Peru - United States Trade Promotion Agreement

The Government of the United States of America and the Government of the Republic of Peru, resolved to:

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

PROMOTE broad-based economic development in order to reduce poverty and generate opportunities for sustainable economic alternatives to drug-crop production;

CREATE new employment opportunities and improve labor conditions and living standards in their respective territories;

ESTABLISH clear and mutually advantageous rules governing their trade;

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

AGREE that foreign investors are not hereby accorded greater substantive rights with respect to investment protections than domestic investors under domestic law where, as in the United States, protections of investor rights under domestic law equal or exceed those set forth in this Agreement;

RECOGNIZE that Article 63 of Peru's Political Constitution provides that "domestic and foreign investment are subject to the same conditions";

AVOID distortions to their reciprocal trade;

FOSTER creativity and innovation and promote trade in the innovative sectors of our economies;

PROMOTE transparency and prevent and combat corruption, including bribery, in international trade and investment;

PROTECT, enhance, and enforce basic workers' rights, strengthen their cooperation on labor matters, and build on their respective international commitments on labor matters;

IMPLEMENT this Agreement in a manner consistent with environmental protection and conservation, promote sustainable development, and strengthen their cooperation on environmental matters;

PRESERVE their ability to safeguard the public welfare;

CONTRIBUTE to hemispheric integration and provide an impetus toward establishing the Free Trade Area of the Americas;

BUILD on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization and agreements to which they are both parties; and

RECOGNIZE that Peru is a member of the Andean Community and that Decision 598 of the Andean Community requires Andean countries negotiating trade agreements to preserve Andean Legal System in relations between the Andean Community Member Countries under the Cartagena Agreement;

HAVE AGREED as follows:

Chapter One. Initial Provisions and General Definitions

Section A. Initial Provisions

Article 1.1. Establishment of a Free Trade Area

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

Article 1.2. Relation to other Agreements

The Parties affirm their existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which such Parties are party.

Section B. General Definitions

Article 1.3. Definitions of General Application

For purposes of this Agreement, unless otherwise specified:
central level of government means:

(a) for Peru, the national level of government; (1) and

(b) for the United States, the federal level of government;

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

covered investment means, with respect to a Party, an investment, as defined in Article 10.28 (Definitions), in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

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

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

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

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

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

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

days means calendar days;

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

enterprise of a Party means an enterprise constituted or organized under the law of a Party; existing means in effect on the date of entry into force of this Agreement;

GATS means the WTO General Agreement on Trade in Services;

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

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

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

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

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

national means a natural person who has the nationality of a Party according to Annex 1.3 ora permanent resident of a Party;

originating means qualifying under the rules of origin set out in Chapter Three (Textiles and Apparel) and Chapter Four (Rules of Origin and Origin Procedures);

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

preferential tariff treatment means the duty rate applicable under this Agreement to an originating good;

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

regional level of government means for the United States, a state of the United States, the District of Columbia, or Puerto Rico. For Peru, as a unitary Republic, the term "regional level of government" is not applicable;

Safeguards Agreement means the WTO Agreement on Safeguards;

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

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

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

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

territory means for a Party the territory of that Party as set out in Annex 1.3;

TRIPS Agreement means the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights; (2)

WTO means the World Trade Organization; and

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

For purposes of this Agreement, unless otherwise specified:

natural person who has the nationality of a Party means:

(a) with respect to Peru, Peruvians by birth, naturalization, or choice in accordance with Articles 52 and 53 of the ConstituciÃ©n Politica del Pert; and

(b) with respect to the United States, "national of the United States" as defined in the existing provisions of the Immigration and Nationality Act; and

territory means:

(a) with respect to Peru, the continental territory, the islands, the maritime areas and the air space above them, in which Peru exercises sovereignty and jurisdiction or sovereign rights in accordance with its domestic law and international law;

(b) with respect to the United States,

(i) the customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) the foreign trade zones located in the United States and Puerto Rico, and
iii) any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources.

(1) For greater certainty, "regiones" are at the local level of government.

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

Chapter Two. National Treatment and Market Access for Goods

Article 2.1. Scope and Coverage

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

Section A. National Treatment

Article 2.2. National Treatment

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

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

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 2.2.

Section B. Tariff Elimination

Article 2.3. Tariff Elimination

1. Except as otherwise provided in this Agreement, no Party may increase any existing customs duty, or adopt any new customs duty, on an originating good.

2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods, in accordance with its Schedule to Annex 2.3.

