

# ECONOMIC AND TRADE EXPANSION AGREEMENT BETWEEN THE REPUBLIC OF PERU AND THE FEDERATIVE REPUBLIC OF BRAZIL

The Republic of Peru

And

The Federative Republic of Brazil, hereinafter referred to as the "Parties" or individually as the "Party":

ANIMATED for the purpose of strengthening the bonds of friendship and solidarity among their peoples;

PERSUADED that trade between the Parties, regulated in the area of trade in goods by Economic Complementation Agreement No. 58, and expanded in terms of investment, trade in services and public procurement by this trade promotion agreement, constitutes one of the main means for both Parties to accelerate their process of economic and social development;

DECIDED to promote bilateral trade and investment by opening up new integration initiatives between the Parties;

RECOGNIZING the fundamental role of regional economic integration in the liberalization of trade and investment and in the promotion of sustainable development, economic growth, poverty reduction, job creation, expansion of productive capacity And human development;

DESIRING to establish a common framework of principles and standards for their bilateral trade in services with a view to expanding such trade in conditions of transparency and as a means of promoting economic growth;

RECOGNIZING the importance of promoting a transparent, agile and friendly environment for trade and investment between the Parties;

ENSURING a predictable legal framework for trade and investment;

REAFFIRMING the autonomy and regulatory space of the Parties;

AGREE:

To conclude this Agreement of Economic Economic Development between the Republic of Peru and the Federative Republic of Brazil, under the Treaty of Montevideo 1980 and Resolution No. 2 of the Council of Ministers of LAFTA.

## Chapter 1. Initial Provisions and General Definitions

### Article 1.1. General Definitions

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

**Agreement** means the Commercial Economic Deepening Agreement between the Republic of Peru and the Federative Republic of Brazil;

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

**GATS** means the General Agreement on Trade in Services contained in Annex 1B to the WTO Agreement;

**ALADI** means the Latin American Integration Association;

**Days** means calendar days;

**Commission** means the Administrative Commission established by Article 6.1 (Administrative Commission);

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

**National** means:

(A) for Peru, a natural person who has Peruvian nationality by birth, naturalization or option in accordance with Articles 52 and 53 of the Political Constitution of Peru and other relevant national legislation, or is a permanent resident of Peru; and

(B) for Brazil, a natural person who has Brazilian nationality by birth, naturalization or option in accordance with Article 12 of the Constitution of the Federative Republic of Brazil and other relevant national legislation, or is a permanent resident of Brazil;

**WTO** stands for World Trade Organization;

**Person** means a natural person or legal entity;

**Person of a Party** means a national or a legal person of a Party;

**Legal entity** means any legal entity duly constituted or otherwise organized under applicable law, whether or not for profit and whether privately or publicly owned, including a capital company, Trust company, partnership, joint venture, individual company or association;

**Territory** means:

(A) for Peru, the mainland, islands, maritime areas and the air space that covers them, under the sovereignty or rights of sovereignty and jurisdiction of Peru, in accordance with the provisions of the Political Constitution of Peru and other national legislation and international law; and

(B) for Brazil, the territory, including its land and air spaces, the exclusive economic zone, the territorial sea, continental shelf, soil and subsoil, within which Brazil exercises its sovereign or jurisdictional rights, in accordance with the International law and its internal legislation.

## **Article 1.2. Relationship with other Agreements**

1. The Parties reaffirm existing rights and obligations between them in international agreements to which both Parties are parties.
2. If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended and accepted by both Parties in the WTO, such amendment shall automatically be deemed to be incorporated into this Agreement.
3. In the event of any inconsistency between this Agreement and other agreements to which both Parties are parties, the Parties shall consult each other to seek a mutually satisfactory solution, taking into account the general principles and rules of international law.

## **Chapter 2. Investment**

### **Section A. Scope and Definitions**

#### **Article 2.1. Purpose**

The purpose of this Chapter is to facilitate and promote mutual investment by establishing a framework for treatment of investors and their investments and institutional governance of cooperation, as well as mechanisms for the prevention and settlement of disputes.

#### **Article 2.2. Scope of Application**

1. In the event of inconsistency between the provisions of treatment provided for in Article 2.5 (National Treatment) and Article 2.6 (Most Favored Nation Treatment) that affect the provision of services; And the treatment provisions and schedule of specific commitments (Annex I) to the mode of supply of commercial presence services contained in Chapter 3 (Services), the former shall prevail to the extent of incompatibility.
2. This Chapter shall apply to all investments made before or after the entry into force of this Agreement.

For the greater certainty, the provisions of this Chapter do not bind any Party in relation to any act or fact that took place, or

any situation that ceased to exist before the entry into force of this Agreement. This does not prevent the Parties from discussing matters of mutual interest in the Joint Committee established under Article 2.15 (Joint Committee).

3. This Chapter shall apply without prejudice to the rights and benefits that an investor of one Party has under national or international law in the territory of the other Party.

4. For greater certainty, the Parties reaffirm that this Chapter will be applied without prejudice to the rights and obligations under the WTO Agreement.

5. The provisions of Article 2.5 (National Treatment) and 2.6 (Most Favored Nation Treatment) do not apply to subsidies or grants awarded by a State Party or enterprise, including government-backed loans, guarantees, and insurance.

If a Party or state enterprise grants a subsidy or grant to an investor or an investor of an investor of a non-Party and does not grant them to an investor or an investment of an investor of the other Party, the measure may be the subject of consultation between Parties within the framework of the Joint Committee.

## **Article 2.3. Definitions**

1. For the purposes of this Chapter:

(A) "Enterprise" means any entity incorporated or organized under applicable law, whether or not for profit and whether owned or controlled by government, including any corporation, foundation, sole proprietorship, joint venture or Another entity without legal personality;

(B) The enterprise of a Party means a business incorporated or organized under the law of a Party, which carries out substantial business activities in the territory of the latter Party;

(C) Host State means the Party where an investment is being made or made;

(D) Profit means the securities obtained by an investment and in particular, but not exclusively, includes profits, interest, capital gains, dividends and royalties;

(E) Investor means a national or business of one Party, which is making or has made an investment in the territory of the other Party;

(F) investment means a direct investment, that is, any asset owned or controlled, directly or indirectly, by an investor of one Party, established or acquired in accordance with the legal system of the other Party, in the territory of that other Party which allows control or a significant degree of influence over the management of the production of goods or the provision of services in the territory of the Host State, including in particular but not exclusively:

(i) an enterprise;

(ii) shares, capital and other types of interests in a company;

(iii) movable or immovable property and rights relating to property, such as mortgage, encumbrance, pledge, usufruct and similar rights;

(iv) concessions conferred by law or under contract, including concessions for search, including exploration, extraction or exploitation of natural resources;

(v) debt instruments or loans of a company:

(A) when the company is an affiliate of the investor, and

(B) when the original maturity date of the debt or loan instrument is at least three years,

But does not include bonds, debentures, loans or other debt instruments of a State enterprise of a Party which this Party treats as public debt.

For greater certainty, investment does not include:

(i) an order or judgment filed in a judicial or administrative action;

(ii) debt securities issued by a Party or loans granted by one Party to the other Party;

(iii) portfolio investments, which do not allow the investor a significant degree of influence in the management of the

company; and

(iv) pecuniary claims arising exclusively from commercial contracts for the sale of goods or services by a national or an enterprise in the territory of one Party to a national or an enterprise in the territory of the other Party, or the granting of Credit in connection with a commercial transaction or any other pecuniary claim, which does not involve the interest rates set forth in subsections (i) to (v) above.

(G) Person of a Party means a national or business of a Party.

## **Section B. Treatment Provisions and Regulatory Measures**

### **Article 2.4. Admission**

Each Party shall admit and encourage the investments of investors of the other Party, in accordance with its laws and regulations pursuant to this Chapter.

### **Article 2.5. National Treatment**

1. Subject to its laws and regulations in effect at the date of entry into force of this Agreement, each Party shall accord to investors of the other Party treatment no less favorable than that it accords to its own investors in similar circumstances, in relation to the establishment, acquisition, expansion, administration, conduction, operation and sale or other disposition of the investments in its territory.

2. Subject to its laws and regulations in effect at the date of entry into force of this Agreement, each Party shall accord to investments of investors of the other Party treatment no less favorable than that it accords, under similar circumstances, to investments of its own investors, in relation to the establishment, acquisition, expansion, administration, conduction, operation and sale or other disposition of the investments in its territory.

3. For greater certainty, that treatment be granted in "like circumstances", depends on the totality of the circumstances, even that the relevant treatment distinguishes between investors or investments based on legitimate objectives of public interest.

4. The provisions of this Article shall not prevent the adoption and application of new measures affecting investors and their investments, provided they are not discriminatory in accordance with the provisions of paragraphs 1 and 2 of this Article.

5. For greater certainty, this Article shall not be construed to compel Parties to compensate for intrinsic competitive disadvantages resulting from the foreign character of the investors and their investments.

6. The Parties reserve the right to adopt or maintain any future measures inconsistent with this Article:

(A) with respect to the design, distribution, retailing or display of handicrafts that are identified as national handicrafts of each Party;

(B) related to artisanal fishing;

(C) with respect to the enforcement of laws and the provision of social rehabilitation services;

(D) with respect to the provision of the following services, to the extent that they are social services that are established or maintained for reasons of public interest: insurance and security of income, social security services, social welfare, public education, public training, Health and child care.

(E) granting differential treatment to socially or economically disadvantaged minorities and to ethnic groups. For purposes of this Chapter, minorities include peasant communities; Ethnic groups means indigenous and native communities. Peasant communities are legal entities integrated on the basis of ancestral, social, economic and cultural ties. They are autonomous in their organization, in the communal work and in the use and free disposition of their lands, as well as in the economic and administrative within the framework of the law;

(F) related to the acquisition or lease of rural property, as defined in the legislation of each Party.

(G) to grant to a person of the other Party the same treatment accorded by this Party to the national of the first Party in the audiovisual, editorial and musical sector.

7. This Article does not apply to government procurement procedures, which are understood as the process by which a government obtains goods or services, or any combination thereof, for governmental purposes and not for commercial sale

or resale or for their use in the production or supply of goods or services intended for commercial sale or resale. For greater certainty, this Chapter applies with respect to the investment resulting from such public procurement procedure.

## **Article 2.6. Most-favored-nation Treatment**

1. Subject to its laws and regulations in effect at the date of entry into force of this Agreement, and with respect to the provisions contemplated in this Chapter, each Party shall accord to investors of the other Party treatment no less favorable than that accorded by it In similar circumstances, to investors of a non-Party in connection with the establishment, acquisition, expansion, administration, conduct, operation and sale or other disposition of investments in its territory.

2. Subject to its laws and regulations in effect at the date of entry into force of this Agreement, and with respect to the provisions contemplated in this Chapter, each Party shall accord to investments of investors of the other Party treatment no less favorable than In similar circumstances, to investments in its territory by an investor of a State which is not a Party in connection with the establishment, acquisition, expansion, administration, conduct, operation and sale or other disposition of investments in its territory.

3. For greater certainty, the treatment referred to in this Article does not include investor-state dispute resolution mechanisms or procedures or any other dispute resolution mechanism for investments that are stipulated in international commercial or investment agreements.

4. The Parties reserve the right to adopt or maintain any measure giving different treatment to countries in accordance with a bilateral or multilateral treaty in force or subscribed prior to the date of entry into force of this Agreement, including agreements Such as those establishing a regional economic integration organization, a free trade area, a customs union or a common market of which a Party is a member.

5. The Parties reserve the right to adopt or maintain any future measures inconsistent with this Article:

(A) granting differential treatment to countries in accordance with any bilateral or multilateral international treaty in force or subscribed after the date of entry into force of this Agreement in respect of aviation; fishing; Or maritime affairs, including rescue. For greater certainty, maritime affairs include transport by lakes and rivers;

(B) which is related to artisanal fishing;

(C) To grant preferential treatment to persons from other countries under any existing bilateral or multilateral international agreements on cultural industries, including audiovisual cooperation agreements.

For the purposes of this sub-paragraph, the term "cultural industries" means:

(i) Publication, distribution or sale of books, magazines, periodicals or printed or electronic journals, excluding the isolated activity of printing and typographic composition of any of the above activities;

(ii) Production, distribution, sale or display of film or video recordings;

(iii) Production, distribution, sale or display of music recordings in audio or video;

(iv) Production and presentation of performing arts;

(v) Production and display of visual arts;

(vi) Production, distribution or sale of printed or machine-readable music;

(vii) Design, production, distribution and sale of handicrafts; or

(viii) Broadcasters for the general public, as well as all activities related to radio, television and cable transmission, satellite programming services and transmission networks.

For greater certainty, Articles 2.5 (National Treatment) and 2.6 (Most Favored Nation Treatment) do not apply to government support programs for the promotion of cultural activities;

(D) grant to a person of a third party the same treatment accorded by that Party to its national in the audiovisual, publishing and musical sector.

