures: Article 322 of the 1972 Constitution

Articles 13, 14 and 86 of Law No. 19 of June 11, 1997

Description: Investment and Cross-Border Trade in Services

1. Preference shall be given to Panamanian nationals over foreign nationals to fill contractual positions in the Panama Canal Authority. A foreign national may be hired instead of a Panamanian national, provided the position is difficult to fill and all means have been exhausted to hire a qualified Panamanian national, and the Panama Canal Authority Administrator has given his authorization. If the only applicants for a position in the Panama Canal Authority are foreign nationals, preference

shall be given to a foreign national with a Panamanian spouse or a foreign national who has lived in Panama for ten (10) consecutive years.

2. Only a Panamanian national may be a director of the Panama Canal Authority.

5. Sector: Artistic Activities

Subsector:

Obligations Affected: National Treatment (Article 13.3)

Level of government: Central

Measures: Article 1 of Law No. 10 of January 8, 1974.

Article 1 of Executive Decree No. 38 of August 12, 1985

Description:Cross Border Trade in Services

1. Every employer that hires a foreign orchestra or musical group must hire a Panamanian orchestra or musical group to perform in each of the locations where the foreign orchestra or musical group performs. This obligation will be maintained throughout the duration of the contract of the foreign orchestra or musical group. This Panamanian orchestra or musical group shall receive at least the amount of one thousand United States dollars (USD 1,000.00) per performance. Each member of the group must receive an amount not less than sixty United States dollars (USD 60.00).

2. A Panamanian artist performing alongside a foreign artist must be contracted under equal conditions and with the same professional considerations. This applies, but is not limited to, promotions, publicity and advertisements related to the event, regardless of the medium used.

3. The contracting of a foreign artist for promotions, or the donation or charitable exchange of services or works of a foreign artist will be approved only if it does not adversely affect or displace a Panamanian artist. In any case, the hiring must be subject to an expert evaluation to determine the value of the service and work provided for the purpose of paying union dues and fees.

6. Sector: Communications

Subsector:

Obligations Affected: National Treatment (Articles 12.2 and 13.3)

Most-Favored-Nation Treatment (Article 13.4) Senior Executives and Boards of Directors (Article 12.5)

Level of government: Central

Measures: Article 285 of the 1972 Constitution

Articles 14 and 25 of Law No. 24 of June 30, 1999

Articles 152 and 161 of Executive Decree No. 189 of August 13, 1999.

Description: Investment and Cross-Border Trade in Services

1. A concession to operate a public radio or television station in Panama may be awarded to a natural person or a company. In the case of a natural person, the concessionaire must be a Panamanian national. In the case of a corporation, at least sixty-five percent (65%) of the shares of the concessionaire must be owned by Panamanian nationals. By exception to the provisions of Article 280 of the Constitution, this requirement does not apply to public radio and paid television services, and therefore, foreign ownership of more than fifty percent (50%) in the capital of these concessions is authorized.

2. Each of the senior executives and directors of a company operating a public radio or television station must be a Panamanian national.

3. Under no circumstances may a foreign government or foreign state enterprise supply, by itself or through a third party, public radio or television services or have a controlling interest, directly or indirectly, in an enterprise providing such services.

4. The concessionaire of a public radio or television service may not broadcast any type of advertising originating within Panama that contains an advertisement made by an advertiser that does not have a license issued by the National Authority

of Public Services. Such license may only be obtained by a Panamanian national or by a national of another country that has granted reciprocal rights to Panamanian nationals.

7. Sector: Communications

Subsector:

Obligations Affected: National Treatment (Article 12.2)

Level of government: Central

Measures: Article 21 of Law No. 31 of February 8, 1996.

Description: Investment

An enterprise under the ownership or control, directly or indirectly, of a foreign government, or in which a foreign government is a partner, may not supply telecommunications services in the territory of Panama.

8. Sector: Education

Subsector:

Obligations Affected: National Treatment (Article 13.3)

Level of government: Central

Measures: Article 100 of the 1972 Constitution

Description:Cross Border Trade in Services

Only a Panamanian national may teach Panamanian history and civic education in the territory of Panama.

9. Sector: Electric Power

Subsector:

Obligations Affected: Market Access (Article 13.5)

Level of government: Central

Measures: Articles 32, 45 and 46 of Law No. 6 of February 3, 1997.

Description:Cross Border Trade in Services

1. Electric power transmission services in the territory of Panama may be provided only by the Government of Panama.

2. Electric power distribution services in the territory of Panama will be provided by three (3) companies for a period of fifteen (15) years, under concessions granted by the National Authority of Public Services. Said period began on October 22, 1998.

10. Sector: Crude Oil, Hydrocarbons and Natural Gas.

Subsector:

Obligations Affected: Local Presence (Article 13.6) Performance Requirements (Article 12.6)

Level of government: Central

Measures: Articles 21, 26 and 71 of Law No. 8 of June 16, 1987

Law No. 52 of July 30, 2008

Description: Investment and Cross-Border Trade in Services

1. If the contractor is a foreign legal entity, it must establish or open a branch in the Republic of Panama.

2. A contractor or subcontractor may procure goods or services abroad if:

(a) the good or service is not available in Panama; or

(b) the good or service available in Panama does not meet the specifications required by the industry, as determined by the National Energy Secretariat.

11. Sector: Mining Operation - Extraction of Non-Metallic and Metallic Minerals (except Precious Minerals), Precious Alluvial Minerals, Non-Precious Alluvial Minerals, Mineral Fuels (except hydrocarbons) and Reserve Minerals and Related Services.

Subsector:

Obligations Affected: National Treatment (Articles 12.2 and 13.3)

Senior Executives and Boards of Directors (Article 12.5)

Level of government: Central

Measures: Articles 4, 5, 130, 131, 131, 132 and 135 of Decree Law no. 23 August 22, 1963

Article 11 of Law No. 3 of January 28, 1988

Article 1 of Decree No. 30 of February 22, 2011

Description: Investment and Cross-Border Trade in Services

1. A foreign government, foreign state-owned enterprise or a juridical person with direct or indirect participation of any foreign government may not:

(a) to obtain a mining concession;

(b) to be a contractor, directly or indirectly, of a mining operation;

(c) operating or benefiting from a mining concession; or

(d) to acquire, possess or retain, for use in mining operations in Panama, equipment or material without prior and special authorization granted by a Decree of the President of the Republic signed by all members of the Cabinet.

2. Panama will give preference to Panamanian nationals for positions in all phases of mining operations, in accordance with the Labor Code.

3. The holder of a mining concession and the contractor engaged in the mining operations may employ a foreign national as an executive, scientist or technical expert if:

(a) it is necessary to employ foreign nationals for the efficient development of mining operations; and

(b) foreign nationals constitute less than twenty-five percent (25%) of the number of persons employed, and the wages foreign nationals receive represent less than twenty- five percent (25%) of total wages:

(i) for the holder of a mining concession who engages in mining operations covered by concessions for extraction, beneficiation or transportation; and

(ii) for a contractor performing mining operations.

4. The National Directorate of Mineral Resources shall establish the terms and conditions that shall govern the hiring of foreign persons in the mining industry sector.

5. The Government of Panama undertakes not to initiate, promote or approve the exploration or exploitation of Cerro Colorado mines or any other deposits within the jurisdiction of the Ngöbe Bugle Comarca and other comarcas. (1)

(1) A comarca is a special political division governed by special laws for aboriginal peoples and/or ethnic groups.

12. Sector: Exploration and Mining of Non-Metallic Minerals used as Construction, Ceramic, Refractory and Metallurgical Materials.

Subsector:

Obligations Affected: National Treatment (Article 12.2)

Level of government: Central

Measures: Article 3 of Law No. 109 of October 8, 1973 Article 7 of Law No. 32 of February 9, 1996.

Description: Investment

1. Only a Panamanian national or a company organized and incorporated in Panama may obtain, directly or indirectly, a contract for the exploration and exploitation of limestone, sand, quarry stone, tuff, clay, gravel, rubble, feldspar, gypsum and other non-metallic minerals. (2)

2. They may not directly or indirectly obtain, operate or benefit from a contract referred to in paragraph 1:

(a) a foreign government or foreign state- owned enterprise; or

(b) a legal person that has direct or indirect participation of a foreign government, unless the Executive Body decides otherwise upon request of the legal person concerned.

(2) For greater certainty, this reservation does not imply a restriction on the participation of foreign private capital in mining companies.

13. Sector: Fishing

Subsector:

Obligations Affected: National Treatment (Article 12.2) Performance Requirements (Article 12.6)

Level of government: Central

Measures: Article 286 of Law No. 8 (Fiscal Code of the Republic of Panama) of January 27, 1956.

Articles 5 and 6 of Decree Law No. 17 of July 9, 2001, of 1959

Article 1 of Decree No. 116 of November 26, 1980

Article 3 of the Decree Executive Decree No. 124 of November 8, 1990

Administrative Resolution 003 of January 7, 2004

Article 3 of Executive Decree No. 239 of July 15, 2010.

Description: Investment

1. Only a Panamanian national may sell fish caught in the territory of Panama when it is destined for consumption in the national territory.