3. For greater certainty, paragraph 2 shall not prevent Peru from granting identical or more favorable tariff treatment to a good as provided for under the legal instruments of the Andean integration, provided that the goods meet the rules of origin under those instruments.

4. On the request of any Party, the requesting Party and one or more other Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules to Annex 2.3. The consulting Parties shall notify the other Parties of the goods that will be subject to the consultations, and shall afford the other Parties an opportunity to participate in the consultations. Notwithstanding Article 20.1.3(b) (Free Trade Commission), an agreement between two or more Parties to accelerate the elimination of a customs duty on a good shall supercede any duty rate or staging category determined pursuant to their Schedules to Annex 2.3 for that good when approved by each involved Party in accordance with its applicable legal procedures. Within 30 days after two or more Parties conclude an agreement under this paragraph, they shall notify the other Parties of the terms of the agreement.

5. For greater certainty, a Party may:

(a) raise a customs duty to the level established in its Schedule to Annex 2.3 following a unilateral reduction; or

(b) maintain or increase a customs duty as authorized by the Dispute Settlement Body of the WTO.

Section C. Special Regimes

Article 2.4. Waiver of Customs Duties

1. No Party may adopt any new waiver of customs duties, or expand with respect to existing recipients or extend to any new recipient the application of an existing waiver of customs duties, where the waiver is conditioned, explicitly or implicitly, on the fulfillment of a performance requirement.

2. No Party may, explicitly or implicitly, condition on the fulfillment of a performance requirement the continuation of any existing waiver of customs duties.

Article 2.5. Temporary Admission of Goods

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

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

(b) goods intended for display or demonstration;

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

(d) goods admitted for sports purposes.

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

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

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

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

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

(d) be capable of identification when exported;

(e) be exported on the departure of the person referenced in subparagraph (a), or within such other period related to the purpose of the temporary admission as the Party may establish, or within one year, unless extended;

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

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

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

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

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

7. Each Party shall provide that the importer or other person responsible for a good admitted under this Article shall not be liable for failure to export the good on presentation of satisfactory proof to the importing Party that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.

8. Subject to Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services):

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

(b) no Party may require any security or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a vehicle or container;

(c) no Party may condition the release of any obligation, including any security, that it imposes in respect of the entry of a vehicle or container into its territory on its exit through any particular port of departure; and

(d) no Party may require that the vehicle or carrier bringing a container from the territory of another Party into its territory be the same vehicle or carrier that takes the container to the territory of another Party.

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

Article 2.6. Goods Re-entered after Repair or Alteration

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

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

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

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

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

Article 2.7. Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials

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

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

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

Section D. Non-Tariff Measures

Article 2.8. Import and Export Restrictions

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

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

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

(b) import licensing conditioned on the fulfillment of a performance requirement, except as provided in a Party's Schedule to Annex 2.3; or

(c) voluntary export restraints inconsistent with Article VI of the GATT 1994, as implemented under Article 18 of the SCM Agreement and Article 8.1 of the AD Agreement.

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 2.2.

4. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, no provision of this Agreement shall be construed to prevent the Party from:

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

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

5. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party,

the Parties, on the request of any Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing, or distribution arrangements in another Party.

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

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

8. For purposes of paragraph 6:

distributor means a person of a Party who is responsible for the commercial distribution, agency, concession, or representation in the territory of that Party of goods of another Party;

(1) For greater certainty, this paragraph applies, inter alia, to prohibitions or restrictions on the importation of remanufactured goods.

Article 2.9. Import Licensing

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

2. Promptly after entry into force of this Agreement, each Party shall notify the other Parties of any existing import licensing procedures, and thereafter shall notify the other Parties of any new import licensing procedure and any modification to its existing import licensing procedures, within 60 days before it takes effect. A notification provided under this Article shall:

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

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

3. No Party may apply an import licensing procedure to a good of another Party unless it has provided notification in accordance with paragraph 2.

Article 2.10. Administrative Fees and Formalities

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

2. No Party may require consular transactions, including related fees and charges, in connection with the importation of any good of another Party.

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

4. The United States shall eliminate its Merchandise Processing Fee on originating goods of Peru upon the entry into force of this Agreement.

Article 2.11. Export Taxes

Except as otherwise provided in this Agreement, no Party may adopt or maintain any duty, tax, or other charge on the export of any good to the territory of another Party, unless the duty, tax, or charge is also adopted or maintained on the good when destined for domestic consumption.