(E) with respect to the enforcement of laws and the provision of social rehabilitation services;

(F) with respect to the provision of the following services, to the extent that they are social services established or

maintained for reasons of public interest: income security and insurance, social security services, social welfare, public education, public training, health and child care.

6. This Article does not apply to government procurement, which is understood as the process by which a government obtains goods or services, or any combination of them, for governmental purposes and not for commercial sale or resale or for their use in the production or supply of goods or services intended for commercial sale or resale. For greater certainty, this Chapter applies with respect to the investment resulting from such public procurement procedure.

## **Article 2.7. Expropriation**

1. The Parties may not nationalize or expropriate the investments covered by this Chapter, unless it is:

(A) in the case of Brazil, by necessity or public utility or social interest; In the case of Peru, for national security or public need;

(B) in a non-discriminatory manner;

(C) by payment of an effective compensation in accordance with paragraphs 2, 3 and 4; and

(D) In accordance with due process of law.

2. The compensation shall:

(A) be paid without undue delay, in accordance with the law of the Host State;

(B) be equivalent to the fair market value of the expropriated investment immediately before the expropriation has taken place, hereinafter expropriation date;

(C) not reflect a change in market value due to knowledge of the intention to expropriate, prior to the date of expropriation; and

(D) be transferable in accordance with Article 2.10 (Transfers).

3. If the fair market value is denominated in a freely usable currency, the payment of an indemnity may not be less than the fair market value at the date of expropriation plus the interest determined according to market criteria for that currency Accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the indemnity to be paid shall not be less than the fair market value at the date of expropriation, plus interest determined according to market criteria for said Currency from the date of expropriation to the date of payment.

5. The Parties shall exchange information on their respective national laws on expropriation.

6. For greater certainty, this Article only provides for direct expropriation, where an investment is nationalized or otherwise expropriated directly through the formal transfer of title or right of dominion.

## **Article 2.8. Compensation for Losses**

In respect of measures such as restitution, compensation, compensation and other settlement, each Party shall accord to investors of the other Party who have suffered losses in their investments in the territory of that Party due to armed conflict or civil strife, treatment not Less favorable than that accorded to its own investors or investors from any country that is not a Party, whichever is more favorable to the affected investor.

## **Article 2.9. Transparency**

1. In accordance with the provisions of this Chapter, each Party shall ensure that all measures affecting the investment are administered in a reasonable, objective and impartial manner, in accordance with its legal system.

2. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application relating to any matter covered by this Chapter, be published as soon as possible and made available, as far as possible, in electronic format, so as to enable the persons concerned and the other Party to be aware of them.

3. Each Party shall, as far as possible, provide reasonable opportunities to interested parties to comment on the measures they intend to adopt.

## **Article 2.10. Transfers**

1. The Parties shall permit the transfer of funds relating to an investment to be made freely and without delay to and from their territory. These transfers include:

- (A) the initial capital contribution or any addition thereof in connection with the maintenance or expansion of this type of investment;
- (B) profits directly related to the investment;
- (C) the proceeds from the total or partial sale or liquidation of the investment;
- (D) payments made under a contract to which the investor or the investor is party, including payments under a loan agreement; and
- (E) payments made in accordance with Article 2.7 (Expropriation) and Article 2.8 (Compensation for Losses). When the compensation is paid in bonds of the public debt, the investor may transfer the value of the proceeds from the sale of said bonds in the market, in accordance with this Article.

2. Each Party shall permit transfers relating to an investment to be made in freely usable currency at the exchange rate prevailing in the market on the date of transfer.

3. Without prejudice to paragraphs 1 and 2, a Party may avoid a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

- (A) bankruptcy, insolvency or protection of the rights of creditors;
- (B) criminal offenses;
- (C) financial reporting or record keeping of transfers where necessary to assist compliance with the law or with regulatory financial authorities; or
- (D) the guarantee for compliance with judgments or awards rendered in judicial or administrative proceedings.

## **Article 2.11. Prudential Measures**

1. Nothing in this Chapter shall be construed to prevent any Party from adopting or maintaining measures for prudential reasons such as:

- (A) the protection of investors, savers, depositors, financial market participants, policyholders, policy beneficiaries, or persons with whom a financial institution has a fiduciary debt;
- (B) maintaining the security, soundness, integrity or accountability of financial institutions; and
- (C) ensure the integrity and stability of a Party's financial system;

2. Nothing in this Chapter shall apply to non-discriminatory measures of a general nature adopted or maintained by any public entity in pursuance of monetary policies and related credit or exchange policies. This paragraph shall not affect a Party's obligations under Article 2.10 (Transfers).

3. When such measures do not conform to the provisions of this Chapter, they shall not be used as a means of circumventing the commitments or obligations entered into by the Party under this Chapter.

## **Article 2.12. Investment and Measures on Health, Environment and other Regulatory Objectives In Social Matters**

1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure that is compatible with this Chapter which it deems appropriate to ensure that investment activities in its territory are carried out Taking into account the environment, health or other regulatory objectives in social matters.

2. The Parties recognize that it is inappropriate to encourage investment by lowering the standards of their environmental, health or other social legislation. Accordingly, the Parties shall not waive or otherwise waive, render flexible or offer to waive, relax or repeal such measures as a means of encouraging the establishment, maintenance or expansion of an investment in their territory.

## **Article 2.13. Corporate Social Responsibility**

1. The Parties recognize the importance of promoting that companies operating in their territory or subject to their jurisdiction apply policies of sustainability and social responsibility and that foster the development of the country receiving the investment.

2. Investors and their investments shall use their best efforts to comply with the following voluntary principles and standards for responsible corporate conduct consistent with the laws approved by the Host State receiving the investment:

(A) contribute to economic, social and environmental progress with a view to achieving sustainable development;

(B) to respect the internationally recognized human rights of persons involved in the activities of enterprises;

(C) stimulate local capacity building through close collaboration with the local community;

(D) promote human capital formation, in particular through the creation of employment opportunities, and by providing training to employees;

(E) refrain from seeking or accepting exemptions not contemplated in the legal or regulatory framework relating to human rights, the environment, health, safety, labor, financial incentives, or other issues;

(F) to support and defend the principles of good corporate governance, and to develop and implement good corporate governance practices;

(G) develop and implement self-disciplinary practices and effective management systems that promote a relationship of mutual trust between the companies and the societies in which they operate;

(H) promote employee awareness and compliance with company policies, through appropriate dissemination of these policies, including through training programs;

(i) to refrain from discriminatory or disciplinary measures against workers who, in good faith, report to the management or, where appropriate, to the competent public authorities on practices contrary to law or company policies;

(J) to encourage, to the extent possible, its business partners, including suppliers and contractors, to apply principles of business conduct consistent with the principles set out in this Article; and

(K) to refrain from any undue interference in local political activities.

## **Article 2.14.**

"Measures on investment and the fight against corruption and illegality

1. Each Party shall adopt or maintain measures and efforts to prevent and combat corruption, money laundering and terrorist financing in respect of the matters covered by this Chapter and in accordance with its laws and regulations.

2. Nothing in this Chapter shall bind any Party to protect:

(A) investments made with capital or assets of illicit origin;

(B) investments in the establishment or operation of acts of corruption;

(C) investments in the establishment or operation of which were verified unlawful acts that, in accordance with its laws and regulations, have been judicially sanctioned with the loss of assets.

## **Section C. Institutional Governance and Prevention of Controversies**

### **Article 2.15. Joint Committee**

1. For the purposes of this Chapter, the Parties establish a Joint Committee for the management of this Chapter (hereinafter Joint Committee).

2. This Joint Committee shall be composed of Government representatives of both Parties.



3. The Joint Committee shall meet at such times, places and by such means as the Parties may agree. Meetings shall be held at least once a year, alternating the chairmanship between the Parties.
4. The Joint Committee shall have the following functions and responsibilities:
  - (A) supervise the implementation and enforcement of this Chapter;
  - (B) discuss and share opportunities for the expansion of mutual investment;
  - (C) coordinate the implementation of mutually agreed cooperation and facilitation programs;
  - (D) invite the private sector, when agreed upon by the members of the Joint Committee, in order to discuss relevant aspects within the scope of this Chapter;
  - (E) review matters within the scope of this Chapter submitted in accordance with Article 2.20 (Consultations and Direct Negotiations);
  - (F) complement the rules for the settlement of arbitral disputes between States; and
  - (G) evaluate any aspect of the interpretation or application of this Chapter that has been submitted by either Party.
5. The Parties may establish ad hoc working groups, within the framework of the Joint Committee, which shall meet jointly or separately from the Joint Committee.
6. The Joint Committee shall establish its own rules of procedure.

## **Article 2.16. Focal Point**

1. Each Party shall designate a Focal Point whose primary responsibility shall be to provide assistance to investors of the other Party in its territory as provided in the following paragraphs.
2. In the case of Brazil, the Focal Point will be the Direct Investment Ombudsman located in the Chamber of Foreign Trade - CAMEX, which is a Governing Council of the Presidency of the Federative Republic of Brazil. Its main body is the Council of Ministers, which is an interministerial body.
3. In the case of Peru, the Focal Point will be the General Directorate for International Economics, Competition and Productivity Affairs of the Ministry of Economy and Finance.
4. The interested party shall send its inquiries, requests, concerns or communications regarding investment within the scope of this Chapter (consultations) to the Focal Point designated by the Party, which shall transmit the same in writing, by electronic means to the Point Focal of the other Party. Consultations should include identification, contact information of the interested party, description of the situation, and the entities or authorities involved in the subject matter of the consultations.
5. The Party's Focal Point may request additional information from the interested party, as the case may be, in order to have all the necessary elements to allow an adequate evaluation of the subject matter of the consultations, for the purpose of deriving them The competent authorities.
6. Each Party shall designate a single institutional representative of its Focal Point to respond to consultations.
7. The Focal Point will have the following functions:
  - (A) endeavor to comply with the guidelines of the Joint Committee and interact with the Focal Point of the other Party, in accordance with this Chapter;
  - (B) to provide the competent authorities with requests for guidance received from the other Party and to coordinate with those entities in order to comply with requests for procedures and activities related to investment initiatives and projects;
  - (C) to exchange information with the Focal Point of the other Party on investment matters within the scope of this Chapter relating to the improvement of the investment climate, such as to identify transversally the potential obstacles in the execution of investment projects, so that each Focal Point assesses, in coordination with the competent entities, possible solutions;
  - (D) discuss any other matter related to the bilateral investment climate within the scope of this Chapter, counting, when deemed appropriate, involving the private sector;

(E) formulate proposals for the most effective operation or achievement of the objectives of this Chapter;

(F) inform the Joint Committee of its activities and actions, when applicable.

8. The Focal Point shall determine its own rules of procedure to carry out its functions.

## **Article 2.17. Exchange of Information between Parties**

At the request of a Party, the other Party, whenever possible, shall promptly provide, through the Joint Committee and / or its Focal Points, information that is available for dissemination and is relevant to investments, With: the investment opportunities promoted by the same Party; applicable legislation; International agreements; public politics; Statistics; Public services and infrastructure.

## **Article 2.18. Treatment of Protected Information**

1. Each Party shall respect the level of protection of the information provided by the other Party, observing the respective domestic legislation on the subject.

2. Nothing in this Chapter shall be construed to require either Party to disclose protected information, the disclosure of which would hinder the application of the law or would otherwise be contrary to the public interest or would prejudice the Privacy or legitimate business interests. For the purposes of this paragraph, protected information includes confidential business information or privileged or protected information to be disclosed under the applicable laws of a Party.

## **Article 2.19. Interaction with the Private Sector**

Recognizing the critical role of the private sector in investment, Parties shall disseminate general information on investment, regulatory frameworks and business opportunities in the territory of the other Party.

## **Article 2.20. Consultations and Direct Negotiations**

1. The Focal Points shall act in co-ordination with each other and with the Joint Committee in order to seek to prevent and seek to resolve, as far as possible, investment differences arising between the Parties in the implementation of this Chapter, Chapter 1 (General Provisions and Definitions), Chapter 5 (Transparency), Chapter 8 (Exceptions) and Chapter 9 (Final Provisions).

2. Prior to commencing an arbitration proceeding, in accordance with Article 2.21 (Dispute Settlement between Parties), any dispute between the Parties shall be assessed through consultations and negotiations between the Parties and shall be considered in advance by the Committee Set. This stage of consultations and negotiations will have a maximum term of 120 days, extendable by mutual agreement between the Parties.