2. Only a vessel built in Panama may carry out commercial or industrial shrimp fishing activities in the territory of Panama.

3. A license for tuna fishing in Panamanian jurisdictional waters shall only be granted to Panamanian flag vessels of inland service with a registered tonnage of less than one hundred and fifty (150) tons. (3)

4. Only a vessel owned by a Panamanian national may obtain a license for inshore artisanal fishing.

(3) For greater certainty, paragraphs 2 and 3 of this reservation do not establish restrictions on the participation of foreign private capital in fishing activities.

14. Sector: Private Security Agencies

Subsector:

Obligations Affected: National Treatment (Articles 12.2 and 13.3) Senior Executives and Boards of Directors (Article 12.5)

Level of government: Central

Measures: Articles 4 and 10 of Executive Decree No. 21 of January 31, 1992

Article 1 of Executive Decree No. 22 of January 31, 1992

Description: Investment and Cross-Border Trade in Services

1. The owner of a security company must be a Panamanian national.

2. To be a member of the Board of Directors, a person must meet the criteria for ownership of a retail business, described in reserve 1 of this Retail Schedule.

3. Only a Panamanian national may hold the position of head of security or security guard in the territory of Panama. Foreign nationals hired by a security company in the territory of Panama must obtain prior authorization from the Panamanian government.

15. Sector: Advertising Services

Subsector:

Obligations Affected: National Treatment (Article 13.3)

Level of government: Central

Measures: Article 152 of Executive Decree No. 189 of August 13, 1999.

Article 1 of Executive Decree No. 273 of November 17, 1999, as amended by Article 1 of Executive Decree No. 641 of December 27, 2006.

Description: Cross Border Trade in Services

The use of television and movie commercials produced in foreign countries whose voices have been dubbed by Panamanians holding a voice-over license shall be allowed only upon payment of a fee for the period of transmission, projection and use.

16. Sector: Maritime Transportation

Subsector:

Obligations Affected: National Treatment (Article 13.3)

Level of government: Central

Measures: Article 6 of Agreement No. 006-95 of May 31, 1995.

Description:Cross Border Trade in Services

Only a Panamanian national may be a trainee pilot.

17. Sector: Maritime Transportation

Subsector:

Obligations Affected: National Treatment (Article 13.3) Local Presence (Article 13.6)

Level of government: Central

Measures: Articles 4, 15 and 18 of Decree Law No. 8 of February 6, 1998

Description:Cross Border Trade in Services

1. In contracting service providers, the owner of a vessel registered in Panama engaged in international service shall give preference to Panamanian nationals, spouses of Panamanian nationals, or a parent of a Panamanian child residing in Panama.

2. A foreign seafarer placement agency operating in Panama shall appoint a Panamanian national residing in Panama and registered with the Commercial Registry to act as the company's representative in all its judicial, extrajudicial and administrative matters.

18. Sector: Transportation - Air Transportation Services

Subsector:

Obligations Affected: National Treatment (Article 12.2)

Level of government: Central

Measures: Article 79 of Law No. 21 of January 29, 2003, Regulated by Executive Decree No. 542 of November 24, 2005.

Description: Investment

1. Only a person of Panama whose base of operations is in Panama may hold an operating certificate to provide air transportation services in Panama.

2. To obtain the certificate referred to in paragraph 1, the Panamanian company must prove before the Civil Aeronautics Authority that the substantial ownership and effective control of the company corresponds to a Panamanian national. For example, at least fifty-one (51%) of the subscribed and paid-in capital of a company is represented by registered shares owned by a Panamanian national.

3. For internal transportation, the percentage referred to in paragraph 2 shall be at least sixty percent (60%).

4. During the validity of the certificate referred to in paragraph 1, the holder shall maintain the minimum percentage of ownership in the name of a Panamanian national, as specified in paragraphs 2 or 3.

19. Sector: Transportation Services

Subsector:

Obligations Affected: National Treatment (Article 13.3)

Level of government: Central

Measures: Article 45 of Law No. 21 of January 29, 2003, as amended by Article 13 of Law No. 89 of December 1, 2010.

Description:Cross Border Trade in Services

Only Panamanian nationals may provide services related to aircraft repair and maintenance. If there are not enough Panamanian nationals to provide such services, the Civil Aeronautics Authority may authorize the temporary hiring of foreign nationals.

20. Sector: Services Provided a the Companies - Professional Services

Subsector: Legal Services

Obligations Affected: National Treatment (Articles 12.2 and 13.3) Senior Executives and Boards of Directors (Article 12.5)

Level of government: Central

Measures: Articles 3 and 16 of Law No. 9 of April 18, 1984.

Description: Investment and Cross-Border Trade in Services

1. Only a Panamanian national with a certificate of competence issued by the Supreme Court of Justice may practice law in Panama.

2. Law firms may be established only by attorneys qualified to practice law in Panama.

3. Notwithstanding paragraphs 1 and 2, if permitted by the express terms of an international agreement, a lawyer who is a foreign national may provide advice on international law and the law of the jurisdiction in which such lawyer is licensed to practice. However, such foreign lawyer may not act in the territory of Panama before one of the bodies referred to in subparagraph 4(a).

4. For purposes of this reservation, the practice of law in Panama includes:

(a) legal representation before civil, criminal, labor, child protection, electoral, administrative or maritime courts;

(b) the provision of legal advice, verbal or written;

(c) drafting of legal documents and contracts; and

(d) any other activity that requires a license to practice law in Panama.

21. Sector: Services Provided a the Companies - Professional Services

Subsector:

Obligations Affected: National Treatment (Article 13.3) Most-Favored-Nation Treatment (Article 13.4) Local Presence (Article 13.6)

Level of government: Central

Measures: Articles 4, 7, 9 and 10 of Law 57 of September 1978, Certified Public Accountants.

Article 3 of Law No. 7 of April 14, 1981, Economists

Articles 32, 33 and 34 of Resolution No. 168 of July 25, 1988, which approves the Regulations of the Technical Council on Economy

Article 4 of Law No. 21 of June 16, 2005, public relations specialist.

Article 5 of Law No. 55 of December 3, 2002, which recognizes the practice of the profession of psychology.

Article 55 of Law No. 51 of December 28, 2005, on the professional and technical health care career ladder.

Articles 2 and 3 of Law No. 1 of January 3, 1996, sociology

Article 3 of Law No. 17 of July 23, 1981, Social workers

Article 3 of Law No. 20 of October 9, 1984, regulating the profession of library science

Article 2141 of Law No. 59 of July 31, 1998, amending the name of Title XVII and Articles 2140, 2141 and 2142 of the Administrative Code, and revoking Article 13 of Law No. 33 of 1984, on authorized public translators.

Book VIII, adopted by resolutions JD-012 of February 20, 2009 and JD-046 of November 25, 2010, on licenses for non-crew aeronautical personnel.

Article 642(a) of the Fiscal Code of the Republic of Panama, approved by Law No. 8 of January 27, 1956, as amended by Law No. 20 of August 11, 1994, which amends certain articles of the Fiscal Code and adopts other provisions, on customs broker agent.

Articles 3 and 4 of Decree Law No. 6 of July 8, 1999, Real Estate Brokers

Article 198 of Law No. 23 of July 15, 1997, which approves the WTO Agreement; the Protocol of Accession of Panama to said Agreement, including its annexes and schedules of commitments, which adjusts national legislation to international standards and enacts other provisions, on commodities brokers.

Articles 2, 3 and 4 of Law No. 22 of January 30, 1961, related to the provision of professional agricultural services.

Articles 4 and 16 of Cabinet Decree No. 362 o f November 26, 1969, Nutritionists and Dietitians

Article 5 of Law No. 34 of October 9, 1980, speech and language therapists, audiologists and audiometrists or audiology technicians

Articles 1 and 8 of Law No. 3 of January 11, 1983, Veterinary Doctors

Article 1 of Cabinet Decree No. 196 of June 24, 1970, which establishes the requirements for obtaining a medical license to freely practice medicine and other related professions.

Resolution No. 1 of January 26, 1987, by which the Technical Council of Health classifies acupuncture as a technique that may be practiced only by Panamanian medical and dental professionals.

Articles 3 and 4 of Executive Decree No. 32 of February 17, 1975, auxiliary of medicine.

Article 1 of Law No. 22 of February 9, 1956, dentistry

Article 10 of Ministerial Decree No. 16 of January 22, 1969, regulating the careers of resident physicians, interns, specialists and dentists and creates the positions of General Practitioner and Medical Specialist.

Article 3 of Resolution No. 1 of March 14, 1983, which approves the Regulations for Specialties in Dentistry

Articles 5 and 6 of Law No. 13 of May 15, 2006, Exercise of the profession of dental assistance technician.

Articles 37, 108, 197 and 198 of Law No. 66 of November 10, 1947, approving the Sanitary Code on Medical Professions.

Article 9 of Law No. 1 of January 6, 1954, concerning the profession of professional nurses, which gives stability to the profession and regulates the pension of retired nurses.

Article 3 of Law No. 74 of September 19, 1978, Clinical Laboratory Personnel, as amended by Article 1 of Law No. 8 of April 25, 1983.