Section E. Other Measures

Article 2.12. Distinctive Products

1. Peru shall recognize Bourbon Whiskey and Tennessee Whiskey, which is a straight Bourbon Whiskey authorized to be produced only in the State of Tennessee, as distinctive products of the United States. Accordingly, Peru shall not permit the sale of any product as Bourbon Whiskey or Tennessee Whiskey, unless it has been manufactured in the United States in

accordance with the laws and regulations of the United States governing the manufacture of Bourbon Whiskey and Tennessee Whiskey.

2. The United States shall recognize "Pisco Perú" as a distinctive product of Peru. Accordingly, the United States shall not permit sale of any product as "Pisco Perú", unless it has been manufactured in Peru in accordance with the laws and regulations of Peru governing Pisco. (2)

3. At the request of a Party, the Committee on Trade in Goods shall consider whether to recommend that the Parties amend the Agreement to designate a good as a distinctive product for the purposes of this Article.

(2) Peruvian laws and regulations provide that Pisco is the product exclusively obtained from the distillation of fresh must of "Pisco grapes," recently fermented, utilizing methods that maintain traditional principles of quality, in accordance with the Peruvian Standard.

Section F. Institutional Provisions

Article 2.13. Committee on Trade In Goods

1. The Parties hereby establish a Committee on Trade in Goods, comprising representatives of each Party.
2. The Committee shall meet on the request of a Party or the Commission to consider any matter arising under this Chapter, Chapter Four (Rules of Origin and Origin Procedures), or Chapter Five (Customs Administration and Trade Facilitation).

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

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

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

(c) providing to the Committee on Trade Capacity Building advice and recommendations on technical assistance needs regarding matters relating to this Chapter, Chapter Four (Rules of Origin and Origin Procedures), or Chapter Five (Customs Administration and Trade Facilitation);

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

(i) the Harmonized System 2007 or subsequent nomenclature and Annex 2.3; and

(ii) Annex 2.3 and national nomenclatures; and consulting on and endeavoring to resolve any difference that may arise among the

(e) Parties on matters related to the classification of goods under the Harmonized System.

Section G. Agriculture

Article 2.14. Scope and Coverage

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

Article 2.15. Administration and Implementation of Tariff-Rate Quotas

1. Each Party shall implement and administer the tariff-rate quotas for agricultural goods set out in Appendix I to its Schedule to Annex 2.3 (hereafter "TRQs") in accordance with Article XIU of the GATT 1994, including its interpretive notes, and the Import Licensing Agreement.

2. Each Party shall ensure that:

(a) its procedures for administering its TRQs are transparent, made available to the public, timely, nondiscriminatory, responsive to market conditions, and minimally burdensome to trade;

(b) subject to subparagraph (c), any person of a Party that fulfills the Party's legal and administrative requirements shall be eligible to apply and to be considered for an in-quota quantity allocation under the Party's TRQs;

(c) it does not, under its TRQs:

(i) allocate any portion of an in-quota quantity to a producer group;

(ii) condition access to an in-quota quantity on purchase of domestic production; or

(iii) limit access to an in-quota quantity only to processors;

(d) solely government authorities administer its TRQs and government authorities do not delegate administration of its TRQs to producer groups or other non- governmental organizations, except as otherwise provided in this Agreement; and

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

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

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

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

6. On request of the exporting Party, the importing Party shall consult with the exporting Party regarding the administration of the importing Party's TRQs.

Article 2.16. Agricultural Export Subsidies

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

2. Except as provided in paragraph 3, no Party may adopt or maintain any export subsidy on any agricultural good destined for the territory of another Party.

3. Where the exporting Party considers that a non-Party is exporting an agricultural good to the territory of another Party with the benefit of export subsidies, the importing Party shall, on written request of the exporting Party, consult with the exporting Party with a view to agreeing on specific measures that the importing Party may adopt to counter the effect of such subsidized imports. If the importing Party adopts the agreed-on measures, the exporting Party shall refrain from applying any subsidy to its exports of the good to the territory of the importing Party.

Article 2.17. Export State Trading Enterprises

The Parties shall work together toward an agreement on export state trading enterprises in the WTO that:

(a) eliminates restrictions on the right to export;

(b) eliminates any special financing granted directly or indirectly to state trading enterprises that export for sale a significant share of their country's total exports of an agricultural good; and

(c) ensures greater transparency regarding the operation and maintenance of export state trading enterprises.