3. A Party may submit a specific question and convene a meeting of the Joint Committee:

(A) to initiate the proceeding, the Party shall submit its request in writing to the Joint Committee, specifying the name of the investor concerned and the issues identified by the investor;

(B) The Joint Committee shall evaluate the relevant information on the case that is presented and prepare the respective report, which shall include:

(i) identification of the Party;

(ii) identification of affected investors, as filed by the Party;

(iii) description of the measure being consulted; and

(iv) conclusions of the dialogue between Parties

(C) In order to facilitate the search for a solution, the Parties shall invite to meetings of the Joint Committee, where they deem it necessary, to:

(i) representatives of the investors involved;

(ii) representatives of the governmental entities involved in the measure or situation under consultation.

(D) after the deadline established by the Parties in accordance with paragraph 2, the Joint Committee shall submit its report.

(E) The Joint Committee may convene special meetings to review matters submitted to it.

(F) in the event that the Joint Committee does not meet within a reasonable time, in accordance with paragraph 2, the dispute may be submitted to arbitration by one of the Parties, in accordance with Article 2.21 (Dispute Settlement between Parties).

## **Article 2.21. Settlement of Disputes between the Parties**

1. Either Party may resort to arbitration mechanisms between States, provided they have exhausted the procedure provided for in Article 2.20.3 (Consultations and Direct Negotiations) without the dispute being resolved.

2. The purpose of arbitration between States is to bring into conformity with the Chapter the measure declared incompatible with the Chapter by the arbitral award.

3. Article 2.12 (Investment and Measures on Health, Environment and Other Regulatory Objectives in Social Matters), 2.13 (Corporate Social Responsibility) and Article 2.14 (Measures on Investment and Fight against Corruption and Illegality) may not be subject to arbitration.

4. No claim may be submitted to the mechanism provided for in this Article if a period of more than five years has elapsed from the date on which the investor first had or should have known for the first time of an alleged violation of this Chapter.

5. The arbitral tribunal shall be constituted in accordance with paragraph 6 of this Article. However, the Parties may jointly decide to refer the dispute to a permanent arbitration institution for the settlement of disputes between States relating to investments.

6. In the case of the establishment of an arbitral tribunal for each dispute, each Party shall designate a member of the arbitral tribunal within two months after receiving the request for arbitration through diplomatic channels. The two members shall designate a national of a third State who, upon approval by both Parties, shall be designated as the President of the arbitral tribunal. The President shall be appointed within two months after the date of appointment of the other two members of the arbitral tribunal.

7. If, within the periods specified in paragraph 6, the necessary appointments have not been made, either Party may invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of one of the Parties or is prevented from exercising that function, the Vice President shall be invited to make the necessary appointments. If the Vice-President is a national of a Party or is prevented from exercising that function, the member of the International Court of Justice who is not a national of one of the Parties, shall be invited to make the necessary appointments.

8. The Arbitrators shall:

(A) have the necessary experience or expertise in public international law, international investment or international trade rules, or in the resolution of disputes arising in connection with international investment agreements or international trade agreements;

(B) be independent and not be bound by any of the Parties or other arbitrators, directly or indirectly, or be instructed by the Parties, and

(C) comply with the "Standards of Conduct for the Application of the Understanding on Rules and Procedures Governing the Settlement of Disputes" of the World Trade Organization (WTO / DSB / RC / 1, of 11 December Of 1996), as applicable, or any other standard of conduct established by the Joint Committee.

9. When a Party claims that a dispute involves measures relating to financial institutions or to investors or investments of such investors in financial institutions and provided that:

(A) the Parties agree, arbitrators, in addition to the criteria set forth in paragraph 8, shall have experience or expertise in law or practice of financial services, which may include regulation of financial institutions; or

(B) the Parties disagree:

(i) each of the Parties to the dispute may select the arbitrators having the qualification profile set forth in subparagraph (a), and

(ii) if the respondent has invoked Article 2.10 (Transfers), the President of the Tribunal shall be the arbitrator who meets the qualifications established in subparagraph (a).

10. The arbitral tribunal shall determine its own procedure. The arbitral tribunal shall take its decision by majority vote. Such a decision shall be binding on both Parties. Unless the parties otherwise agree, the decision in the arbitral tribunal award shall be rendered within six months of the appointment of the President in accordance with paragraphs 6 and 7.

## **Section D. Agenda for Greater Cooperation and Facilitation of Investments**

### **Article 2.22. Agenda for Increased Cooperation and Facilitation of Investments**

1. The Joint Committee will develop and discuss an Agenda for Enhanced Cooperation and Investment Facilitation on issues relevant to improving the climate of bilateral investment. The topics to be addressed initially and their objectives will be decided at the first meeting of the Joint Committee.

2. The agendas shall be discussed between the competent governmental authorities of both Parties. The Joint Committee may invite, where applicable, additional governmental authorities from both Parties for agenda discussions.

3. The Parties shall submit to the Joint Committee the names of the governing bodies and their official representatives involved in these negotiations.

## **Section E. Final Provisions**

### **Article 2.23. Final Provisions**

1. Neither the Joint Committee nor the National Focal Points or the Ombudsman shall replace or impair in any way any other agreement or diplomatic channels existing between the Parties.

2. The Parties shall consult, in any way they agree, in order to review the implementation of this Chapter, the extension of its scope and the deepening of the commitments assumed.

## **Chapter 3. Trade In Services**

### **Article 3.1. Definitions**

For the purposes of this Chapter:

(A) trade in services means the provision of a service:

(i) from the territory of one Party to the territory of the other Party

(ii) in the territory of a Party by a person of that Party to a person of the other Party;

(iii) by a service supplier of one Party through commercial presence in the territory of the other Party; or

(iv) by a national of one Party in the territory of the other Party.

(B) a legal person of a Party means a legal person who:

(i) is constituted or otherwise organized under the law of a Party; or

(ii) in the case of the provision of a service by commercial presence in the territory of the other Party, is owned, or is under the control or under a significant degree of influence of:

(A) nationals of a Party; or

(B) legal entities of a Party as defined in sub-paragraph (i)

(C) commercial presence means any type of commercial or professional establishment, through, among other means, of:

(i) the constitution, acquisition or maintenance of a legal person, or

(ii) The creation or maintenance of a branch or representative office, within the territory of a Party for the purpose of providing a service;

(D) A service provider of a Party means any person of a Party providing or seeking to provide a service. Where the service is not provided by a legal person directly but through other forms of commercial presence, eg a branch or representative office, the service provider (ie, to the legal person), through that presence, the treatment granted to service providers under this Chapter. Such treatment shall be granted to the presence through which the service is provided, without it being necessary to grant it to the other party of the provider located outside the territory in which the service is provided;

(E) sector of a service means:

(i) with reference to a specific commitment, one or more sub-sectors of that service, or all of them, as specified in the Schedule of Specific Commitments of a Party set out in Annex I;

(ii) otherwise, the entire service sector, including all of its subsectors; and

(F) provision of a service includes the production, distribution, marketing, sale and provision of a service.

## **Article 3.2. Scope of Application**

1. This Chapter applies to measures adopted or maintained by a Party which affect trade in services provided by service suppliers of the other Party. Such measures include measures affecting:

(A) the purchase, payment or use of a service;

(B) access to services offered to the general public by the prescription of the Parties, and the use thereof, in connection with the provision of a service;

(C) the presence, including commercial presence, of persons of one Party in the territory of the other Party for the provision of a service.

2. For the purposes of this Chapter:

(A) "measures taken or maintained by a Party" means measures taken or maintained by:

(i) central, regional or local governments and authorities; and

(ii) non-governmental institutions in the exercise of powers delegated by governments or central, regional or local authorities.

3. This Chapter does not apply to:

(A) services provided in the exercise of governmental authority. A "service rendered in the exercise of governmental authority" means any service which is not provided on a commercial basis or in competition with one or more service providers;

(B) air services, (1) including national and international scheduled and non-scheduled air transport services, and related services in support of air services, except:

(i) aircraft repair and maintenance services while the aircraft is out of service;

(ii) the sale and marketing of air transport services; and

(iii) computerized reservation system (SRI) services;

(C) public procurement; and

(D) subsidies or grants made by a Party, including government-supported loans, guarantees and insurance, with the exception of Article 3.13 (Subsidies).

4. This Chapter does not apply to measures affecting nationals of one Party seeking access to the labor market of the other Party, or measures relating to citizenship, nationality, permanent residence, or employment on a permanent basis.

5. This Chapter does not apply to measures affecting the provision of financial services as defined in paragraph 5 (a) of the Annex on Financial Services of the GATS.

(1) For greater certainty, the term "air services" includes traffic rights.

### **Article 3.3. Most-favored-nation Treatment**

1. Subject to Annex II (Limitations on 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 Services of a non-Party.
2. For greater certainty, treatment accorded in "like circumstances" under this Article shall depend on the totality of the circumstances, including whether the relevant treatment distinguishes between services and service providers on the basis of legitimate public welfare objectives.

### **Article 3.4. Access to Markets**

1. With regard to market access through the modes of supply identified in Article 3.1 (a) (Definitions), each Party shall accord to services and service suppliers of the other Party treatment no less favorable Than specified in its Schedule of Specific Commitments in Annex I (hereinafter "the List of Specific Commitments").
2. To the extent that a Party enters into a market access commitment in its Schedule of Specific Commitments and when the cross-border movement of capital forms an essential part of a service provided through the mode of supply referred to in the definition of " Services "of Article 3.1 (a) (i) (Definitions), that Party undertakes at the same time to permit such movement of capital. To the extent that a Party enters into a market access commitment in its Schedule of Specific Commitments, and when a service is provided through the mode of supply referred to in the definition of "trade in services" in Article 3.1 (a) (iii)) (Definitions), that Party undertakes at the same time to permit capital transfers related to its territory.
3. In sectors where market access commitments are entered into, measures that a Party shall not maintain or adopt, either on the basis of a regional subdivision or the whole of its territory, unless in its Schedule of Specific Commitments to the contrary, are defined as follows:
  - (A) limitations on the number of service providers, whether in the form of numerical quotas, monopolies or exclusive service providers or through the requirement of an economic needs test;
  - (B) limitations on the total value of the assets or service transactions in the form of numerical quotas or the requirement of an economic needs test;
  - (C) limitations on the total number of service operations or on the total amount of output of services, expressed in designated numerical units, in the form of quotas or by requiring an economic needs test; (2)
  - (D) limitations on the total number of natural persons that may be employed in a particular service sector or that a service provider may employ and which are necessary for the provision of a specific service and are directly related to it, in the form of numerical quotas Or by requiring an economic needs test; and
  - (E) measures restricting or prescribing the specific types of legal person or joint venture through which a service provider may provide a service.

(2) This subparagraph does not cover measures by a Party that limit inputs for the provision of services.

### **Article 3.5. National Treatment**

1. Subject to the conditions and limitations set out in its Schedule of Specific Undertakings, Peru shall accord to service providers of the other Party treatment no less favorable than that accorded, in similar circumstances, to its service providers.
2. Subject to the conditions and limitations set forth in its Schedule of Specific Commitments, Brazil shall accord to service providers of the other Party treatment no less favorable than that accorded to its own similar services and similar service providers.

### **Article 3.6. Additional Commitments**

The Parties may negotiate commitments with respect to measures affecting trade in services but not subject to entry in their

respective Schedules of Specific Commitments under Article 3.4 (Access to Markets) and Article 3.5 (National Treatment), Including those relating to qualifications, standards or issues related to licenses. These commitments shall be entered in the Schedules of Specific Commitments of the Parties.

### **Article 3.7. National Regulations**

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. While recognizing the right to regulate and introduce new regulations in the provision of services to meet policy objectives and in order to ensure that measures relating to qualification requirements and procedures, The licensing requirements:

(A) do not constitute unnecessary barriers to trade in services, each Party shall ensure, in those sectors in which it has undertaken specific commitments under the GATS, that such measures:

(i) are based on objective and transparent criteria, such as competence and ability to provide the service;

(ii) are not more burdensome than necessary to ensure the quality of the service;

(iii) in the case of licensing procedures, do not in themselves constitute a restriction on the provision of the service; and

(B) do not constitute a disguised restriction on trade in services, each Party shall ensure, in those sectors in which it has not made specific commitments under the GATS, that such measures:

(i) are based on objective and transparent criteria, such as competence and ability to provide the service;

(ii) do not constitute arbitrary or unjustifiable discrimination between service providers; and

(iii) in the case of licensing procedures, do not in themselves constitute a restriction on the provision of the service.

3. When a Party requires authorization for the provision of a service, it shall ensure that the competent authorities of that Party:

(A) within a reasonable time after the submission of an application considered complete in accordance with the laws and regulations of that Party, inform the applicant of the decision on his / her application;

(B) at the request of the applicant, provide, without undue delay, information concerning the status of the application.

(C) in accordance with the laws and regulations of that Party in the case of an incomplete application, at the request of the applicant, identify the additional information required to complete the application and provide the opportunity to remedy minor errors or omissions in the request;

(D) to the extent practicable, set indicative deadlines for processing an application;

(E) if an application is denied, inform the applicant, to the extent practicable, of the reasons for the denial, either directly or at the request of the applicant; Y

(F) to the extent practicable and in accordance with their domestic law, accept copies of documents that are authenticated, rather than original documents.