Article 4 of Law No. 48 of November 22, 1984, auxiliaries and support personnel working in clinical laboratories governed by the Ministry of Health and the Social Security Reserve Fund and Foundation and regulating said profession

Articles 7, 13 and 15 of Law No. 47 of November 22, 1984, physiotherapy or kinesiology.

Article 2 of Decree Law No. 8 of April 20, 1967, chiropractor

Article 6 of Law No. 42 of October 29, 1980, Radiological Medical Technician, modified by Article 5 of Law No. 53 of September 18, 2009.

Article 6 of Law No. 13 of August 23, 1984, on specialists in medical records and health statistics employed by public health agencies, which regulates their salary scale, and establishes other provisions (medical records assistants and specialists in health statistics, medical records technicians and health statistics technicians).

Resolution No. 1 of April 15, 1985, orthopedic and nuclear medicine technicians.

Resolution No. 2 of June 1, 1987, neurophysiological technician, encephalogram technician, and electroneurography or evoked potential technician.

Resolution No. 1 of February 8, 1988, occupational health technician.

Article 6 of Law No. 36 of August 2, 2010, which recognizes the profession of occupational therapy.

Article 2 of Resolution No. 10 of March 24, 1992, Respiratory Therapy Technician or Respiratory Inhalation Therapy Technician

Article 3 of Resolution No. 19 of November 12, 1991, prosthetist-orthopedic technician

Article 2 of Resolution No. 7 of December 15, 1992, which regulates the practice of histology and the professions of histology assistant and cytology assistant.

Articles 5, 6 and 7 of Law No. 27 of May 22, 2009, which regulates the histology profession.

Article 2 of Resolution No. 50 of September 14, 1993, radiological health technician.

Article 2 of Resolution No. 1 of January 21, 1994, cardiovascular perfusion technician.

Article 2 of Resolution No. 2 of January 25, 1994, technician and assistant technician in medical information technology.

Article 2 of Resolution No. 4 of June 10, 1996, assistant medical technician radiologist

Article 3 of Resolution No. 5 of June 10, 1996, by which the Ministry of Health recognizes the profession of emergency medical technician.

Article 3 of Resolution No. 1 of May 25, 1998, specialist in emergency surgery.

Article 3 of Resolution No. 2 of May 25, 1998, Technician in Human Genetics

Article 35 of Law No. 24 of January 29, 1963, which creates the Board of Directors of the National College of Pharmacists and regulates pharmaceutical establishments.

Articles 11 and 20 of Law No. 45 of August 7, 2001, chemical

Article 5 of Law No. 4 of January 23, 1956, which creates the Technical Commission and regulates the professions of barber and cosmetologist, as amended by Article 2 of Law No. 51 of January 31, 1963.

Articles 4 and 5 of Law No. 15 of January 22, 2003, Orthopedic Technology and Traumatology.

Article 5 of Resolution No. 3 of August 26, 2004, medical physicist

Article 17 of Law No. 19 of June 5, 2007, Lifeguards in aquatic environments

Article 3 of Law No. 49 of December 5, 2007, community developer

Article 5 of Law No. 31 of June 3, 2005 on Emergency Medical Technicians and Professionals from 2008,

Article 3 of Law No. 28 of May 22 Early stimulation and family counseling from 2008,

Article 5 of Law No. 53 of August 5 respiratory therapist from 2008,

Article 5 of Law No. 17 of February 12, 2002 on Biological Sciences from 2009,

Article 4 of Law No. 24 of April 30, 2009, Ministry of Health vector control technician

Article 5 of Law No. 52 of September 18, 2009, technician and graduate in gerontology.

Article 5 of Law No. 51 of July 14, 2003, profession of nuclear medicine technologist.

Description:Cross Border Trade in Services

The person who practices a profession listed in the Measures of this reserve must be a Panamanian national. See reciprocity or residency requirement applies, as applicable.

22. Sector: Professional Services - Engineers and Architects

Subsector:

Obligations Affected: National Treatment (Article 13.3) Most-Favored-Nation Treatment (Article 13.4) Local Presence (Article 13.6)

Level of government: Central

Measures: Articles 1, 2, 3, 4 and 24 of Law 15 of January 26, 1959

Article 4 of Law 53 of February 4, 1963

Articles 1 and 3 of Decree 257 of September 3, 1965

Article 1 of Law No. 21 of June 20, 2007

Description:Cross Border Trade in Services

1. Only the holder of a certificate of suitability issued by the Technical Board of Engineers and Architects may work as an engineer or architect. The Technical Board may grant such certificate to:

(a) a Panamanian national;

(b) a foreign national married to a Panamanian national or who is the parent of a Panamanian child. In the case of foreigners with a Panamanian spouse or children, it is required that they have obtained permanent residence in the country; or

(c) a foreign national who is authorized to practice in a jurisdiction that permits Panamanian nationals to practice as engineers or architects under the same conditions.

2. The Technical Board may also authorize a company to hire an architect or engineer who is a foreign national for a period of up to twelve (12) months if there are no qualified Panamanians to provide the service in question. In such case, the firm must hire a qualified Panamanian national during the contract period, who shall replace the foreign national upon termination of such contract.

3. Only a company registered with the Technical Board may provide engineering or architectural services in Panama. To register:

(a) the company must have its corporate domicile in Panama, unless an international agreement stipulates otherwise; and

(b) persons employed by the company who are responsible for supplying the services must be qualified to perform such services in Panama.

23. Sector: Telecommunications Services

Subsector:

Obligations Affected: Market Access (Article 13.5)

Level of government: Central

Measures: Law No. 17 of July 9, 1991

Law No. 5 of February 9, 1995.

Law No. 31 of February 8, 1996

Executive Decree No. 73 of April 9, 1997 Executive

Decree No. 21 of 1996

JD-025 Regulation of December 12, 1996 JD-080 Regulation of April 10, 1997

Concession Contract No. 30-A of February 5, 1996 between the State and BSC (Bell South Panamá, S.A.)

Concession Contract No. 309 of October 24, 1997 between the State and Cable Wireless Panamá, S.A.

Executive Decree No. 58 of May 12, 2008

Concession Contract No. 10-2008 dated May 27, 2008 between the State and Digicel Panamá, S.A.

Concession Contract No. 11-2008 dated May 27, 2008 between the State and Claro Panamá, S.A.

Description: Cross Border Trade in Services

Cellular mobile telephony services will be provided exclusively by four (4) operators that have received the concession from the State.

24. Sector: Telecommunications Services

Subsector:

Obligations Affected: Local Presence (Article 13.6)

Level of government: Central

Measures: Law No. 31 of February 8, 1996.

Executive Decree No. 73 of April 9, 1997

Description: Cross Border Trade in Services

A telecommunication service provided directly to users in Panama may only be provided by a person domiciled in Panama.

25. Sector: Commercial Services; Nightclubs, Bars, Pubs, Canteens and Wineries.

Subsector:

Obligations Affected: Market Access (Article 13.5)

Level of government: Central

Measures: Law No. 55 of July 10, 1973

Law No. 5 of January 11, 2007.

Executive Decree No. 26 of July 12, 2007

Description: Cross Border Trade in Services

1. A license shall not be granted for the operation of bars in any district in Panama when the number of bars existing in said district exceeds the proportion of one (1) per one thousand (1000) inhabitants, according to the last official population census.

2. When an establishment considered as level 1, in accordance with national legislation, such as restaurants, cafeterias,

grills, food service in hotels, tourist lodging establishments, comes to have the sale of liquor as its main activity, or the nature of the business falls within level 2, the limitation indicated in paragraph 1 shall apply to it.

26. Sector:Community, Social and Personal Services

Subsector:

Obligations Affected: Market Access (Article 13.5)

Level of government: Central

Measures: Article 297 of the 1972 Constitution

Description: Cross Border Trade in Services

Only the Panamanian State may operate games of chance or other gambling activities in Panama.

27. Sector: Communications Services

Subsector:

Obligations Affected: Market Access (Article 13.5)

Level of government: Central

Measures: Article 301 of the Fiscal Code of the Republic of Panama approved through Law No. 8 of January 27, 1956, as amended by Law No. 20 of August 11, 1994.

Description: Cross Border Trade in Services

Only the Government of Panama may operate postal services in Panama.

28. Sector: Ports and Airports

Subsector:

Obligations Affected: Market Access (Article 13.5)

Level of government: Central

Measures: Decree Law No. 7 of February 10, 1998

Law No. 23 of January 29, 2003.

Description: Cross Border Trade in Services

The Executive Branch of the Government of Panama has discretion to determine the number of concessions for national ports and airports.

## Annex I. Schedule of Peru

1. Sector: All Sectors

Subsector:

Obligations Affected: National Treatment (Article 12.2)

Level of government: Central

Measures: Political Constitution of Peru (1993), article 71.

Legislative Decree No. 757, Official Gazette "El Peruano" of November 13, 1991, Framework Law for the Growth of Private Investment, Article 13.

Description: Investment

No foreign national, company incorporated under foreign law or company incorporated under Peruvian law, wholly or partially, directly or indirectly, in the hands of foreign nationals, may acquire or own by any title, directly or indirectly, lands

or waters (including mines, forests or energy sources) within fifty (50) kilometers of the borders of Peru. By Supreme Decree approved by the Council of Ministers, exceptions may be authorized in case of expressly declared public necessity.