Article 2.18. Agricultural Safeguard Measures

1. Notwithstanding Article 2.3, a Party may apply a measure in the form of an additional import duty on an originating agricultural good listed in that Party's Schedule to Annex 2.18, provided that the conditions in paragraphs 2 through 8 are met. The sum of any such additional import duty and any other customs duty on such good shall not exceed the least of:

(a) the base tariff rate provided in the Schedule to Annex 2.3;
(b) the most-favored-nation (MFN) applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement;

(c) the prevailing MFN applied rate of duty; or

(d) the level of duty described in subparagraph 2(c) of Appendix I to Peru's Schedule to Annex 2.3, if applicable.

2. A Party may apply an agricultural safeguard measure during any calendar year (or, in the case of a good provided for in the subheadings listed in subparagraph 7(d) of Appendix I to Peru's Schedule to Annex 2.3, during any marketing year) on an originating agricultural good if the quantity of imports of the good during such year exceeds the trigger level for that good set out in its Schedule to Annex 2.18.

3. The additional duty under paragraph 1 shall be set according to each Party's Schedule to Annex 2.18.

4. No Party may apply an agricultural safeguard measure and at the same time apply or maintain:

(a) a safeguard measure under Chapter Eight (Trade Remedies); or

(b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement; with respect to the same good.

5. No Party may apply or maintain an agricultural safeguard measure on a good:

(a) on or after the date that the good is subject to duty-free treatment under the Party's Schedule to Annex 2.3; or

(b) that increases the in-quota duty on a good subject to a TRQ.

6. A Party shall implement an agricultural safeguard measure in a transparent manner. Within 60 days after applying such a measure, the Party applying the measure shall notify the Party whose good is subject to the measure, in writing, and shall provide it relevant data concerning the measure. On request, the Party applying the measure shall consult with the Party whose good is subject to the measure regarding application of the measure.

7. A Party may maintain an agricultural safeguard measure only until the end of the calendar year or marketing year, as applicable, in which the Party imposes the measure.

8. Originating goods from any Party shall not be subject to any duties applied pursuant to any agricultural safeguard measure taken under the WTO Agreement on Agriculture or any successor provisions thereof.

9. For purposes of this Article and Annex 2.18, agricultural safeguard measure means a measure described in paragraph 1.

Article 2.19. Sugar Compensation Mechanism

1. In any year, the United States may, at its option, apply a mechanism that results in compensation to a Party's exporters of sugar goods in lieu of according duty-free treatment to some or all of the duty-free quantity of sugar goods established for that Party in Appendix I to the Schedule of the United States to Annex 2.3. Such compensation shall be equivalent to the estimated economic rents the Party's exporters would have obtained on exports to the United States of any such amounts of sugar goods and shall be provided within 30 days after the United States exercises this option. The United States shall notify the Party at least 90 days before it exercises this option and, on request, shall enter into consultations with the Party regarding application of the mechanism.

2. For purposes of this Article, sugar good means a good provided for in the subheadings listed in subparagraph 5(c) of Appendix I to the Schedule of the United States to Annex 2.3.

Article 2.20. Consultations on Trade In Chicken

The Parties shall consult on, and review the implementation and operation of the Agreement as it relates to, trade in chicken in the ninth year after the date of entry into force of this Agreement.

Article 2.21. Committee on Agricultural Trade

1. No later than 180 days after the date of entry into force of this Agreement, the Parties shall establish a Committee on Agricultural Trade, comprising representatives of each Party.

2. The Committee shall provide a forum for:

(a) monitoring and promoting cooperation on the implementation and administration of this Section;

(b) consultation between the Parties on matters related to this Section in coordination with other committees, subcommittees, working groups, or other bodies established under this Agreement; and

(c) undertaking any additional work that the Commission may assign.

3. The Committee shall meet at least once a year unless it decides otherwise. Meetings of the Committee shall be chaired by the representatives of the Party hosting the meeting.

4. All decisions of the Committee shall be taken by consensus, unless the Committee otherwise decides.

Section H. Definitions

Article 2.22. Definitions

For purposes of this Chapter:

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

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

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

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

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

consumed means

(a) actually consumed; or

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

duty-free means free of customs duty;

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

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

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

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

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

performance requirement means a requirement that:

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

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

(c) a person benefiting from a waiver of customs duties or an import license purchase other goods or services in the territory of the Party granting the waiver of customs duties or the import license, or accord a preference to domestically produced goods;

(d) a person benefiting from a waiver of customs duties or an import license produce goods or supply services, in the

territory of the Party granting the waiver of customs duties or the import license, with a given level or percentage of domestic content; or