4. Each Party shall ensure that any fee charged by the competent authority to authorize the provision of a service is reasonable, transparent and does not in itself restrict the provision of such service. For the purposes of this paragraph, "rate" does not include payments for the use of natural resources, payments for auctions, bidding or other non-discriminatory means of granting concessions, or mandatory contributions for the provision of universal service.

5. If licensing or qualification requirements include an assessment, each Party shall endeavor to ensure that:

(A) the evaluation is scheduled at reasonable intervals; and

(B) a reasonable period of time allowing the persons concerned to submit a request to participate in the evaluation.

6. In determining whether a Party complies with the obligation set out in paragraph 2, the international standards of competent international organizations to which that Party applies shall be taken into account. "Competent international organizations" means international organizations to which the competent bodies of the Parties may belong.

7. The Parties may consult regularly to determine whether it is possible to remove remaining restrictions on nationality or

permanent residence relating to the licensing or certification of their respective service providers.

8. Each Party shall ensure that appropriate procedures exist to verify the competence of the professionals of the other Party.

9. The Parties shall review this Article taking into account progress in the negotiations under Article VI of the GATS, in order to integrate them into this Chapter.

10. The obligations set out in paragraphs 2, 3, 4, 5 and 8 shall apply subject to the terms, limitations and conditions of each Party's Schedule of Specific Commitments.

11. Pursuant to this Article, each Party shall take such reasonable measures as may be available to it to ensure observance by non-governmental institutions in its territory.

### **Article 3.8. Recognition**

1. For the purposes of compliance, in whole or in part, with its rules or criteria for the authorization or certification of service providers or licensing thereof, and subject to the requirements of paragraph 4, a Party May recognize the education or experience obtained, the requirements met, or the licenses or certificates granted in a non-Party. Such recognition, which may be effected through harmonization or otherwise, may be based on an agreement or agreement with the country concerned or may be granted autonomously.

2. Where a Party recognizes, autonomously or through an agreement or agreement, the education or experience obtained, the requirements met or the licenses or certifications granted in the territory of a non-Party, nothing in Article 3.3 (Treatment of Nation Most Favored) shall be construed as requiring the Party to accord such recognition to education or experience gained, requirements met or licenses or certificates issued in the territory of the other Party. 3

3. A Party which is party to an agreement or arrangement of the kind referred to in paragraph 1, existing or future, shall provide adequate opportunities to the other Party, if the other Party is interested, to negotiate its adherence to such agreement or Agreement or to negotiate with others comparable. Where a Party grants recognition autonomously, it shall provide the other Party with adequate opportunities to demonstrate that the education, experience, licenses or certifications obtained or requirements

Completed in the territory of that other Party shall be subject to recognition.

4. No Party shall accord recognition in a manner that constitutes a means of discrimination between countries in the application of its standards or criteria for the authorization or certification of service providers or licensing thereof, or a disguised restriction on trade of services.

### **Article 3.9. Transparency**

In addition to the provisions of Chapter 5 (Transparency):

(A) each Party shall publish or otherwise make available to the public any international agreements which it enters into with any country and which relate to or affect trade in services;

(B) at the request of a Party, the other Party shall inform the electronic publication of laws, regulations, procedures and administrative rulings of general application affecting trade in services covered by this Chapter;

(C) each Party shall establish or maintain adequate mechanisms to respond to consultations of interested persons regarding its regulations relating to the subject matter of this Chapter; (3)

(D) if one of the Parties does not publish in advance or give the opportunity to provide comments, in accordance with Article 5.1 (Publication), it shall, to the extent possible, provide, upon request, in writing, the reasons therefor;

(E) at the time of final regulations concerning the subject matter of this Chapter, each Party shall respond in writing, as far as possible, even on request, to substantive comments received from interested persons with respect to the proposed regulations; and

(F) to the extent possible, each Party shall give a reasonable period between the publication of definitive regulations and the date on which they enter into force.

(3) For the implementation of this provision, resource constraints may be taken into account.



## **Article 3.10. Payments and Transfers**

1. Each Party shall allow all transfers and payments related to its specific commitments to be made freely and without delay to and from its territory

2. Each Party shall allow all transfers and payments related to the supply of services are made in freely circulating currency at the exchange rate prevailing in the market at the time of transfer<sup>3</sup>

3 For the implementation of this provision, resource limitations may be taken into account.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay the making of a transfer or payment through the equitable, non-discriminatory and good faith application of its legislation in respect of:

(A) bankruptcy or bankruptcy, insolvency or protection of the rights of creditors;

(B) issuance, trading or trading in securities, futures, options or derivatives;

(C) financial reporting or record keeping of transfers where necessary to assist law enforcement or financial regulatory authorities;

(D) criminal or criminal offenses; or

(E) ensuring compliance with orders or rulings in judicial or administrative proceedings.

## **Article 3.11. Money Laundering and Anti-corruption**

Each Party may adopt or maintain measures and efforts to prevent and combat corruption and money laundering in relation to the matters covered by this Chapter and in accordance with its laws and regulations.

## **Article 3.12. Lists of Specific Commitments**

1. Each Party shall list its specific commitments under Articles 3.4 (Market Access), 3.5 (National Treatment) and 3.6 (Additional Commitments). With respect to the sectors in which such commitments are made, each Schedule shall specify:

(A) the terms, limitations and conditions on market access;

(B) national treatment conditions and qualifications;

(C) obligations relating to additional commitments;

(D) where appropriate, the time frame for the implementation of such commitments; and

(E) the date of entry into force of such commitments.

2. Measures inconsistent with Articles 3.4 (Market Access) and 3.5 (National Treatment) shall be recorded in the column corresponding to Article 3.4 (Market Access). In this case, the consignment shall also be considered to indicate a condition or qualification to Article 3.5 (National Treatment).

3. The Schedules of Specific Commitments of the Parties are set out in Annex I (List of Specific Commitments).

## **Article 3.13. Subsidies**

1. A Party which considers itself to be unfavorably affected by a subsidy or gift from the other Party may request consultations in that regard with that other Party. Such requests should be examined with understanding.

2. If the results of negotiations related to Article XV: 1 of the GATS or the results of any similar negotiations undertaken in other multilateral forums in which both Parties participate enter into force for both Parties, this Article shall be modified, as the case may be Necessary, after consultations between the Parties, to ensure that these results come into force in accordance with this Chapter.

## **Article 3.14. Denial of Benefits**

A Party may deny the benefits of this Chapter, upon notification and consultation, to service providers of the other Party if the service provider is:

(A) a legal person owned by, controlled directly or indirectly by, or under a significant degree of influence by, persons from a non-Party country and the legal person has no substantial business activities in the territory of the other Party; or

(B) a legal person owned by, controlled directly or indirectly by, or under a significant degree of influence by, persons of the denying Party and the legal person has no substantial business activities in the territory of the other Party.

## **Article 3.15. Future Negotiations**

1. Until one year after the entry into force of this Agreement, the Administrative Commission established by Article 6.1 (Administrative Commission) shall approve the work plan for:

(A) incorporation of the "negative lists" approach in this Chapter; and

(B) negotiation of the following topics:

(i) Financial Services; and

(ii) Electronic Commerce.

2. The negative list approach shall apply to Article 3.4 (Market Access), Article 3.5 (National Treatment) and any other provision agreed upon by the Parties.

3. The Parties shall, under this approach, improve conditions for trade in services between the Parties.

4. Negotiations for the negative list approach shall be completed within one year of the approval of the Work Plan referred to in paragraph 1.

5. During the negotiations, the Parties shall define whether the Financial Services and the services provided through commercial presence (mode 3) require any particular treatment.

6. One year after the entry into force of the Agreement, the Parties shall begin negotiations on, inter alia, the following topics:

(A) Telecommunications;

(B) Recognition of Degrees and Degrees;

(C) Ground Transportation; and

(D) Movement of Persons

## **Chapter 4. Public Procurement**

### **Article 4.1. Definitions**

For the purposes of this Chapter:

Notice of contract means a notice published by the contracting entity inviting the suppliers concerned to submit a request for participation, an offer or both;

Goods or commercial services means goods or services of the type generally sold or offered for sale in the commercial market to non-governmental purchasers and are normally acquired by non-governmental purchasers for non-governmental purposes;

For greater certainty, commercial goods or services include common goods or services, which are those where there is more than one supplier, have quality and performance standards objectively defined through usual market characteristics or specifications, or have been standardized as Resulting from a process of homogenization, so that the differentiating factor between them is the price at which they are traded.

Special compensatory terms means any condition or commitment that promotes local development or enhances a Party's balance of payments accounts, such as local content requirements, technology licenses, investment requirements, countervailing trade or similar requirements;

Conditions of participation means any registration, qualification or other prerequisites to participate in a public procurement;

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

Public works concession contracts means any contractual agreement whose main purpose is to provide for the construction or rehabilitation of physical infrastructure, plants, buildings, facilities or other public works, and according to which, in consideration of the execution of a contract of a supplier, an entity grants such supplier, for a specified period, temporary ownership or the right to control, operate and demand payment for the use of such works during the term of the contract;

Contracting entity means an entity listed in Annex 3 (Coverage Annex);

Written or written means any expression in words, numbers or other symbols, which can be read, reproduced and subsequently communicated. It can include information transmitted and stored electronically;

State enterprise means a company owned or controlled by a Party by means of domain rights;

Technical specification means a procurement requirement that:

(A) establish the characteristics of:

(i) the goods to be acquired, including quality, performance, safety and dimensions, or processes and methods for their production; or

(ii) services to be contracted or processes or methods for their provision, including any applicable administrative provisions; or

(B) understands the terminology, symbols, packaging, marking and

Labeling, as applied to a good or service;

(C) establish conformity assessment procedures as prescribed by an entity;

Technical standard means a document approved by a recognized body, which provides, for common and repeated use, rules, guidelines or characteristics for goods, or services or related processes and production methods, compliance with which is not mandatory. It may also include or refer exclusively to terminology, symbol, packaging, trademark or labeling requirements as they apply to a product, service, process or method of production;

Open tendering means a method of public procurement in which all interested suppliers may submit a tender;

Selective tendering means a method of public procurement where only suppliers who meet the conditions of participation are invited by the contracting entity to submit proposals;

Multi-use list means a list of suppliers which the contracting entity has determined to satisfy the conditions for participation in that list and which the contracting entity intends to use more than once;

Commodities include fruits, vegetables, farm products, bread and other perishable foods.

Supplier means a person who provides or could provide goods or services to a procuring entity;

Services include construction services, unless otherwise specified;

Construction service means a service whose objective is the realization, by any means, of a civil engineering or construction work, on the basis of the

Division 51 of the United Nations Central Product Classification (CPC Prov. 1.1); and

Electronic auction means an iterative process in which suppliers use electronic means to present new bids or prices, or new values for quantifiable bid elements other than the bid or price, or both, which are linked to the evaluation criteria, and Which results in a classification or reclassification of tenders.

## **Article 4.2. Scope and Coverage Scope of Application**

1. This Chapter applies to any action taken in respect of covered public procurement.

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

(A) not contracted for commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;

(B) performed through any contractual means, including: purchase, lease, with or without option to purchase, and concession contracts in public works;

(C) for which the value, as estimated in accordance with paragraphs 4 and 5, is equal to or exceeds the corresponding threshold value specified in Annex III (Coverage);

(D) which is carried out by a contracting entity; Y

(E) not expressly excluded from the coverage of this Chapter.

3. This Chapter does not apply to:

(A) the acquisition or lease of land, existing buildings or other immovable property or rights thereto;

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

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

(i) public indebtedness; or

(ii) administration of public debt;

(D) hiring of public employees and measures related to employment;

(E) contracting by a State entity or enterprise to another entity of the same Party;

(F) the contracting:

(i) for the specific purpose of providing international assistance, including development assistance; or

(ii) in accordance with a particular procedure or condition of an international agreement relating to:

(A) the establishment of troops; or

(B) the joint execution of a project by the contracting parties to that agreement;

(G) contracting financed by donations, loans or other forms of international assistance, when the applicable procedure or conditions are incompatible with the provisions of this Chapter; and

(H) contracting for the specific purpose of providing assistance abroad.

#### Assessment

4. When estimating the value of a procurement for the purpose of determining whether it is a covered procurement, a procuring entity:

(A) should not divide public procurement into separate public procurement, or use a particular method to estimate the value of public procurement for the purpose of evading the application of this Chapter;

(B) shall take into account all forms of remuneration, including premiums, fees, fees, commissions, interest, other revenue streams that may be stipulated in public procurement, and where public procurement stipulates the possibility of option clauses, Total maximum value of public procurement, including optional purchases; and

(C) shall, where public procurement is to be carried out in multiple parts and results in the award of contracts at the same time or in a given period to one or more suppliers, base its calculation on the total maximum value of public procurement During the whole period of its validity.