For each case of acquisition or possession in the referred area, the investor must submit the corresponding request to the competent Ministry in accordance with the legal regulations in force. For example, this type of authorization has been granted in the mining sector.

2. Sector: Fishing and Fishing-Related Services

Subsector:

Obligations Affected: National Treatment (Article 13.3)

Level of government: Central

Measures: Supreme Decree N° 012-2001-PE, Official Gazette "El Peruano" of March 14, 2001, Regulation of the General Fisheries Law, articles 67, 68, 69 and 70.

Description: Cross-Border Trade in Services

The owners of foreign-flagged fishing vessels, prior to the start of their operations, shall submit a joint and several, irrevocable, unconditional and automatic performance bond, valid for no more than thirty (30) calendar days after the date of the termination of the fishing permit, issued in favor and to the satisfaction of the Ministry of Production, by a banking, financial or insurance institution, duly recognized by the Superintendence of Banking and Insurance. Said letter shall be issued for a value equivalent to twenty-five percent (25%) of the amount due for payment of the fishing fee.

Owners of foreign flagged fishing vessels that are not of larger scale (according to the above mentioned regulation) and that operate in Peruvian jurisdictional waters, are obliged to have the Satellite Tracking System on their vessels, unless by Ministerial Resolution, owners of highly migratory fisheries are exempted from such obligation.

Foreign-flagged fishing vessels with a fishing permit must carry on board a scientific technical observer designated by the Instituto de Mar del Perú (IMARPE). The shipowners, in addition to providing accommodation on board for said representative, must pay an allowance per day of boarding, which will be deposited in a special account managed by IMARPE for this purpose.

Owners of foreign-flagged fishing vessels operating in Peruvian jurisdictional waters must hire a minimum of thirty percent (30%) of Peruvian crew members, subject to applicable national legislation.

3. Sector: Broadcasting Services

Subsector:

Obligations Affected: National Treatment (Article 12.2) Local Presence (Article 13.6)

Level of government: Central

Measures: Law No. 28278, Official Gazette "El Peruano" of July 16, 2004, Radio and Television Law, Article 24.

Description: Investment and Cross-Border Trade in Services

Only natural persons of Peruvian nationality, or legal entities incorporated under Peruvian law and domiciled in Peru, may be holders of broadcasting service licenses and authorizations.

The foreigner, neither directly nor through a sole proprietorship, may be the holder of an authorization or license.

4. Sector: Audiovisual Services

Subsector:

Obligations Affected: National Treatment (Article 13.3) Performance Requirements (Article 12.6)

Level of government: Central

Measures: Law No. 28278, Official Gazette "El Peruano" of July 16, 2004, Radio and Television Law, Eighth Complementary and Final Provision.

Description: Investment and Cross-Border Trade in Services

The owners of broadcasting services (open signal) must establish a minimum national production of thirty percent (30%) of their programming, between 5:00 a.m. and midnight, on a weekly average.

5. Sector: Broadcasting Services

Subsector:

Obligations Affected: National Treatment (Articles 12.2 and 13.3) Most-Favored-Nation Treatment (Articles 12.3 and 13.4)

Level of government: Central

Measures: Supreme Decree No. 005-2005-MTC, Official Gazette "El Peruano" of February 15, 2005, Regulation of the Radio and Television Law, Article 20.

Description: Investment and Cross-Border Trade in Services

If a foreigner is, directly or indirectly, a shareholder, partner or associate of a juridical person, such juridical person may not hold authorizations to provide the broadcasting service within the localities bordering the country of origin of such foreigner, except in the case of public necessity authorized by the Council of Ministers.

This restriction is not applicable to legal entities with foreign participation that have two (2) or more authorizations in force, as long as they deal with the same frequency band.

6. Sector: All Sectors

Subsector:

Obligations Affected: National Treatment (Article 13.3)

Senior Executives and Boards of Directors (Article 12.5)

Level of government: Central

Measures: Legislative Decree No. 689, Official Gazette "El Peruano" of November 5, 1991, Law for the Hiring of Foreign Workers, articles 1, 3, 4, 5 (as amended by Law No. 26196) and 6

Description: Investment and Cross-Border Trade in Services

Employers, whatever their activity or nationality, shall give preference to hiring national workers.

Foreign natural persons providing services and employed by companies providing services may render services in Peru through an employment contract that must be entered into in writing and for a specific term, for a maximum period of three (3) years, which may be extended successively for equal periods, and must also include the commitment to train national personnel in t h e same occupation.

Foreign natural persons may not represent more than twenty percent (20%) of the total number of servants, employees and workers of a company, and their remunerations may not exceed thirty percent (30%) percent of the total payroll. These percentages shall not apply in the following cases:

(a) when the foreign service provider is a spouse, ascendant, descendant or sibling of a Peruvian;

(b) in the case of personnel of foreign companies engaged in international land, air or water transportation services with foreign flag and registration;

(c) in the case of foreign personnel working in multinational service companies or multinational banks, subject to legal regulations issued for specific cases;

(d) in the case of a foreign investor, provided that its investment has permanently a minimum amount of five (5) Unidades Impositivas Tributarias (Tax Units) (1) during the term of its contract;

(e) in the case of artists, sportsmen or those service providers who perform in public shows in Peruvian territory, up to a maximum of three (3) months per year;

(f) in the case of a foreigner with an immigrant visa;

(g) in the case of a foreigner with whose country of origin there is a labor reciprocity or dual nationality agreement; and

(h) in the case of foreign personnel who, by virtue of bilateral or multilateral agreements entered into by the Peruvian Government, render services in the country.

Employers may request exemptions from the limiting percentages related to the number of foreign workers and the percentage that their remunerations represent in the total amount of the company's payroll, when:

(a) professional or specialized technical personnel are involved;

(b) it concerns management and/or managerial personnel of a new business activity or business reconversion;

(c) teachers hired for higher education, or for basic or secondary education in private foreign schools, or for language teaching in private national schools, or in specialized language teaching centers;

(d) they are personnel of public or private sector companies under contract with public sector agencies, institutions or companies; and

(e) in any other case established by Supreme Decree following the criteria of specialization, qualification or experience.

(1) The "Unidad Impositiva Tributaria (UIT)" is a reference amount used in tax regulations in order to maintain constant values of taxable bases, deductions, allocation limits and other aspects of taxes considered convenient by the legislator.

7. Sector: Professional Services

Subsector: Legal Services

Obligations Affected: National Treatment (Articles 12.2 and 13.3)

Level of government: Central

Measurements: Legislative Decree No. 1049, Official Gazette "El Peruano" of June 26, 2008, Legislative Decree of the Notarial Profession, Article 10

Description: Investment and Cross-Border Trade in Services

Only natural persons of Peruvian nationality by birth may provide notarial services.

8. Sector: Professional Services

Subsector: Architectural Services

Obligations Affected: National Treatment (Articles 12.2 and 13.3)

Level of government: Central

Measures: Law No. 14085, Official Gazette "El Peruano" of June 30,1962, Law of Creation of the College of Architects of Peru.

Law No. 16053, Official Gazette "El Peruano" of February 14, 1966, Law of Professional Practice, Authorizes the Colleges of Architects and Engineers of Peru to supervise the Engineering and Architecture professionals of the Republic, Article 1.

Agreement of the National Council of Architects, approved in Session No. 04-2009 of December 15, 2009.

Description: Investment and Cross-Border Trade in Services

To practice as an architect in Peru, a person must become a member of the Colegio de Arquitectos. There may be a difference in the amount of the registration fees between Peruvians and foreigners. The proportion of this difference cannot exceed five (5) times. For the sake of transparency, the current fees are:

(a) Peruvian graduates from Peruvian universities seven hundred and seventy-five nuevos soles (S/. 775);

(b) Peruvian graduates from foreign universities one thousand two hundred and forty nuevos soles (S/. 1,240);

(c) foreigners graduated from Peruvian universities one thousand two hundred and forty nuevos soles (S/. 1,240); and

(d) foreigners graduated from foreign universities three thousand one hundred nuevos soles (S/. 3,100).

Likewise, for temporary registration, non-resident foreign architects require a contract of association with a resident Peruvian architect.

9. Sector: Professional Services

Subsector: Audit Services

Obligations Affected: National Treatment (Articles 12.2 and 13.3) Local Presence (Article 13.6)

Level of government: Central

Measures: Internal Regulations of the Lima Association of Public Accountants, articles 145 and 146.

Description: Investment and Cross-Border Trade in Services

The auditing companies shall be constituted solely and exclusively by licensed public accountants residing in the country and duly qualified by the Lima Association of Public Accountants. No partner may be a member of another auditing firm in Peru.