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

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

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

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

(h) substituted by an identical or similar good that is subsequently exported;

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

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

Chapter Three. Textiles and Apparel (1)

Article 3.1. Textile Safeguard Measures

1. Subject to the following paragraphs, and during the transition period only, if, as a result of the reduction or elimination of a duty provided for in this Agreement, a textile or apparel good benefiting from preferential tariff treatment is being imported into the territory of another Party in such increased quantities, in absolute terms or relative to the domestic market for that good, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good, the importing Party may, to the extent necessary to prevent or remedy such damage and to facilitate adjustment, apply a textile safeguard measure to that good, consisting of an increase in the rate of duty on the good to a level not to exceed the lesser of:

(a) the most-favored-nation (MFN) applied rate of duty in effect at the time the measure is applied; and

(b) the MFN applied rate of duty in effect on the date of entry into force of this Agreement.

2. In determining serious damage, or actual threat thereof, the importing Party:

(a) shall examine the effect of increased imports of the good of the exporting Party or Parties on the particular industry, as reflected in changes in such relevant economic variables as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits and losses, and investment, none of which, either alone or combined with other factors, shall necessarily be decisive; and

(b) shall not consider changes in consumer preference or changes in technology in the importing Party as factors supporting a determination of serious damage or actual threat thereof.

3. The importing Party may apply a textile safeguard measure only following an investigation by its competent authority.

4. The investigations referred to in this Article shall be carried out according to procedures established by each Party, which shall be notified to the Parties upon entry into force of this Agreement or before a Party initiates an investigation.

5. The importing Party shall deliver to the exporting Party or Parties, without delay, written notice of the initiation of the investigation, as well as of its intent to apply or extend a textile safeguard measure and, on request of the exporting Party or Parties, shall enter into consultations with that Party or Parties.

6. The following conditions and limitations apply to any textile safeguard measure:

(a) no Party may maintain a textile safeguard measure for a period exceeding two years, except that the period may be extended for up to one year;

(b) no Party may apply a textile safeguard measure to the same good of another Party more than once;

(c) on termination of the textile safeguard measure, the Party applying the measure shall apply the rate of duty set out in its

Schedule to Annex 2.3 (Tariff Elimination) as if the measure had never been applied; and

(d) no Party may maintain a textile safeguard measure beyond the transition period.

7. The Party applying a textile safeguard measure shall provide to the Party or Parties against whose good the measure is taken mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the textile safeguard measure. Such concessions shall be limited to textile or apparel goods, unless the consulting Parties otherwise agree.

8. If the consulting Parties are unable to agree on compensation within 30 days of application of a textile safeguard measure, the Party or Parties against whose good the measure is taken may take tariff action having trade effects substantially equivalent to those of the textile safeguard measure. Such tariff action may be taken against any good of the Party applying the textile safeguard measure. The Party taking the tariff action shall apply it only for the minimum period necessary to achieve the substantially equivalent trade effects. The importing Party's obligation to provide trade compensation and the exporting Party's or Parties' right to take tariff action shall terminate when the textile safeguard measure terminates.

9. (a) Each Party maintains its rights and obligations under Article XIX of the GATT 1994 and the Safeguards Agreement.

(b) No Party may apply, with respect to the same good at the same time, a textile safeguard measure and:

(i) a safeguard measure under Chapter Eight (Trade Remedies); or

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

(1) For greater certainty, the obligations in Chapter Two (National Treatment and Market Access for Goods) with respect to trade in goods between the Parties apply to trade in textile and apparel goods between the Parties. 3-1

Article 3.2. Customs Cooperation and Verification of Origin

1. The competent authorities of the Parties shall cooperate for purposes of:

(a) enforcing or assisting in the enforcement, and deterring circumvention, of the laws, regulations, and procedures of each Party, and international agreements affecting trade in textile or apparel goods, and;

(b) ensuring the accuracy of claims of origin for textile or apparel goods.

The Parties recognize that, in accordance with paragraph 10, providing technical or other assistance to advance these purposes is an essential part of this Article.

2. A Party's request for cooperation under this Article shall identify the relevant laws, regulations, or procedures pertaining to that request.

3. (a) On the written request of the importing Party, an exporting Party shall conduct a verification for purposes of enabling the importing Party to determine:

(i) that a claim of origin for a textile or apparel good is accurate; or

(ii) that the exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods, including:

(A) laws, regulations, and procedures that the exporting Party adopts and maintains pursuant to this Agreement; and

(B) laws, regulations, and procedures of the importing Party and the exporting Party implementing other international agreements regarding trade in textile or apparel goods.