5. When the total maximum value of a public procurement throughout its entire duration is unknown, public procurement

will be covered by this Chapter.

6. No contracting entity may prepare, design, structure or divide public procurement, in order to evade the obligations of this Chapter.

### **Article 4.3. 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 security interests, such as the acquisition of arms, ammunition or War material, or any other contracting indispensable for national defense or national security.

2. Provided that the following measures are not applied in a discriminatory manner or constitute a disguised restriction on trade, no provision of this Chapter shall be construed to prevent a Party from adopting or maintaining measures:

(A) necessary to protect public morals, order or security;

(B) necessary to protect human, animal or plant life or health, including the respective environmental measures;

(C) necessary to protect intellectual property; or

(D) related to the goods or services of persons with disabilities, charities or prison labor.

### **Article 4.4. General Principles**

1. Nothing in this Chapter shall prevent a Party from developing new procurement policies, procedures or contractual arrangements, provided they are compatible with this Chapter.

#### **National Treatment and Non-Discrimination**

2. With respect to any measure covered by this Chapter, each Party shall immediately and unconditionally grant the goods and services of the other Party and the suppliers of the other Party offering such goods or services, a treatment no less

Favorable treatment accorded by that Party to its own goods, services and suppliers offering such goods and services.

3. With respect to any measure covered by this Chapter, a Party, including its contracting entities, may not:

(A) treat a locally established supplier less favorably than another locally established supplier, by reason of its degree of affiliation or foreign ownership; or

(B) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for procurement are goods or services of the other Party.

#### **Measures not specific to public procurement**

4. Paragraphs 2 and 3 shall not apply to customs duties and charges of any kind imposed on or related to importation; To the method of collection of said rights and charges; Other import regulations or formalities; Or to measures affecting trade in services, other than measures governing covered public procurement.

#### **Use of Electronic Media**

5. Where covered public procurement is carried out by electronic means, a contracting entity shall:

(A) to ensure that public procurement is carried out using information technology systems and software, including those related to authentication and cryptographic coding of information, which are generally accessible and compatible with other information technology systems And generally accessible computer programs; and

(B) maintain mechanisms to ensure the integrity of requests for participation and offers, as well as determining the timing of receipt of such documents and preventing inappropriate access.

#### **Execution of the Contract**

6. A contracting entity shall carry out covered procurement in a transparent and impartial manner, in a manner consistent with this Chapter, avoid conflicts of interest and prevent corrupt practices.

#### **Rules of Origin**

7. Each Party shall apply to covered public procurement of goods the rules of origin which it applies in the normal course of trade in such goods. For the sake of clarity, it is understood as rules of origin which apply in the normal course of trade non-preferential rules of origin, in accordance with Article 1.2 of the WTO Agreement on Rules of Origin.

#### Denial of Benefits

8. A Party may deny benefits under this Agreement, upon notification and consultation, to service providers of the other Party if the service provider:

(A) is a person who does not conduct substantive business operations in the territory of the other Party; or

(B) supplies the service from or in the territory of a non-Party.

9. For the sake of clarity, "substantive business operations" means that the legal entity meets the following criteria:

(A) pays taxes on profits in one of the Parties (or is exempt by law from the payment of such taxes); and

(B) owns or rents commercial premises and employs personnel commensurate with the scope and scale of its business in one of the Parties.

### **Article 4.5. Publication of Information on Government Procurement**

1. Each Party shall publish in a timely manner its generally applicable measures specifically governing public procurement covered by this Chapter, as well as any modification to such measures in the same manner as the original publication on an electronic medium listed in Annex III (Coverage).

2. Each Party shall, upon request, furnish to the other Party an explanation of such information.

### **Article 4.6. Electronic Auctions**

1. Where a procuring entity intends to conduct a covered procurement by means of an electronic auction, the procuring entity shall provide each participant, before the electronic auction begins, with the following information:

(A) the automatic assessment method, which is based on the evaluation criteria established in the contracting documents and which will be used in the automatic classification or reclassification during the auction;

(B) the results of any initial evaluation of the elements of its offer when the contract is awarded on the basis of the most advantageous tender; and

(C) any other relevant information on the conduct of the auction.

### **Article 4.7. Publication of Notices**

1. For each procurement covered by this Chapter, a procuring entity shall publish in advance a notice inviting interested suppliers to submit tenders for such procurement, or, where applicable, requests to participate in procurement, with the exception of Provided in Article 4.12. Notices shall be electronically accessible at no cost for the entire period set for the submission of bids for the corresponding procurement.

2. Each public procurement notice shall include at least the following information:

(A) a description of public procurement;

(B) the contracting method to be used;

(C) any condition that suppliers must satisfy in public procurement;

(D) the name of the entity issuing the notice;

(E) the address and / or contact point where suppliers can obtain all relevant documentation relating to public procurement;

(F) the address and final date for the submission of bids;

(G) the dates of delivery of the goods or services to be contracted or the duration of the contract, unless this information is included in the contracting documents; and

(H) an indication that public procurement is covered by this Chapter.

#### Notice of Contracting Plans

3. Each Party shall publish, on an electronic medium listed in Annex III (Coverage), as soon as possible in each fiscal year, a notice regarding its future contracting plans. Such notices shall include the object or category of goods and services to be contracted and the estimated period in which the procurement will take place.

### **Article 4.8. Terms of Participation**

1. Where a Party requires suppliers to comply with registration, qualification or other requirements or conditions of participation in a procurement, the procuring entity shall publish a notice inviting suppliers to apply for such participation. The contracting entity shall publish the notice sufficiently in advance to allow sufficient time for the interested parties to prepare and submit their applications and for the contracting entity to evaluate and make its determinations on the basis of such requests.

2. When establishing the conditions for participation, a contracting entity:

(A) shall limit these conditions to those which are essential to ensure that the supplier has the legal and financial capacities and the commercial and technical skills to comply with the requirements and technical specifications of public procurement on the basis of commercial activities Of the supplier made both inside and outside the territory of the Party of the contracting entity;

(B) shall base its decision only on such conditions as the contracting entity has specified in advance in the procurement notices or documents;

(C) shall not impose as a condition that, for a supplier to participate in a procurement or a contract to be awarded, that the supplier has previously been awarded one or more contracts by a contracting entity of the Party concerned;

(D) may require relevant prior experience when essential to meet procurement requirements; Y

(E) shall allow all national suppliers and suppliers of the other Party who have fulfilled the conditions of participation to participate in public procurement.

3. Where there is evidence to support it, a Party, including its contracting entities, may exclude a supplier from public procurement on grounds such as:

(A) bankruptcy;

(B) false statements;

(C) significant or persistent deficiencies in the performance of any

Substantive requirement or obligation arising from one or more previous contracts;

(D) Final sentences for serious offenses or other serious offenses;

(E) lack of professional ethics or acts or omissions that call into question the commercial integrity of the supplier; Or not paying taxes

4. Contracting entities shall not adopt or apply a registration system or rating procedure with the purpose or effect of creating unnecessary obstacles to the participation of suppliers of the other Party in their respective public procurement.

5. The process of, and the time required for, the registration and qualification of the suppliers shall not be used to exclude suppliers of the other Party from being considered for a particular procurement.

6. Entities may establish publicly available permanent lists of qualified suppliers to participate in public procurement. Where an entity requires suppliers to qualify on that list as a condition of participation in a procurement, and a supplier who has not yet qualified requests to be included in the list, the Parties shall ensure that the procedure for entry on the list is initiated without delay And shall allow the supplier to participate in public procurement provided that the qualification procedures can be completed within the time limit set for the submission of tenders.

7. A procuring entity shall promptly inform any supplier it has applied for qualification regarding its decision with respect to that request. Where a contracting entity rejects a qualification request or fails to recognize a supplier as one that fulfills the conditions for participation, the contracting entity shall inform the supplier and, on request, without delay, in writing, of the

reasons for the request. Decision of the entity.

#### Registration and Qualification Process Multi-purpose List

8. Parties whose entities use lists or permanent records of qualified suppliers shall ensure that:

(A) suppliers of the other Party may request their registration, qualification or rating under the same conditions as national suppliers;

(B) all suppliers who so request are included in such lists or records without undue delay; Y

(C) all suppliers included in the lists or records are notified of the temporary suspension or cancellation of those lists or records or of their removal from them.

9. When the inclusion in a list or register of suppliers is required, the objective should be no other than the accreditation of the suitability to contract with the State, without hindering the entry of interested parties of the other Party.

10. A procuring entity may establish a multi-use list whenever the entity publishes annually or otherwise continuously makes available in electronic form a notice inviting interested suppliers to request their inclusion in the list.

11. The notice must include:

(A) a description of the goods or services that may be contracted through the list;

(B) the conditions of participation that suppliers must satisfy and the methods that the procuring entity will use to verify that suppliers have met such conditions;

(C) the name and address of the contracting entity and any other information necessary to contact the entity and obtain all relevant documents related to the list;

(D) any deadline for the submission of requests for inclusion on the list; and

(E) an indication that the list may be used for public procurement covered by this Chapter.

12. A contracting entity maintaining a multi-use list shall: (a) include in the list, within a reasonably short period of time following the submission of an application, all suppliers who have met the conditions for participation; And (b) when the entity uses the multi-use list in any future procurement, invite all suppliers on the list to submit bids.

## **Article 4.9. Contracting Documents**

1. A procuring entity shall provide, in a timely manner, to suppliers interested in participating in procurement, procurement documents containing all the information necessary to enable them to prepare and submit appropriate tenders. These documents will be published in an electronic medium listed in Annex III (Coverage).

2. Unless the procurement notice has included this information, the procurement documents shall include at least a complete description of the following:

(A) The nature and quantity of goods or services to be contracted, or, if the quantity is not known, the estimated amount and any compliance requirements, including technical specifications, conformity assessment certificates, plans, designs or instruction manuals;

(B) the conditions of participation of suppliers, including information and documents that suppliers must submit in relation to those conditions;

(C) the evaluation criteria to be considered in the award of a contract and, unless the price is the sole criterion, the relative importance of such criteria;

(D) where an entity conducts an electronic auction, the rules applicable to the auction, including the identification of the elements of the bid related to the evaluation criteria;

(E) the date, time and place of the opening of tenders;

(F) any other term or condition, such as terms of payment and the manner in which tenders will be submitted; and

(G) the date or period for the delivery of the goods or for the provision of the services or the duration of the contract.



3. Where an entity does not publish all procurement documents by electronic means, it shall ensure that they are available to any supplier who requests them.

4. Where, in the course of a covered procurement contract, a contracting entity changes the criteria or technical requirements set out in a procurement notice or document provided to the participating suppliers, or amends a procurement notice or document, written:

(A) all suppliers who are participating at the time of modification of the information, if the identification of such suppliers is known, and in all other cases, in the same way as the original information was transmitted; and

(B) in sufficient time to allow suppliers to modify and resubmit corrected bids, as appropriate.

#### Technical specifications

5. A contracting entity shall not prepare, adopt or apply any technical specification or require any conformity assessment procedure with the purpose or effect of creating unnecessary obstacles to trade between the Parties.

6. In establishing any technical specification for the goods or services to be contracted by a contracting entity, the technical specification shall, where appropriate:

(A) be specified in terms of performance and functional requirements, rather than descriptive or design features; and

(B) be based on international technical standards, where applicable, or otherwise, in national technical regulations, recognized national technical standards, or in building codes.

7. A contracting entity shall not establish 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 Describe the requirements of public procurement, and provided that, in such cases, expressions such as "or equivalent" are also included in the procurement documents.

8. A procuring entity shall not solicit or accept, in a manner that would have the effect of preventing competition, advice that could be used to prepare or adopt any technical specification for specific procurement from any person who may have a commercial interest therein. Public procurement.

9. For greater certainty, this Article is not intended to prevent a procuring entity from preparing, adopting or applying technical specifications to promote the conservation of natural resources or to protect the environment.

### **Article 4.10. Deadlines**

1. A procuring entity shall provide sufficient time for suppliers to submit applications for participation in a procurement and to prepare and submit tenders, taking into account the nature and complexity of procurement.

2. Except as provided in paragraphs 3, 4 and 5, a procuring entity shall provide that the deadline for the submission of tenders shall not be less than 40 days:

(A) from the date of publication of the notice of future engagement; or

(B) where the contracting entity makes use of a selective tender, from the date on which the entity invites suppliers to submit tenders.

3. A contracting entity may reduce the deadline for submitting bids up to 10 days when the entity publishes a notice of future engagement in accordance with Article 4.7.3 (Publication of Notices) in an electronic medium.