10. Sector: Security Services

Subsector: Personal Protection Services, Private Surveillance, Transportation of Money and Valuables, Self Protection, Security Technology, Consulting and Advisory Services in Private Security Issues

Obligations Affected: National Treatment (Article 13.3) Local Presence (13.6) Senior Executives and Boards of Directors (Article 12.5)

Level of government: Central

Measures: Supreme Decree N° 003-2011-IN, Official Gazette "El Peruano" of March 31, 2011, Regulation of Private Security Services, articles 12, 18, 22, 36, 40, 41, 46, 47, and 48

Description: Investment and Cross-Border Trade in Services

The provision of personal and property security services by natural persons is reserved for Peruvian nationals.

Only legal entities incorporated in Peru may request authorization for the provision of security services, which must be evidenced by a copy of the company's incorporation record.

Senior executives who at the same time are shareholders of the security services companies must have a valid foreigner's card with the immigration status of Independent-Investor. In order to obtain the foreigner's card it is required to be a resident in Peru.

11. Sector: Recreational, Cultural and Sports Services

Subsector: National Artistic Production Services Obligations Affected: National Treatment (Article 13.3) Level of government: Central

Measures: Law No. 28131, Official Gazette "El Peruano" of December 18, 2003, Law of the Artist, Performer and Executor, articles 23 and 25.

Description: Cross-Border Trade in Services

All national artistic audiovisual productions must be made up of at least eighty percent (80%) of national artists.

Every national artistic show presented directly to the public must be made up of at least eighty percent (80%) of national artists.

National artists shall receive no less than sixty percent (60%) of the total artist salary and wage schedule.

The same percentages established in the following paragraphs The above rules apply to the technical worker linked to the artistic activity.

12. Sector: Recreational, Cultural and Sports Services

Subsector: Circus Show Services

Obligations Affected: National Treatment (Article 13.3)

Level of government: Central

Measures: Law No. 28131, Official Gazette "El Peruano" of December 18, 2003, Law of the Artist, Performer and Executor, article 26.

Description: Cross-Border Trade in Services

Every foreign circus show shall enter the country with its original cast, for a maximum term of ninety (90) days, which may be extended for the same period. In the latter case, at least thirty percent (30%) of national artists and fifteen percent (15%) of national technicians shall be incorporated to the artistic cast. These same percentages shall be reflected in the wage and salary schedules.

13. Sector: Commercial Advertising Services

Subsector:

Obligations Affected: National Treatment (Article 13.3)

Level of government: Central

Measures: Law No. 28131, Official Gazette "El Peruano" of December 18, 2003, Law of the Artist, Performer and Executor, articles 25 and 27.2.

Description: Cross-Border Trade in Services

Commercial advertising in the country must include at least eighty percent (80%) of national artists.

National artists shall receive no less than sixty percent (60%) of the total artist salary and wage schedule.

The same percentages established in the preceding paragraphs apply to technical workers engaged in commercial advertising.

14. Sector: Recreational, Cultural and Sports Services

Subsector: Bullfighting Shows

Obligations Affected: National Treatment (Article 13.3)

Level of government: Central

Measures: Law No. 28131, Official Gazette "El Peruano" of December 18, 2003, Law of the Artist, Performer and Executor, Article 28.

Description: Cross-Border Trade in Services

At least one (1) national matador must participate in every bullfighting fair. At least one (1) national bullfighter must participate in all bullfighting fairs.

15. Sector: Broadcasting Services

Subsector:

Obligations Affected: National Treatment (Article 13.3) Performance Requirements (Article 12.6)

Level of government: Central

Measures: Law No. 28131, Official Gazette "El Peruano" of December 18, 2003, Law of the Artist, Performer and Executor, articles 25 and 45.

Description Investment and Cross-Border Trade in Services

Open signal broadcasting companies must allocate no less than ten percent (10%) of their daily programming to the broadcasting of folklore, national music and series or programs produced in Peru related to Peruvian history, literature, culture or national reality, made with contracted artists in the following percentages:

(a) a minimum of eighty percent (80%) of national artists;

(b) national artists shall receive not less than sixty percent (60%) of the total artists' salary and wage schedule; and

(c) The same percentages established in the preceding paragraphs apply to technical workers linked to the artistic activity.

16. Sector: Bonded Warehouse Services

Subsector:

Obligations Affected: Local Presence (Article 13.6)

Level of government: Central

Measures: Supreme Decree No. 08-95-EF, Official Gazette "El

Peruano" of February 5, 1995, approving the Customs Warehouse Regulations, Article 7.

Description: Cross-Border Trade in Services

Only natural or legal persons domiciled in Peru may request authorization to operate bonded warehouses.

17. Sector: Telecommunications Services

Subsector:

Obligations Affected: National Treatment (Article 13.3)

Level of government: Central

Measures: Supreme Decree No. 020-2007-MTC, Official Gazette "El Peruano" of July 4, 2007, Sole Ordered Text of the General Regulations of the Telecommunications Law, Article 258.

Description: Cross-Border Trade in Services

Call-back is prohibited, understood as the offering of telephone services for the making of attempted telephone calls originating in the country, with the purpose of obtaining a return call with an invitation to dial tone, coming from a basic telecommunications network located outside the national territory.

18. Sector: Transportation

Subsector: Air Transportation

Obligations Affected: National Treatment (Article 12.2) Senior Executives and Boards of Directors (Article 12.5)

Level of government: Central

Measures: Law No. 27261, Official Gazette "El Peruano" of May 10, 2000, Civil Aeronautics Law, articles 75 and 79.

Supreme Decree N° 050-2001-MTC, Official Gazette "El Peruano" of December 26, 2001, Regulation of the Civil Aeronautics Law, articles 147, 159, 160 and VI Complementary Provision.

Description: Investment

National Commercial Aviation is reserved to Peruvian individuals and legal entities.

For the purposes of this entry, a Peruvian legal entity is considered to be one that meets the following requirements:

(a) be incorporated under Peruvian law, indicate in its corporate purpose the commercial aviation activity to which it will be dedicated and have its domicile in Peru, for which it must develop its main activities and install its administration in Peru;

(b) at least one half plus one of the directors, managers and persons in charge of the control and management of the company must be of Peruvian nationality or have permanent domicile or habitual residence in Peru; and

(c) At least fifty-one percent (51%) of the capital stock of the company must be Peruvian-owned and under the real and effective control of shareholders or partners of Peruvian nationality with permanent domicile in Peru. (This limitation shall not apply to companies incorporated under Law No. 24882, which may maintain the ownership percentages within the margins established therein). Six (6) months after granted the company's operating permit to provide commercial air transportation services, the percentage of capital stock owned by foreigners may be up to seventy percent (70%).

In operations carried out by national operators, the personnel performing aeronautical functions on board must be Peruvian. The General Directorate of Civil Aeronautics may, for technical reasons, authorize these functions to foreign personnel for a period not to exceed six (6) months from the date of authorization, extendable for proven lack of such trained personnel.

The General Directorate of Civil Aeronautics, after verifying the lack of Peruvian aeronautical personnel, may authorize the hiring of non-resident foreign personnel for the technical management of aircraft and for the training of Peruvian aeronautical personnel for a term of up to six (6) months, extendable according to the proven lack of Peruvian personnel.

19. Sector: Transportation

Subsector: Water Transportation

Obligations Affected: National Treatment (Articles 12.2 and 13.3) Local Presence (Article 13.6) Senior Executives and Boards of Directors (Article 12.5)

Level of government: Central

Measures: Law No. 28583, Official Gazette "El Peruano" of July 22, 2005, Law for the Reactivation and Promotion of the National Merchant Marine, Articles 4.1, 6.1, 7.1, 7.2, 7.4 and 13.6.

Law No. 29475, Official Gazette "El Peruano" of December 17, 2009, Law that amends Law No. 28583, Law for the Reactivation and Promotion of the National Merchant Marine, Article 13.6 and Tenth Transitory and Final Provision.

Supreme Decree No. 028 DE/MGP, Official Gazette "El Peruano" of May 25, 2001, Regulation of Law No. 26620, Article I-010106, paragraph (a).

Description: Investment and Cross-Border Trade in Services

1. National Shipping Company or National Shipping Company means the natural person of Peruvian nationality or legal entity incorporated in Peru, with main domicile, real and effective headquarters in Peru, which is engaged in the service of water transportation in domestic traffic or sabotage (2) and/or international traffic and is owner or lessee under the modalities of financial lease or bareboat lease, with mandatory purchase option, of at least one Peruvian flag merchant vessel and has obtained the corresponding Operating Permit from the General Directorate of Aquatic Transportation.

2. At least fifty-one percent (51%) of the capital stock of the legal entity, subscribed and paid, must be owned by Peruvian citizens.

3. The Chairman of the Board of Directors, the majority of the Directors and the Chief Executive Officer must be Peruvian nationals and reside in Peru.

4. The captain and crew of the vessels of national shipping companies shall be of Peruvian nationality in its entirety, authorized by the General Directorate of Coast Guard and Coast Guard. In exceptional cases and prior verification of unavailability of Peruvian personnel duly qualified and experienced in the type of vessel in question, the hiring of services of foreign nationality may be authorized up to a maximum of fifteen percent (15%) of the total crew of each vessel and for a limited period of time. This exception does not apply to the master of the vessel.