4. A procuring entity may set a time limit of less than 40 days, or 30 days where an entity has complied with paragraph 3, provided that the time limit given to suppliers is sufficient for the procuring entity to prepare and submit its offers, and In no case may be less than 10 days before the deadline for the submission of tenders when:

(A) the contracting entity has issued a separate notice, including the public procurement notice planned under Article 4.7.3 (Publication of Notices) at least 40 days and not more than 12 months in advance, and such separate notice Contain a description of government procurement, where appropriate, applications for participation in a procurement, and the address where procurement documentation can be obtained; or

(B) the procuring entity purchases commercial goods or services; or

(C) an unforeseen emergency situation duly justified by the contracting entity, render impracticable compliance with the

time limit stipulated in paragraph 2, or where applicable, paragraph 3.

5. A procuring entity shall require all participating suppliers to submit their bids in accordance with a common deadline. For greater certainty, this requirement also applies when:

(A) as a result of the need to amend the information provided to suppliers during the procurement process, the contracting entity extends the deadline for qualification or tendering procedures; or

(B) in the case of negotiations, these negotiations will be concluded and the bidders may submit new bids.

## **Article 4.11. Negotiations**

1. A Party may provide that its contracting entities conduct negotiations:

(A) in the context of a public procurement where such intention has been indicated in the notice of public procurement; and

(B) when it appears from the evaluation made that no offer is obviously the most advantageous in terms of the specific evaluation criteria set out in the notices or in recruitment documents.

2. A contracting entity shall ensure that any elimination of suppliers participating in the negotiations is carried out in accordance with the evaluation criteria set out in the procurement notices and documents.

## **Article 4.12. Procurement Procedures Open Tender**

1. Contracting entities shall award contracts through open tendering procedures, in the course of which any interested supplier may submit a tender.

### **Selective Bidding**

2. Where the legislation of a Party allows for selective tendering, an entity shall, for each procurement:

(A) publish a notice inviting suppliers to submit requests for participation in procurement sufficiently in advance for interested suppliers to prepare and submit applications and for the entity to evaluate and make its determination based on such requests; and

(B) allow all domestic suppliers and all suppliers of the other Party that the entity has determined that they comply with the terms of participation to submit an offer, unless the entity has established in the notice or in the procurement documents publicly any condition that impedes the participation of all qualified suppliers, provided it is consistent with the provisions of this Chapter, and the criteria for that limitation.

3. Entities holding multi-use lists of qualified suppliers may select suppliers from such lists, who will be invited to submit tenders. Any selection should offer fair opportunities to suppliers included in such lists

### **Other Procurement Procedures**

4. Whenever this provision is not used to prevent competition between suppliers or in a manner that discriminates against suppliers of the other Party, or protects domestic suppliers, a contracting entity may use other procurement procedures only in Following circumstances:

(A) provided that the requirements of the procurement documents are not substantially modified, where:

(i) no offer has been submitted or no supplier has requested to participate;

(ii) no offer meeting the essential requirements of the bidding documents was submitted or the bids submitted were inadmissible;

(iii) no supplier complied with the terms of participation; or

(iv) there has been collusion in the submission of bids;

(B) where the goods or services may be supplied only by a particular supplier and there is no reasonable alternative or substitute service for any of the following reasons:

(i) the requirement is for the performance or restoration of a work of art;

(ii) the protection of patents, copyrights or other exclusive intellectual property rights; or

(iii) due to lack of competition for technical reasons; As in the case of contracting services *intuitu personae*;

(C) for deliveries or additional services from the initial supplier of goods or services that were not included in the initial public procurement, where the change of supplier of such additional goods or services:

(i) can not be made for economic or technical reasons such as requirements for interchangeability or compatibility with existing equipment, software, services or facilities subject to initial contracting; Y

(ii) would cause significant drawbacks or substantial duplication of costs for the contracting entity,

In the case of construction services, the total value of contracts awarded for such additional services shall not exceed 50 per cent of the initial contract amount, provided that such services have been included in the objectives contained in the contracting documents and Have become necessary to complete the work due to unforeseen reasons;

(D) to the extent strictly necessary, where for reasons of extreme urgency occasioned by unforeseen events for the contracting entity, goods or services can not be obtained on time through open tendering, or as appropriate, selective tendering, and Use of such procedures could result in serious prejudice to the contracting entity;

(E) for purchases of goods made in a commodity or commodity market;

(F) where a procuring entity acquires a first good in a limited quantity, or a prototype, or contracts a service that is developed upon request in the course of, and for, a particular original research, experiment, study or development contract, including Inputs for this; or

(G) where a contract is awarded to the winner of a design competition, provided that:

(i) the competition has been organized in a manner consistent with the principles of this Chapter, in particular with respect to the publication of the notice of public procurement; and

(ii) the participants are qualified or evaluated by a jury or independent body with a view to the conclusion of a design contract awarded to a winner.

(H) in the contracting of work, service or supply, as a consequence of contractual resolution, provided that the order of priority of the original tender is respected;

5. A procuring entity shall maintain records or prepare a written report for each contract awarded in accordance with paragraph 2, consistent with Article 4.14.2 (Transparency of Public Procurement Information). Where a Party prepares written reports in accordance with this paragraph, they shall include the name of the contracting entity, the value and nature of the goods or services contracted and a justification indicating the circumstances and conditions described in paragraph 2 that justify the use of others Recruitment procedures. When a Party maintains records, the Parties shall indicate the circumstances and conditions described in paragraph 2 that justify the use of other procurement procedures.

## **Article 4.13. Opening of Bids and Award of Contracts**

1. A procuring entity shall receive and open all bids under procedures that guarantee equality and impartiality between the suppliers of the Parties in the public procurement process and shall treat bids confidentially, at least until the bids are opened.

2. Where a procuring entity provides suppliers with an opportunity to rectify any inadvertent error of form between the period of opening of tenders and the award of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

### **Contract Awarding**

3. A contracting entity shall require that, for the purpose of being considered for an award, the tender:

(A) is presented in writing, by a supplier who meets all the terms of participation; and

(B) at the time of opening, shall be in accordance with the essential requirements specified in the procurement notices and documents.

4. Unless a contracting entity determines that the award of a contract is contrary to the public interest, the procuring entity shall award the contract

To the supplier that the contracting entity has determined fulfills the conditions of participation and is fully capable of

complying with the contract and whose offer is considered the most advantageous based solely on the requirements and evaluation criteria specified in the notices and documents of Contracting, or when the price is the only evaluation criterion, the lowest price.

5. Where 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 it satisfies the conditions for participation and if it has the capacity to comply with contract.

6. A contracting entity may not cancel a procurement, or terminate or modify a contract that has been awarded in order to evade the obligations of this Chapter.

#### **Article 4.14. Transparency of Public Procurement Information Information to Be Provided to Suppliers**

1. A procuring entity shall promptly inform the participating suppliers of its decision on the award of a contract and shall, upon request, do so in writing. Subject to Article 4.7 (Publication of Notices), a procuring entity shall, upon request, provide the supplier whose offer has not been chosen, the reasons for that decision and the relative advantages of the winning bid.

##### **Publication of Award Information**

2. As soon as practicable after an award, a contracting entity shall publish in an electronic medium listed in Annex III (Coverage) a notice containing at least the following information on the award of the contract:

- (A) the name of the contracting entity;
- (B) a description of the goods or services contracted;
- (C) the date of 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 public procurement procedures related to covered public procurement, including the reports referred to in Article 4.12 (Procurement Procedures) and shall maintain

Such reports or records for a period of at least five years after the date of award of a contract.

#### **Article 4.15. Disclosure of Information**

1. At the request of a Party, the other Party shall provide in a timely manner the information necessary to determine whether a procurement has been conducted fairly, impartially and in accordance with this Chapter. This information will include information about the characteristics and relative advantages of the winning bid. In cases where disclosure of information may prejudice competition in future bids, the Party receiving the information shall not disclose it to any supplier, except if the other Party agrees.

##### **No Disclosure of information**

2. No Party, including its contracting entities, authorities or review bodies, may disclose information that the person providing it has designated as confidential, in accordance with its national law, unless such person is authorized. Notwithstanding any other provision of this Chapter, no Party, including its contracting entities, shall provide to any particular supplier any particular information that may prejudice fair competition between suppliers.

3. No provision in this Chapter shall be construed to require a Party, including its contracting entities, reviewing authorities to disclose confidential information under this Chapter, if such disclosure would:

- (A) prevent compliance with the law;
- (B) impairing fair competition between suppliers;
- (C) prejudice legitimate private commercial interests, including protection of intellectual property; or
- (D) otherwise be contrary to the public interest.

## **Article 4.16. Challenging Procedures**

1. Each Party shall ensure that its contracting entities consider, in an impartial and timely manner, any claim by their suppliers with respect to an allegation of non-compliance with this Chapter arising in the context of covered public procurement in which they have or have had an interest. Each Party shall encourage its suppliers to seek clarification from their contracting entities through consultations with a view to facilitating the resolution of any such claim.

2. Each Party shall provide for a timely, effective, transparent and non-discriminatory administrative or judicial review procedure, in accordance with

With the principle of due process, through which a supplier may file an appeal alleging a breach of this Chapter that arises in the context of covered public contracts in which the supplier has or has had interest.

3. Each Party shall establish or maintain at least one impartial administrative or judicial authority, independent of its contracting entities, to receive and review a challenge by a supplier within a covered public procurement, and issue relevant decisions and recommendations.

4. Where an entity other than the authority referred to in paragraph 3 initially reviews a challenge, the Party shall ensure that the provider is able to appeal the initial decision to an impartial administrative or judicial authority which is independent of the contracting entity whose Hiring is the subject of the challenge.

5. Without prejudice to other dispute procedures provided or developed by each Party, each Party shall ensure that the authority established or designated in accordance with paragraph 3 has at least the following:

(A) a sufficient period for the supplier to prepare and present written challenges, which, in no case, shall be less than 10 days, from the moment the act or omission in which the objection was challenged was known by the supplier or reasonably should have been known by him;

(B) prompt and written delivery of the decisions related to the challenge, with an explanation of the basis of each decision.

6. Each Party shall adopt or maintain procedures to establish:

(A) prompt interim measures to preserve the ability of the supplier to participate in public procurement, which are applied by the contracting entity or by the impartial authority referred to in paragraph 3. Such measures may have the effect of suspending the procurement process. The procedures may provide for the possibility of taking into account the predominant adverse consequences for the interests concerned, including the public interest, in deciding whether to apply those measures. The reason for not adopting such measures shall be stated in writing; and

(B) where a review body has determined a breach referred to in paragraph 2, remedial action or compensation for loss or damage suffered, in accordance with the national legislation of each Party.

## **Article 4.17. Modifications and Rectifications of Coverage**

1. When a Party modifies its public 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 amendment.

2. Notwithstanding sub-paragraph 1 (b), a Party shall not need to grant compensatory adjustments where:

(A) the amendment in question is a minor amendment or a purely formal rectification; or

(B) the proposed amendment covers an entity over which the Party has effectively eliminated its control or influence.

3. If the other Party does not agree that:

(A) a proposed adjustment under the scope of paragraph 1 (b) is adequate to maintain a level comparable to mutually agreed coverage;

(B) the proposed amendment is a minor amendment or rectification under paragraph 2 (a); or

(C) the proposed amendment covers an entity over which the Party has effectively eliminated its control or influence under the scope of paragraph 2 (b);

Shall object in writing within 30 days of receipt of the notice referred to in paragraph 1 or shall be deemed to have reached an agreement on the proposed change or modification, including for the purpose of the dispute settlement mechanism provided for in this Chapter.

4. Where the Parties agree on a proposed amendment, rectification or amendment, including where a Party has not objected within 30 days in accordance with paragraph 3, the Parties shall give effect to the agreement by immediately amending Annex III (Coverage), Through a decision adopted by the Committee.

#### **Article 4.18. Integrity In Public Procurement Practices**

Each Party shall establish or maintain procedures to declare ineligibility to participate in public procurements by the Party, either indefinitely or for an established period, of suppliers that the Party determines to have engaged in illegal or fraudulent activities related to public procurement. Upon request by the other Party, the receiving Party shall identify the suppliers determined to be ineligible under these procedures and, where appropriate, exchange information with respect to such suppliers or to fraudulent or illegal activity.

#### **Article 4.19. Future Negotiations**

1. At the request of a Party, the other Party may consider additional negotiations with a view to expanding the scope and coverage of this Chapter. If, as a consequence of these negotiations, the Parties agree to amend Annex III (Coverage), the result will be submitted to the Public Procurement Committee established in Article 4.21 (Cooperation) for its implementation.

2. Upon the entry into force of this Agreement, both Parties shall enter into consultations with a view to expanding the list of entities at the central (federal) level of government and their respective related agencies (Section A), subcentral (sub-federal) (Section B), as well as other entities (Section C), as part of each Party's market access offer for procurement.