5. To obtain the license of Práctico you must be a Peruvian citizen.

6. Cabotage is reserved exclusively to Peruvian flag merchant vessels owned by the National Shipping Company or National Shipping Company or under the Financial Lease or Bareboat Lease modalities, with mandatory purchase option; except that:

(a) the transportation of hydrocarbons in national waters is reserved up to twenty-five percent (25%) for vessels of the Peruvian Navy; and

(b) for water transportation between Peruvian ports only or cabotage, in cases of non-existence of own or leased vessels under the above mentioned modalities, the chartering of foreign flag vessels will be allowed to be operated only by National Shipping Companies or National Shipping Companies, for a period not exceeding six (6) months.

(2) For greater certainty, water transportation services include lake and river transportation.

20. Sector: Transportation

Subsector: Water Transportation

Obligations Affected: National Treatment (Article 13.3) Local Presence (Article 13.6)

Level of government: Central

Measurements: Supreme Decree No. 056-2000-MTC, Official Gazette "El Peruano" of December 31, 2000. They provide that

maritime and related transportation services carried out in bays and port areas must be provided by authorized natural and legal persons, with vessels and artifacts of national flag, article 1.

Ministerial Resolution Nº 259-2003-MTC/02, Official Gazette "El Peruano" of April 4, 2003. Approval of the Regulation of Water Transportation and Related Services Provided in Bay Traffic and Port Areas, articles 5 and 7.

Description: Cross-Border Trade in Services

The Water Transportation and Related Services that are performed in the bay traffic and port areas, must be rendered by natural persons domiciled in Peru and legal persons constituted and domiciled in Peru, duly authorized with vessels and naval artifacts of Peruvian flag:

(a) fueling service;

(b) mooring and unmooring service;

(c) Diver service;

(d) Ship provisioning service;

(e) Dredging service;

(f) Pilotage service;

(g) Waste collection service;

(h) Towing service; and

(i) Transportation of people.

21. Sector: Transportation

Subsector: Water Transportation

Obligations Affected: National Treatment (Article 13.3) Local Presence (Article 13.6)

Level of government: Central

Measures: Supreme Decree No. 006-2011-MTC, Official Gazette El Peruano of February 4, 2011, Supreme Decree approving the Regulation of Aquatic Tourist Transportation, Article 1.

Description: Cross-Border Trade in Services

The service of aquatic tourist transport will be rendered by natural or juridical persons, domiciled and constituted in the country, for the regional and national scope is reserved to be rendered exclusively with own or chartered vessels of Peruvian flag or under the modality of Financial Leasing or Bareboat Leasing, with obligatory purchase option.

22. Sector: Transportation

Subsector: Water Transportation Obligations Affected: National Treatment (Article 13.3) Level of government: Central

Measures: Law No. 27866, Official Gazette "El Peruano" of November 16, 2002, Port Labor Law, articles 3 and 7.

Description: Cross-Border Trade in Services

Only Peruvian citizens may register in the Port Workers Registry.

The port worker is the natural person who, under a relationship of subordination to the port employer, performs a specific service destined to the execution of tasks inherent to port work, such as "stevedore", "targeteer", "winchman", "crane operator", "portalonero", "ship's side lifter" and/or the other specialties that according to the particularities of each port are established by the Regulations of the Law.

23. Sector: Transportation

Subsector: Passenger Ground Transportation Obligations Affected: Local Presence (Article 13.6) Level of government: Central

Measures: Supreme Decree N° 017-2009-MTC, Official Gazette "El Peruano" of April 22, 2009, National Transportation

Administration Regulations, Article 33, amended by Supreme Decree N° 006-2010-MTC of January 22, 2010.

Description: Cross-Border Trade in Services

The provision of transportation services must provide safety and quality to the user, for this purpose, it is necessary to have an adequate physical infrastructure, which, as appropriate, includes: offices, land terminals for people or goods, route stations, route stops, any other infrastructure used as a place for loading, unloading and storage of goods, maintenance workshops and any other infrastructure necessary for the provision of the service.

24. Sector: Transportation

Subsector: Ground Transportation Obligations Affected: National Treatment (Article 13.3)

Level of government: Central

Measures: Agreement on International Land Transportation (ATIT) between the Governments of the Republic of Chile, the Republic of Argentina, the Republic of Bolivia, the Federative Republic of Brazil, the Republic of Paraguay, the Republic of Peru and the Oriental Republic of Uruguay, signed in Montevideo on January 1, 1990.

Description: Cross-Border Trade in Services

Foreign vehicles that, in accordance with the ATIT, are permitted by Peru to carry out international road transportation, may not provide local transportation (cabotage) in Peruvian territory.

25. Sector: Research and Development Services

Subsector: Archaeological Services Obligations Affected: National Treatment (Article 13.3) Level of government: Central

Measures: Supreme Resolution No. 004-2000-ED, Diario Oficial "El Peruano" of January 25, 2000, Reglamento de Investigaciones Arqueológicas, article 30.

Description: Cross-Border Trade in Services

Archaeological research projects directed by a foreign archaeologist must have an archaeologist of Peruvian nationality and registered in the National Register of Archaeologists as co-director or scientific sub-director of the project. The co-director or sub-director will necessarily participate in the integral execution of the project (field and cabinet work).

26. Sector: Energy-Related Services

Subsector:

Obligations Affected: National Treatment (Article 13.3) Local Presence (Article 13.6)

Level of government: Central

Measures: Law No. 26221, Official Gazette "El Peruano" of August 19, 1993, General Hydrocarbons Law, Article 15.

Description: Cross-Border Trade in Services

Foreign natural persons, in order to enter into exploration contracts, must be registered in the Public Registries.

Foreign companies must establish a branch or incorporate a company in accordance with the General Companies Law, establish domicile in the capital of the Republic of Peru and appoint an agent of Peruvian nationality.

## Annex II. Nonconforming Measures

## Annex II. Explanatory Note

1. The Schedule of a Party to this Annex sets forth, in accordance with Articles 12.7 (Non-Conforming Measures) and 13.7 (Non-Conforming Measures), the reservations adopted by a Party for the sectors, sub-sectors or activities for which it may maintain existing measures, or adopt new or more restrictive measures, that are inconsistent with the obligations imposed by:

(a) Article 12.2 (National Treatment) or 13.3 (National Treatment);

(b) Article 12.3 (Most-Favored-Nation Treatment) or 13.4 (Most-Favored- Nation Treatment);

(c) Article 12.5 (Senior Executives and Boards of Directors);

(d) Article 12.6 (Performance Requirements);

(e) Article 13.5 (Market Access); or

(f) Article 13.6 (Local Presence).

2. Each reservation in the Party's Schedule sets forth the following elements:

(a) Sector refers to the general sector for which the reservation has been made;

(b) Subsector refers to the specific sector for which the reservation has been made;

(c) Affected Obligations specifies the obligation(s) referred to in paragraph 1 that, in accordance with Articles 12.7 (Non-Conforming Measures) and 13.7 (Non-Conforming Measures), do not apply to the sectors, sub- sectors or activities listed in the reservation; and

(d) Description establishes the coverage of the sectors, subsectors or activities covered by the reserve.

3. Pursuant to Articles 12.7 (Non-Conforming Measures) and 13.7 (Non- Conforming Measures), the Articles of this Agreement specified in the Affected Obligations element of a reservation do not apply to the sectors, sub-sectors and activities identified in the Description element of that reservation.

## Annex II . Schedule of Panama

1. Sector: Social Services

Subsector:

Obligations Affected: National Treatment (Articles 12.2 and 13.3) Most-Favored-Nation Treatment (Articles 12.3 and 13.4) Local Presence (Article 13.6) Performance Requirements (Article 12.6) Senior Executives and Boards of Directors (Article 12.5) Market Access (Article 13.5)

Description: Investment and Cross-Border Trade in Services

Panama reserves the right to adopt or maintain measures for the provision of law enforcement and prison services, as well as the following services, to the extent that they are social services that are established or maintained for reasons of public interest: pensions and unemployment insurance, social security or insurance, social security, social welfare, public education, public training, health care and child care.

2. Sector: Indigenous and Minority Populations

Subsector:

Obligations Affected: National Treatment (Articles 12.2 and 13.3) Most-Favored-Nation Treatment (Articles 12.3 and 13.4) Local Presence (Article 13.6) Performance Requirements (Article 12.6) Senior Executives and Boards of Directors (Article 12.5)

Description: Investment and Cross-Border Trade in Services

Panama reserves the right to adopt or maintain measures that deny foreign investors and their investments, or foreign service suppliers, a right or preference granted to socially or economically disadvantaged minorities and indigenous populations in its reserve areas.

3. Sector: Panama Canal Related Matters

Subsector:

Obligations Affected: National Treatment (Articles 12.2 and 13.3) Local Presence (Article 13.6) Performance Requirements (Article 12.6) Senior Executives and Boards of Directors (Article 12.5) Market Access (Article 13.5)

Description: Investment and Cross-Border Trade in Services

1. Panama reserves the right to adopt or maintain measures related to the management, administration, operation, maintenance, conservation, modernization, exploitation, development or ownership of the Panama Canal and the reverted

areas that restrict the rights of foreign investors and service providers.

2. The Panama Canal includes the water route itself, as well as its anchorages, berths and entrances; maritime, lake and river lands and waters; locks; auxiliary dikes; piers; and water control structures.