3. The Parties shall conclude such consultations no later than two years after the date of entry into force of this Agreement and shall notify the other Party of the results of those consultations.

4. The incorporation of new entities at the central level of government, its related agencies (Section A), the sub-federal level of government (Section B), and other government entities (Section C), will require the agreement of The Parties by decision of the Public Procurement Committee, subject to negotiation between the Parties, in accordance with the provisions of this Article.

#### **Article 4.20. Facilitating the Participation of Micro, Small and Medium Enterprises (msmes)**

1. The Parties recognize the important contribution that micro, small and medium-sized enterprises (SMMEs) can make to economic growth and employment and the importance of facilitating their participation in public procurement.

2. The Parties also recognize the importance of business partnerships between suppliers of the Parties and in particular of MSMEs, including joint participation in procurement procedures.

3. When a Party maintains measures offering preferential treatment for its MSMEs, it shall ensure that such measures, including eligibility criteria, are objective and transparent.

4. The Parties may:

(A) provide information regarding its measures used to assist, promote, encourage or facilitate the participation of MSMEs in public procurement; and

(B) cooperate in the development of mechanisms to provide information to MSMEs on the means to participate in public procurement covered by this Chapter.

5. The Parties agree to exchange information and work together to facilitate the access of MSMEs to contractual procurement procedures, methods and requirements, focusing on their special needs.

6. To facilitate the participation of MSMEs in covered public procurement, each Party shall:

(A) provide information related to public procurement, including a definition of MSMEs in an electronic portal;

- (B) ensure that procurement documents are available for free;
- (C) identify MSMEs interested in becoming business partners of other companies in the territory of the other Parties;
- (D) develop databases on MSMEs on the territory of each Party for use by entities of other Parties; and
- (E) undertake other activities aimed at facilitating the participation of MSMEs in public procurement covered by this Chapter.

## **Article 4.21. Cooperation**

1. The Parties recognize the importance of cooperation as a way to achieve a better understanding of their respective public procurement systems, as well as better access to their respective markets, in particular for MSMEs.
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 in access to the public procurement market; and
  - (D) institutional strengthening for compliance with the provisions of this Chapter, including training or training of public officials.
3. The Parties shall notify the Committee of any cooperation activities.

## **Article 4.22. Committee on Government Procurement**

1. The Parties hereby establish a Joint Committee on Government Procurement (hereinafter the Joint Committee), composed of representatives of both Parties.
2. Unless otherwise agreed by the Parties, the Committee shall meet at least once a year, on the date, place and according to the agenda previously agreed upon by the Parties.
3. The functions of the Committee shall include:
  - (A) to monitor and evaluate the implementation and administration of this Chapter, including its use and recommend to the Parties the corresponding activities;
  - (B) assess and follow up on cooperative activities submitted by Parties;
  - (C) address any other matter relating to this Chapter;
  - (D) consider conducting additional negotiations with the aim of expanding the coverage of this Chapter;
  - (E) to make efforts to promote the participation of enterprises of both Parties through a better understanding of the respective public procurement systems, as well as to promote access to public procurement opportunities, especially for SME suppliers.
4. The Parties may establish ad hoc working groups, which shall meet jointly or separately from the Committee.
5. Meetings may be held by any means agreed upon by the Parties. When present, they shall be held alternately in the territory of each Party, and it shall be the responsibility of the Party hosting the meeting. The first meeting of the Committee shall be held not later than one year after the date of entry into force of this Chapter.
6. Unless otherwise agreed by the Parties, the Committee shall be of a permanent nature and shall draw up its rules of procedure.

# **Chapter 5. Transparency**

## **Article 5.1. Definition**

For the purposes of this Chapter, administrative resolution of general application means an administrative resolution or interpretation that applies to all persons and situations that generally fall within its scope and that establishes a norm of conduct, but does not include:

(A) a determination or resolution made in an administrative proceeding that applies to a particular person, commodity or service of either Party in a specific case, or

(B) a decision which decides with respect to a particular act or practice.

## **Article 5.2. Publication**

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application relating to any matter covered by this Agreement are published promptly or otherwise are made available in a manner that allows interested persons and the Knowledge of them.

2. To the extent possible, each Party shall:

(A) publish any measure referred to in paragraph 1 that it proposes to adopt; and

(B) provide the interested persons and the other Party with a reasonable opportunity to comment on those proposed measures.

## **Article 5.3. Provision of Information**

1. At the request of a Party, the other Party shall provide information as soon as possible and shall answer questions relating to its existing laws, regulations, procedures and administrative rulings of general application and, as far as possible, Relating to any matter covered by this Agreement.

2. The provision of the information referred to in this Article shall be without prejudice to whether or not the measure is considered compatible with this Agreement.

3. The information referred to in this Article may be considered supplied when it has been made available on an official, free and publicly accessible website.

## **Article 5.4. Administrative Procedures**

Each Party shall ensure, in its administrative procedures in which measures relating to any matter covered by this Agreement are applied:

(A) to provide, where possible, to persons of the other Party directly affected by such proceedings when a reasonable notice has been given, including:

(i) a description of the nature of the procedure,

(ii) the presentation of the legal basis under which the procedure is initiated, and

(iii) a general description of any matter in dispute;

(B) where the time, nature of the proceedings 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 its legislation.

## **Article 5.5. Review and Appeal**

1. Each Party shall establish or maintain, in accordance with its legal system, courts or judicial or administrative proceedings for the purpose of review and, where appropriate, the correction of final administrative actions related to the matters covered by this Agreement. When such procedures are carried out by the same entity responsible for the administrative decision in question, the Party shall ensure an objective and impartial review of that decision.

2. Each Party shall ensure that, before such tribunals or in such proceedings, the parties to the proceedings are entitled to:

(A) a reasonable opportunity to support or defend their respective claims; and

(B) a decision based on evidence and arguments or, where required by national law, in the file compiled by the administrative authority.

3. Each Party shall ensure that, subject to appeal or subsequent review in accordance with its domestic law, such decisions



shall be implemented by its agencies or authorities.

## **Article 5.6. Relationship with other Chapters**

In case of incompatibility between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the incompatibility.

# **Chapter 6. Administration of the Agreement**

## **Article 6.1. Administrative Commission**

1. The Parties hereby establish an Administrative Commission (hereinafter referred to as the Commission) composed of the Minister of Foreign Trade and Tourism of Peru and the Minister of Foreign Affairs of Brazil, or their respective successors or designees.

2. The Commission shall:

(A) establish its rules and procedures;

(B) supervise the implementation and application of this Agreement, as well as evaluate its results;

(C) to ensure compliance with the work and, if necessary, to recommend the actions of the committees established in accordance with the chapters of this Agreement, respecting their specific responsibilities;

(D) adopt the Model Rules of Procedure referred to in Article 7.8.1 (Rules of Procedure);

(E) develop and approve the code of conduct for panelists;

(F) establish the amount of remuneration and expenses that will be paid to the panelists; and

(G) consider any other matter relating to the operation of this Agreement, or to be entrusted to it by the Parties.

3. The Commission may:

(A) consider and adopt any amendment or amendment to this Agreement, in accordance with the applicable legal procedures of each Party;

(B) issue interpretations of the provisions of this Agreement;

(C) amend or modify, where necessary, the Model Rules of Procedure referred to in Article 7.8.1 (Rules of Procedure);

(D) to establish working groups to deal with aspects not foreseen in the terms of reference of the Committees, to supervise them and, if necessary, to recommend corresponding actions; or

(E) take any other action in the exercise of its functions, subject to the agreement of the Parties.

Four.

All decisions of the Commission shall be taken by consensus.

5. The Commission shall meet at least once a year in regular session and, subject to the agreement of the Parties, in extraordinary sessions. Sessions shall take place alternately in the territory of each Party, or through any technological means available to the Parties.

## **Article 6.2. Agreement Coordinators**

1. To facilitate communications between the Parties, each Party shall designate a Coordinator of the Agreement and shall communicate such designation to the other Party within 90 days of the date of entry into force of this Agreement.

2. Any information, request or notification shall be communicated to the other Party through the coordinator, unless otherwise agreed by the Parties. For greater certainty, the provisions of this article are without prejudice to the attributions of the Focal Point provided for in the chapter on Investments and Committees.

3. The Coordinators of the Agreement:

(A) work jointly on the preparation of agendas and other preparations for the meetings of the Commission and follow up on the decisions of the Commission;

(B) provide administrative support to panels established pursuant to Chapter 7 (Dispute Settlement).

4. Each Party shall be responsible for the operation and costs of its designated Coordinator.

## **Chapter 7. Settlement of Disputes**

### **Article 7.1. Scope of Application**

1. Except as otherwise provided in this Agreement, this Chapter applies to the prevention or settlement of all disputes between the Parties relating to the interpretation or application of this Agreement or where a Party considers that:

(A) a measure of the other Party is inconsistent with its obligations under this Agreement; or

(B) the other Party has in any way failed to comply with its obligations under this Agreement.

2. This Chapter does not apply to Chapter 2 (Investment).

### **Article 7.2. 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 and consultation to reach a mutually satisfactory solution to any matter that may affect its operation.

### **Article 7.3. Choice of Forum**

1. In the event of a dispute arising under this Agreement and pursuant to another trade agreement of which both Parties are a party, the complaining Party may choose the forum to settle the dispute.

2. Unless the Parties agree otherwise, once the complaining Party has requested the establishment of a panel under one of the agreements referred to in paragraph 1, the selected forum shall be exclusive of the others in respect of that subject.

### **Article 7.4. Consultation**

1. A Party may request in writing from the other Party consultations regarding any measure referred to in Article 7.2 (Scope)

2. The requesting Party shall deliver the request to the other Party and shall state in its request the reasons therefor, including the identification of the measure or other matter in question and an indication of the legal and factual grounds of the claim.

3. The Party receiving the request will respond in writing within 10 days from the date of receipt of the request.

4. The Parties shall consult within:

(A) 30 days after the date of receipt of the request for consultations; or

(B) such other period as the Parties may agree.

5. The Parties shall make every effort to reach a mutually satisfactory resolution of any matter through consultations under this Article or other provisions relating to consultations of this Agreement.

6. The Parties shall make every effort to provide each other with the information requested during the consultations and, at the request of the other party, to participate in the personal consultations of their governmental agencies or other regulatory entities with competence in the subject matter of the consultation. To reach a mutually satisfactory solution to the subject matter of the dispute.

7. Consultations may be conducted in person or by any technological means available to the Parties. Unless otherwise agreed by the Parties, consultations shall be held in the capital of the Party consulted.

8. In a consultation, each Party:

(A) provide sufficient information to allow a full examination of how the measure or other matter might affect the operation

or application of this Agreement; and

(B) give the confidential information received during the consultation, the same treatment as the Party providing it.

9. The consultation period shall not exceed 60 days from the date of receipt of the request for consultations, unless otherwise agreed by the Parties.

10. Consultations shall be confidential and shall not prejudice the rights of the Parties in any other proceedings.

## **Article 7.5. Establishment of a Panel**

1. If the consulting Parties have not resolved an issue within:

(A) 60 days after a Party has submitted a request for consultations pursuant to Article 7.4 (Consultations); or

(B) such other period as the consulting Parties may agree,

Any requesting Party may request in writing the establishment of a panel to consider the matter. The requesting Party shall deliver the request to the other Party and shall state the reasons for the request, including the identification of the measure or other matter in question and an indication of the legal basis of the claim.

2. The panel will be considered established upon delivery of the request.

3. Unless the Parties agree otherwise, the panel shall be selected and shall perform its functions in accordance with the provisions of this Chapter and the Model Rules of Procedure.

4. The Panel shall decide on the dispute on the basis of an objective and impartial assessment of the facts submitted to it and its conformity with the provisions of the Agreement invoked by the Parties, taking into account the arguments and evidence presented by both Parties.

## **Article 7.6. Qualification of Panelists**

1. The panelists:

(A) have specialized knowledge or experience in law, international trade, other matters covered by this Agreement or in the settlement of disputes arising out of international trade agreements;

(B) will be selected strictly in function of their objectivity impartiality, reliability, and good judgment;

(C) shall be independent, shall not be bound by or receive instructions from any of the Parties; and

(D) comply with the code of conduct established by the Commission.

2. Individuals who have participated in consultations pursuant to Article 7.4 (Consultations) or have a conflict of direct or indirect interest in the dispute can not be panellists in a dispute.

## **Article 7.7. Panel Selection**

1. The Parties shall apply the following procedures in the selection of the panel:

(A) the panel shall be composed of three members.

(B) within 15 days from the date of receipt of the panel request, each Party shall designate a panelist. If a Party fails to designate the panelist within the time limit, the other Party shall designate the panelist within the names indicated in the panelist list referred to in paragraph 3 of the Party that did not designate the panelist. In the absence of such a list, the other Party shall designate the panelist.

(C) Parties shall endeavor to designate the third panelist, who shall serve as chair of the panel, within 15 days from the date of selection of the second panelist. If the Parties fail to agree on the panel chairmanship within the period specified, the Parties shall exchange their respective lists of four candidates, who are not nationals of either Party, within the next 10 days. The President shall be drawn from the list of candidates by lot in the presence of the Parties, in person or by any technological means available to the Parties, within 10 days of the date of exchange of the lists. If a Party fails to submit its list of four candidates, the President shall be appointed by drawing lots from the list submitted by the other Party.

(D) the panel chairman shall not be a national of any of the Parties, nor have his current place of residence in the territory of any of the Parties, or be or have been employed by any of the Parties, or have treated at any level The matter arising in the dispute, unless the parties agree otherwise.

(E) Parties shall endeavor to select panelists having relevant knowledge or experience on the subject matter of the dispute.

2. If a Party considers that a panelist has violated or is violating the code of conduct, the Parties shall consult and, if they agree, the panelist shall be replaced by a new panelist in accordance with this Article.

3. For the purposes of the provisions of this Article, within 180 days of the date of entry into force of the Agreement, each Party shall notify, through its respective Coordinator, its indicative list of panelists composed of up to 12 candidates.

## **Article 7.8. Rules of Procedure**

1. Unless the Parties agree otherwise, the panel shall conduct its proceedings in accordance with the Model Rules of Procedure, to be established by the Commission, which shall ensure that each Party has a full opportunity to be heard and that the proceedings are Carried out expeditiously and shall ensure, in particular:

(A) the right to at least one hearing before the Panel;

(B) an opportunity for each party to submit initial written and rebuttal submissions; and

(C) hearings before the Panel, the deliberations, as well as all written submissions and communications delivered during the hearings, shall be confidential.

2. The Panel shall, after consultation with the Parties, and unless otherwise agreed, within 10 days of its establishment, the Panel shall set the timetable for its work, taking into account the provisions of paragraph 2 of Article 7.9.

3. Unless the Parties agree otherwise, the Panel shall adopt the following term of reference:

"To examine, in the light of the applicable provisions of this Agreement, the matter referred to in the Panel's request and issue the report with its findings."

4. Panellists' fees and other costs related to the proceeding shall be borne by the disputing Parties in equal parts.

5. Unless the Parties otherwise agree, if the procedure provides for more than one hearing, the location of the hearings shall alternate between the territories of the Parties. The first hearing shall be held in the territory of the Party complained against.

6. Written submissions, oral arguments or presentations at the oral hearing, the panel report, as well as other written or oral communications between the Parties and the panel relating to panel proceedings shall be conducted in Spanish and / or Portuguese.

7. The Panel procedure should also have sufficient flexibility to ensure the quality of the reports without unduly delaying the work of the Panel.

8. The Panel will give the parties an appropriate opportunity to reach a mutually satisfactory solution.

## **Article 7.9. Report of the Panel**

1. The panel shall base its report on the relevant provisions of this Agreement, the submissions and allegations of the Parties, and any information provided by Parties in accordance with the Model Rules of Procedure. At the request of the Panel and if the Parties so agree The Panel may use additional elements in the preparation of its report.

2. Unless the Parties agree otherwise, the panel shall present the report within 120 days of the appointment of the third panelist. Where the Panel finds that it can not issue its report within that time limit, it shall inform the Parties in writing of the reasons for the delay and shall at the same time provide an estimate of the time limit within which it shall issue its report. In no case shall the period between the establishment of the panel and the distribution of the report exceed 150 days.

The report shall contain:

(A) The conclusions with their foundations of fact and law;

(B) The determination as to whether a Party has failed to comply with its obligations under this Agreement or any other

matter requested by the Parties that the panel addresses in the terms of reference;

(C) the recommendations for the resolution of the dispute, including a reasonable time to implement them, if any Party has requested it.

4. The panel report will be adopted by the majority of its panelists. Panelists may formulate separate opinions on matters that have not been agreed upon.

5. The panel can not disclose that Panelists have majority or minority views.

## **Article 7.10. Suspension and Termination of the Procedure**

1. The Parties may agree to suspend the work of the panel at any time for a period not longer than 12 months following the date of such agreement. If panel work has been suspended for more than 12 months, panel authority will lapse unless the parties agree otherwise. If the authority of the panel expires and the Parties have not reached an agreement in the settlement of the dispute, nothing in this Chapter shall prevent a Party from requesting a new proceeding on the same matter.

2. At any time, the Parties may agree to terminate the panel proceedings, by joint notification to the panel chair on this matter.

## **Article 7.11. Compliance with the Report**

1. The panel report shall be final and binding on the Parties, unless the Parties agree otherwise.

2. If the Report determines that the measure is inconsistent with the obligations under this Agreement, the Party complained against shall eliminate non-compliance.

3. Either party may request, within 15 (fifteen) days following the date of circulation of the Report, a clarification of the same. The Panel will rule on the request within 15 (fifteen) days after its filing. The period of time until the Panel's pronouncement will not be counted within the period of compliance with the Report.

4. Within 30 days after receipt of the Panel Report, the Party complained shall indicate the means by which it will comply with the Report and the period for its execution, which shall be adjusted as far as possible to the recommendations of the Panel.

5. If the other Party disagrees with the proposed deadlines, the two Parties shall consult in order to agree on a reasonable period to execute the Report. If the parties do not reach an agreement, the complaining Party may appeal to the Panel under the terms of paragraph 3 to request that it set the deadline for compliance with the Report. The decision of the Panel shall be binding on the parties.

6. Without prejudice to Article 7.12 (Compliance Review) and Article 7.13 (Non-Compliance - Compensation), the Party complained against may, at any time, propose compensation to the complaining Party for the purpose of promoting a settlement of the dispute Mutually satisfactory.

## **Article 7.12. Compliance Review**

1. Without prejudice to the procedures set forth in Article 7.13 (Failure - Compensation), once the reasonable period agreed by the Parties or set out in the panel report has expired, and the Parties do not agree on the existence or Compatibility of the measures taken to comply with the determinations and recommendations of the panel, either Party may request the Coordinators of the Agreement referred to in Article 6.2 (Coordinators of the Agreement) to bring together the original panel in order for the dispute to be referred to.

2. The panel shall meet no later than 15 days after the date of receipt of the request, and shall issue its report on the matter within 30 days after the first meeting.

3. If possible, the Panel will consist of the same panelists of the original panel. If this is not possible, the procedure established in Article 7.7 (Panel Selection) shall be followed, in which case the periods established therein shall be reduced by half.

## **Article 7.13. Non-compliance - Compensation**

1. If the Panel decides, based on the procedures set forth in the preceding Article, that the Party complained against failed to comply with the Report, or if the Party complained against has not taken any action to comply, within a reasonable period of time agreed by the Parties or Established in the panel report, the Parties shall enter into negotiations with a view to establishing mutually acceptable compensation. The Parties shall begin negotiations within 10 days of the date of receipt of the written request for negotiations.

2. The compensation referred to in paragraph 1 shall be effective from the time the Parties so agree and until the Party complained against complies with the panel report.

## **Article 7.14. Suspension of Benefits**

1. If the Parties:

(A) do not reach an agreement to establish compensation within 30 days after the start of the negotiations referred to in Article 7.13 (Non-compliance - Compensation), or

(B) have agreed compensation and the complaining Party considers that the Party complained against has failed to comply with the terms of the agreement within 20 days of such agreement,

The complaining Party may, at any time after the expiration of the time limits set out in subparagraphs (a) or (b), notify the complained Party in writing of its intention to suspend the application of benefits. The communication shall specify the level of benefits that the complaining Party proposes to suspend.

2. The complaining Party may initiate the suspension of benefits within 30 days after the last date between the date of the communication pursuant to paragraph 1 and the date on which the Panel issued its report pursuant to Article 7.13 (Non-compliance - Compensation).

3. The level of benefits to be suspended shall have an effect equivalent to the adverse trade effects caused by the Party complained against.

4. In considering what benefits to suspend under paragraph 1:

(A) the complaining Party shall first seek to suspend benefits in the same sector or sectors affected by the measure; and

(B) if the complaining Party considers that it is impracticable or ineffective to suspend benefits in the same sector (s), it may suspend benefits in other sectors.

5. Any suspension of benefits shall be restricted to benefits granted to the Party claimed under this Agreement.

6. The suspension of benefits shall be temporary and may be applied only until such time as the measure that was inconsistent with the Agreement has been terminated or a mutually satisfactory solution reached.

7. If the Party affected by the suspension considers that the level of the proposed suspension is excessive or that the nonconformity found by the Panel has been eliminated, it may refer the matter to the Panel established in accordance with Article 7.12 (Review of Compliance).

8. If the panel established pursuant to the preceding paragraph decides that the level of the suspensions is excessive or the Party complained of has eliminated the nonconformity, the complaining Party shall promptly adjust or terminate the suspension of benefits.

9. Neither compensation nor the suspension of benefits or other obligations are preferable to full implementation of the Report.

## **Chapter 8. Exceptions**

### **Article 8.1. General Exceptions**

For the purposes of Chapter 3 (Services), Article XIV of the GATS, including its footnotes, is incorporated and forms part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XIV (b) of the GATS include environmental measures necessary to protect human, animal or plant life and health.

### **Article 8.2. Security Exceptions**

Nothing in this Agreement shall be construed as:

(A) require a Party to provide or permit access to any information the disclosure of which it deems contrary to its essential security interests; or

(B) prevent a Party from taking any measures it deems necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, in accordance with the provisions of the Charter of the United Nations, or for the protection Of their own essential security interests.

### **Article 8.3. Temporary Safeguard Measures**

1. Nothing in this Agreement shall be interpreted as to prevent a Party from adopting or maintaining temporary restrictive measures with respect to payments or transfers for current account transactions in the event of serious external balance of payments difficulties and financial difficulties or Threats from them.

2. Nothing in this Agreement shall be interpreted as to prevent a Party from adopting or maintaining temporary restrictive measures with respect to payments or transfers relating to capital movements:

(A) in the event of serious difficulties in the balance of payments and external financial difficulties or threats thereof; or

(B) when, in exceptional circumstances, payments or transfers relating to capital movements cause or threaten to cause serious difficulties for macroeconomic management.

3. The adoption of temporary restrictive measures on transfers in the event of serious balance of payments difficulties, in the cases described in paragraphs 1 and 2, shall be non-discriminatory and in accordance with the Agreement Establishing the Monetary Fund International.

### **Article 8.4. Tax Measures**

1. Nothing in this Agreement shall apply to taxation measures. For greater certainty, nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention. In the event of any inconsistency between the provisions of this Agreement and any tax agreement, the provisions of that agreement shall apply to the extent of the inconsistency.

2. Nothing in this Agreement shall be construed so as to prevent the adoption or enforcement of any measure designed to ensure the fair or effective taxation or collection of taxes in accordance with the laws of the Parties.

## **Chapter 9. Final Provisions**

### **Article 9.1. Attachments, Appendices and Footnotes**

The Annexes, Appendices and Footnotes to this Agreement form an integral part of this Agreement.

### **Article 9.2. Entry Into Force**

This Agreement shall enter into force 90 days after the date of the last Note in which one of the Parties notifies the other Party that it has completed the internal procedures necessary for the entry into force of this Agreement. Simultaneously, the Parties shall communicate to the General Secretariat of ALADI the fulfillment of the corresponding procedures.

### **Article 9.3. Depositary**

The General Secretariat of ALADI shall deposit this Agreement from which it shall send duly authenticated copies to the Parties.

### **Article 9.4. Amendments**

1. The Parties may agree on any amendment to this Agreement.

2. An amendment shall enter into force, unless otherwise provided by the Parties, 45 days after the date of receipt of the last Note to which one Party notifies the other Party that it has completed the internal procedures necessary for The entry into force of the amendment.

3. Except as otherwise provided in this Agreement, references to laws or regulations in this Agreement include amendments and replacements thereto.

### **Article 9.5. Evolution of the Agreement**

The Parties shall consider further negotiations with a view to broadening and deepening the scope of coverage of this Agreement as well as adopting other specific rules and disciplines. The provisions of this Article do not detract from the specific commitments set forth in Chapter 2 (Investment), Chapter 3 (Trade in Services) and Chapter 4 (Government Procurement).

### **Article 9.6. Complaint**

Any Party may denounce this Agreement. The denunciation shall be made by means of a Note to the other Party, as well as to the General Secretariat of ALADI, and shall take effect 365 days after being notified to the other Party, notwithstanding that the Parties may agree on a different time period to give effect the complaint.

IN WITNESS WHEREOF, the representatives of both Parties sign this Agreement in the city of Lima, on the 29th day of April 2016, in two originals in the Spanish and Portuguese languages, both texts being equally valid.

FOR THE REPUBLIC OF PERU

FOR THE FEDERATIVE REPUBLIC OF BRAZIL