3. Reverted areas include lands, buildings and facilities and other assets that have reverted to the Republic of Panama in accordance with the Panama Canal Treaty of 1977 and its Annexes (Torrijos-Carter Treaty).

4. Sector: State-owned enterprises

Subsector:

Obligations Affected: National Treatment (Article 12.2) Local Presence (Article 13.6) Performance Requirements (Article 12.6) Senior Executives and Boards of Directors (Article 12.5)

Description: Investment and Cross-Border Trade in Services

Panama, when selling or disposing of equity interests or assets of an existing state enterprise or existing governmental entity, reserves the right to prohibit or impose limitations:

(a) on the provision of services;

(b) on the ownership of such interests or property;

(c) on the technical and financial capacity and experience of the owners of such interests or assets; and

(d) to control the foreign participation in any resulting company.

In connection with the sale or other form of disposition, Panama may adopt or maintain any measure relating to the nationality of senior executives or members of the Board of Directors.

5. Sector: Construction Services

Subsector:

Obligations Affected: National Treatment (Article 13.3)

Local Presence (Article 13.6)

Description:Cross Border Trade in Services

Panama reserves the right to adopt or maintain residency requirements, registration or other local presence obligations, or to require a financial guarantee if and when necessary to ensure compliance with Panamanian law and private contractual obligations.

6. Sector: Fisheries and Fisheries-Related Services

Subsector:

Obligations Affected: National Treatment (Articles 12.2 and 13.3) Most-Favored-Nation Treatment (Articles 12.3 and 13.4)

Description:Cross Border Trade and Investment in Services

Panama reserves the right to adopt or maintain a measure related to the requirements to invest, acquire, control and operate vessels engaged in fishing and related activities in Panamanian jurisdictional waters.

7. Sector: All Sectors

Subsector:

Obligations Affected: Most-Favored-Nation Treatment (Articles 12.3 and 13.4)

Description:Cross Border Trade and Investment in Services

1. Panama reserves the right to adopt or maintain measures that grant differential treatment to countries under a bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

2. Panama reserves the right to adopt or maintain measures that grant differential treatment to countries by virtue of a

bilateral or multilateral international treaty in force or signed subsequent to the date of entry into force of this Agreement with respect to:

(a) aviation;

(b) fishing; or

(c) maritime affairs, including salvage.

8. Sector: All Sectors

Subsector:

Obligations Affected: Market Access (Article 13.5)

Description:Cross Border Trade in Services

Panama reserves the right to adopt or maintain measures that are not inconsistent with Panama's obligations under Article XVI of the GATS, except for the following sectors, subject to the limitations and conditions set out in Annex I:

(a) reserve 9 on Electric Power;

(b) reserve 23 on Telecommunications Services;

(c) reserve 25 on Commercial Services: Discotheques, Bars, Pubs, Canteens, Wineries;

(d) reserve 26 on Community, Social and Personal Services;

(e) reserve 27 on Communications Services; and

(f) reserve 28 on Ports and Airports.

This reserve does not apply to the following sectors:

(a) Real estate services (commercial and/or residential); and

(b) Call center services.

9. Sector: Transportation Services

Subsector:

Obligations Affected: National Treatment (Articles 12.2 and 13.3) Local Presence (Article 13.6) Performance Requirements (Article 12.6) Senior Executives and Boards of Directors (Article 12.5) Market Access (Article 13.5)

Description: Investment and Cross-Border Trade in Services

1. Panama reserves the right to adopt or maintain measures restricting the supply of services and investment related to scheduled passenger transportation, other types of non-scheduled passenger transportation, and commercial freight vehicle rental services with operator, or bus terminal services.

2. Inland cabotage within Panama's borders is reserved for national carriers only.

10. Sector: Publications y Business Services - Professional Services

Subsector:

Obligations Affected: National Treatment (Articles 12.2 and 13.3) Senior Management and Boards of Directors (Article 12.5) Most-Favored-Nation Treatment (Article 13.4) Local Presence (Article 13.6)

Description: Investment and Cross-Border Trade in Services

1. Panama reserves the right to adopt or maintain measures relating to investment and administrative or managerial personnel of Panamanian print media, such as a newspaper or magazine.

2. Panama reserves the right to adopt or maintain measures related to the requirements for the professional practice of the profession of journalists.

## Annex II. Schedule of Peru

Sector: All Sectors

Subsector:

Obligations Affected: Most-Favored-Nation Treatment (Articles 12.3 and 13.4)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure that grants differential treatment to countries pursuant to any bilateral or multilateral international treaty in force or entered into prior to the date of entry into force of this Agreement.

Peru reserves the right to adopt or maintain any measure that grants differential treatment to countries pursuant to any bilateral or multilateral international treaty in force or entered into after the date of entry into force of this Agreement with respect to:

(a) aviation;

(b) fishing; or

(c) maritime affairs, (1) including salvage.

(1) For greater certainty, maritime matters include transportation on lakes and rivers.

2. Sector Matters Related with Communities Indigenous, Campesino, Native and Minority Communities

Subsector:

Obligations Affected: National Treatment (Articles 12.2 and 13.3) Most-Favored-Nation Treatment (Articles 12.3 and 13.4) Senior Management and Boards of Directors (Article 12.5) Performance Requirements (Article 12.6) Local Presence (Article 13.6)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure that grants rights or preferences to socially or economically disadvantaged minorities and ethnic groups.

For purposes of this entry, "ethnic groups" means indigenous, native and peasant communities.

3. Sector: Fishing and Fishing-Related Services

Subsector:

Obligations Affected: National Treatment (Articles 12.2 and 13.3) Most-Favored-Nation Treatment (Articles 12.3 and 13.4) Performance Requirements (Article 12.6)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure related to artisanal fishing.

4. Sector: Cultural Industries

Subsector:

Obligations Affected: Most-Favored-Nation Treatment (Articles 12.3 and 13.4)

Description: Investment and Cross-Border Trade in Services

For purposes of this entry, the term "cultural industries" means:

(a) publication, distribution or sale of books, magazines, periodicals or printed or electronic newspapers, excluding the isolated activity of printing and typesetting of any of the foregoing;

(b) production, distribution, sale or exhibition of film or video recordings;

(c) production, distribution, sale or exhibition of audio or video recordings of music;

(d) performing arts production and presentation (2) ;

(e) production and exhibition of visual arts;

(f) production, distribution or sale of printed or machine-readable music;

(g) design, production, distribution and sale of handicrafts; or

(h) radio broadcasting for the general public, as well as all activities related to radio, television and cable transmission, satellite programming services and transmission networks.

Peru reserves the right to adopt or maintain any measure granting preferential treatment to persons (natural and juridical) from other countries under any existing or future bilateral or multilateral international treaty with respect to cultural industries, including agreements of audiovisual cooperation.

For greater certainty, Articles 12.2 (National Treatment) and 12.3 (Most-Favored-Nation Treatment) and Chapter 13 (Cross-Border Trade in Services) do not apply to government support programs for the promotion of cultural activities.

(2) The term "performing arts" means live shows or performances such as theater, dance or music.

5. Sector: Crafts

Subsector:

Obligations Affected: National Treatment (Articles 12.2 and 13.3) Performance Requirements (Article 12.6)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure with respect to the design, distribution, retail sale 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).

6. Sector: Audiovisual Industry

Subsector:

Obligations Affected: National Treatment (Article 13.3) Performance Requirements (Article 12.6)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure that establishes a specific percentage (up to twenty percent (20%) of the total number of cinematographic works exhibited annually in cinemas or exhibition halls in Peru for Peruvian cinematographic works. The criteria to be considered by Peru for the establishment of such percentage include: national cinematographic production, the exhibition infrastructure and the attendance of the public.

7. Sector: Jewelry Design Performing Arts Visual Arts Music Industry Publishing Industry

Subsector:

Obligations Affected: Performance Requirements (Article 12.6) National Treatment (Article 13.3)

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 jewelry design, performing arts, visual arts, music and publishing, to the achievement of a level or percentage of domestic creative content.

8. Sector: Audiovisual Industry Publishing Industry Music Industry

Subsector:

Obligations Affected: National Treatment (Articles 12.2 and 13.3) Most-Favored-Nation Treatment (Articles 12.3 and 13.4)

Description: Investment and Cross-Border Trade in Services

Peru may adopt or maintain any measure that accords to a person of another Party the same treatment accorded by such Party to a Peruvian person in the audiovisual sector, editorial and musical.

9. Sector Social Services

Subsector:

Obligations Affected: National Treatment (Articles 12.2 and 12.3) Most-Favored-Nation Treatment (Articles 12.3 and 13.4) Senior Management and Boards of Directors (Article 12.5) Performance Requirements (Article 12.6) Local Presence (Article 13.6)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure with respect to law enforcement and the provision of social rehabilitation services as well as the following services, insofar as they are social services that are established or maintained for reasons of public interest: insurance and income security, social security services, social welfare, public education, public training, health and child care.

10. Sector: Drinking Water Utility

Subsector:

Obligations Affected: Local Presence (Article 13.6)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure in relation to the public drinking water service.

11. Sector: Sewage Public Service

Subsector:

Obligations Affected: Local Presence (Article 13.6)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure in relation to public sewage services.

12. Sector: Telecommunications

Subsector:

Obligations Affected: Most-Favored-Nation Treatment (Article 13.4) Local Presence (Article 13.6)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure with respect to the granting of a concession for the installation, operation and exploitation of public telecommunications services.

13. Sector: Education Services

Subsector:

Obligations Affected: National Treatment (Article 13.3) Most-Favored-Nation Treatment (Article 13.4) Local Presence (Article 13.6)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure with respect to natural persons who provide educational services, including teachers and auxiliary personnel who provide educational services at the stages of basic education and higher education, including "technical-productive education", and other persons who provide services related to education, including promoters of educational institutions at any level or level of education, and other persons who provide services related to education, including promoters of educational institutions at any level or level of education, including teachers and auxiliary personnel who provide educational services at the stages of basic education and higher education, including "technical-productive education", and other persons who provide services related to the educational system.

14. Sector: Transportation

Subsector: Road Transportation Services

Obligations Affected: National Treatment (Article 13.3)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure authorizing only Peruvian natural or juridical persons to provide land transportation services of goods or persons within the territory of the Republic of Peru (cabotage). For this purpose, companies must use Peruvian vehicles.

15. Sector: Transportation

Subsector: International Road Transportation Services

Obligations Affected: National Treatment (Articles 12.2 and 13.3) Most-Favored-Nation Treatment (Articles 12.3 and 13.4) Local Presence (Article 13.6)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure related to international land transportation of cargo or passengers in border areas.

In addition, Peru reserves the right to adopt or maintain the following limitations on the supply of international land transportation services from Peru:

(a) the service provider must be a Peruvian natural or legal person;

(b) the service provider must have a real and effective domicile in Peru; and

(c) in the case of a legal entity, the service provider must be legally incorporated in Peru and have more than fifty percent (50%) of its capital stock and its effective control in the hands of Peruvian nationals.

16. Sector: All Sectors

Subsector:

Obligations Affected: Market Access (Article 13.5)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure related to Article 13.5 (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 a maximum number of positions for notaries is established depending on the number of inhabitants of each city. For (b): None. For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Accounting, auditing and bookkeeping 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 the GATS.

Architectural services: For (a), (b) and (c): None, except that for temporary registration, non-resident foreign architects require a contract of association with a resident Peruvian architect. For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Engineering services: For (a), (b) and (c): None. For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Veterinary services: For (a), (b) and (c): None. For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Services provided by midwives, nurses, physiotherapists and paramedical personnel: For (a), (b) and (c): None. For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Computer and related services: For (a), (b) and (c): None. For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Real estate services: Involving real estate owned or leased or on commission or contract: For (a),(b) and (c): None. For (d): No

commitments, except as established in the Law for the Hiring of Foreign Workers.

Leasing or rental services without crew/operators, relating to ships, aircraft, any other transportation equipment and other machinery and equipment: For (a), (b) and (c): None, unless:

National Shipping Company or National Shipping Company means the natural person of Peruvian nationality or legal entity incorporated in Peru, with its main domicile, real and effective headquarters in Peru, which is engaged in the service of water transportation in national traffic or cabotage3 and/or international traffic and is owner or lessee under the modalities of financial lease or bareboat lease, with mandatory purchase option, of at least one Peruvian flag merchant vessel and has obtained the corresponding Operating Permit from the General Directorate of Aquatic Transportation.

Cabotage is reserved exclusively to Peruvian flag merchant vessels owned by the National Shipping Company or National Shipping Company or under the Financial Lease or Bareboat Lease modalities, with mandatory purchase option; except that:

(i) the transportation of hydrocarbons in national waters is reserved up to twenty-five percent (25%) for vessels of the Peruvian Navy; and

(ii) for water transportation between Peruvian ports only or cabotage, in cases of non-existence of own or leased vessels under the above mentioned modalities, the chartering of foreign flag vessels will be allowed to be operated only by National Shipping Companies or National Shipping Companies, for a period not exceeding six (6) months.

For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Advertising services: For (a), (b) and (c): None, except for: commercial advertising in the country must have at least eighty percent (80%) of national artists. National artists shall receive no less than sixty percent (60%) of the total of the artists' wages and salaries. The same percentages established in the preceding paragraphs shall apply to technical workers engaged in commercial advertising. Para (d): No commitments, except as established in the Law on Artists, Performers and Executants and in the Law for the Hiring of Foreign Workers.

Market research and public opinion polling services, management consulting services related to those of management consultants, and technical testing and analysis: For (a), (b) and (c): None. For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Services related to agriculture, hunting and forestry: For (a), (b) and (c): None. For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Services related to mining, placement and supply of personnel, and research and security: For (a), (b) and (c): None. For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Maintenance and repair services of equipment (excluding vessels, aircraft or other transportation equipment), building cleaning services, photographic service, packing service and services rendered on the occasion of assemblies and conventions: For (a), (b) and (c): None. For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Publishing and printing services: For (a), (b) and (c): None. For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Domestic 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 the GATS.

Services carriers fromtelecommunications, private telecommunications services and value-added services (4) : For (a), (b), (c): None, except the obligation to obtain a concession, authorization or registration, or other enabling title that Peru deems appropriate to grant for the provision of such services. Legal entities incorporated under Peruvian law may be eligible for a concession.

Call-back is prohibited, understood as the offering of telephone services for the making of attempted telephone calls originating in the country, with the purpose of obtaining a return call with an invitation to dial tone, coming from a basic telecommunications network located outside the national territory.

International traffic must be routed through an operator to which the Ministry of Transportation and Communications has granted a concession or other enabling title.

Interconnection between private services is prohibited.

For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Commission agent services (except hydrocarbons): For (a), (b) and (c): None. For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Retail trade services, except alcohol and tobacco: For (a), (b) and (c): None. For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Wholesale trade services (except hydrocarbons): For (a), (b) and (c): None. For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Franchise services: For (a), (b) and (c): None. For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Repair services of personal and household goods: For (a), (b) and (c): None. For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Hotel and restaurant services (including catering services from abroad under contract), travel agencies and organization of group tours, tour guides: For (a), (b) and (c): None. For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Entertainment services (including theaters, bands and orchestras, and circuses), news agency services, libraries, archives, museums and other cultural and sporting services: For (a), (b) and (c): None, except the following:

(i) every production of scenic art5 and visual art, and every national artistic show presented directly to the public must be composed of at least eighty percent (80%) of national artists. National artists shall receive no less than sixty percent (60%) of the total of the artists' salary and wage payroll. The same percentages apply to technical workers linked to the artistic activity.

(ii) every foreign circus show shall enter the country with its original cast, for a maximum period of ninety (90) days, which may be extended for the same period. In the latter case, at least thirty percent (30%) of national artists and fifteen percent (15%) of national technicians shall be incorporated to the artistic cast. These same percentages shall be reflected in the wage and salary schedules.

For (d): No commitments, except as established in the Artist, Performer and Executant Law, and in the Law for the Hiring of Foreign Workers.

Services for the operation of facilities for competitive sports and recreational sports: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Hiring of Foreign Workers.

Recreational park services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for the Hiring of Foreign Workers.

Maritime and inland waterway transportation 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 the GATS.

Road transport services: rental of commercial vehicles with driver, maintenance and repair of road transport equipment, road, bridge and tunnel operation services: For (a), (b) and (c): None. For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Ancillary services in connection with all modes of transport: loading and unloading services, warehousing, freight forwarding agency services: For (a), (b) and (c): None. For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Aircraft repair and maintenance services: For (a): No commitments. For (b) and (c): None. For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Sales and marketing services of air transport services, and Computer reservation services: For (a), (b) and (c): None. For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Research and development services in natural sciences: For (a), (b) and (c): None, except that an operations permit may be required and the competent authority may provide that one (1) or more representatives of the relevant Peruvian activities be included in the expedition, in order to participate and know the studies and their scope. Para (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Research and development services in the social sciences and humanities: For (a), (b) and (c): None, subject to the respective authorizations of the competent authority. For (d): No commitments, except as established in the Law for the Hiring of

Foreign Workers.

Interdisciplinary research and development services: For (a), (b) and (c): None, except that an operating permit may be required. For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

Call center services: For (a), (b) and (c): None. For (d): No commitments, except as established in the Law for the Hiring of Foreign Workers.

For greater certainty, nothing in this reservation shall be inconsistent with Peru's commitments under Article XVI of the GATS.

For the purposes of this non-conforming measure:

1. "(a)" refers to the supply of a service from the territory of Panama to the territory of Peru;

2. "(b)" refers to the supply of a service in the territory of Panama by a person of Panama to a person of Peru;

3. "(c)" refers to the supply of a service in the territory of Peru by an investor of Panama or by a covered investment; and

4. "(d)" refers to the supply of a service by a national of Panama in the territory of Peru.

(3) For greater certainty, water transportation includes transportation on lakes and rivers.

(4) Value-added services will be defined in accordance with Peruvian law.

(5) The term "performing arts" means live shows or performances such as theater, dance or music.