(b) A request under subparagraph (a) shall include specific information regarding the reason the importing Party is requesting the verification and the determination the importing Party is seeking to make.

(c) The exporting Party shall conduct a verification under subparagraph (a)(i), regardless of whether an importer claims preferential tariff treatment for the textile or apparel good for which a claim of origin has been made.

(d) The exporting Party may conduct a verification of enterprises within its territory on its own initiative.

4. The importing Party, through its competent authority, may assist in a verification conducted under paragraph 3(a), including by conducting, along with the competent authority of the exporting Party, visits in the territory of the exporting Party to the premises of an exporter, producer, or any other enterprise involved in the movement of textile or apparel goods from the territory of the exporting Party to the territory of the importing Party. At the request of the exporting Party, the importing Party may undertake such verification.

5. (a) The competent authority of the importing Party shall provide a written request to the competent authority of the exporting Party 20 days before the proposed date of a visit under paragraph 4. The request shall identify the competent authority making the request, the names and titles of the authorized personnel that will conduct the visit; the reason for the visit, including a description of the type of goods that are the subject of the verification; and the proposed dates of the visit.

(b) The competent authority of the exporting Party shall respond within ten days of receipt of the request, and shall indicate the date on which authorized personnel of the importing Party may perform the visit. The exporting party shall seek, in accordance with its laws, regulations, and procedures, permission from the enterprise to conduct the visit. If consent is not provided, the importing Party may deny preferential tariff treatment to the type of goods of the enterprise that would have been the subject of the verification, except that the importing Party may not deny preferential tariff treatment to such goods based solely on a postponement of the visit, if there is adequate reason for such postponement.

(c) Authorized personnel of the importing and exporting Parties shall conduct the visit in accordance with the laws, regulations, and procedures of the exporting Party.

(d) On completion of the visit, the importing Party shall provide the exporting Party with an oral summary of the results of the visit and provide it with a written report of the results of the visit within approximately 45 days of the visit. The written report shall include:

(i) the name of the enterprise visited;

(ii) particulars of the shipments that were checked;

(iii) observations made at the enterprise relating to circumvention, if any; and

(iv) an assessment of whether the enterprise's production records and other documents support its claims of origin, for:

(A) a textile or apparel good subject to a verification conducted under subparagraph 3(a)(i); or

(B) in the case of a verification conducted under subparagraph 3(a)(ii), any textile or apparel good exported or produced by the enterprise.

6. In accordance with its laws, each Party shall provide to the other Party production, trade, and transit documents and other information necessary to conduct verifications under paragraph 3(a). Each Party shall treat any documents or information exchanged in the course of such verification in accordance with Article 5.6 (Confidentiality). Nothwithstanding the foregoing, a Party may publish the name (2) of an enterprise if the Party has determined, consistent with its laws, that such enterprise:

(a) has engaged in circumvention of the laws, regulations, or procedures of that Party or of international agreements affecting trade in textile or apparel goods; or

(b) has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

7. (a) (i) If, during a verification conducted under subparagraph 3(a), the information to support a claim for preferential tariff treatment is insufficient, the importing Party may take the actions it considers appropriate, which may include suspending the application of such treatment to:

(A) in the case of a verification conducted under subparagraph 3(a)(i), the textile or apparel good for which a claim for preferential tariff treatment has been made; and

(B) in the case of a verification conducted under subparagraph 3(a)(ii), any textile or apparel good exported or produced by the enterprise subject to that verification for which a claim of preferential tariff treatment has been made.

(ii) If, on completion of a verification conducted under subparagraph 3(a), the information to support a claim for preferential tariff treatment is insufficient, the importing Party may take the actions it considers appropriate, which may include denying the application of such treatment to any textile or apparel good described in clauses (i)(A) and (B).

(iii) If, during or on completion of a verification conducted under subparagraph 3(a), the importing Party discovers that an enterprise has provided incorrect information to support a claim for preferential tariff treatment, the importing Party may

take the actions it considers appropriate, which may include denying the application of such treatment to any textile or apparel good described in clauses (i)(A) and (B).

(b) (i) If, during a verification conducted under subparagraph 3(a), the information to determine the country of origin is insufficient, the importing Party may take the actions it considers appropriate, which may include detention of any textile or apparel good exported or produced by the enterprise subject to the verification.

(ii) If, on completion of a verification conducted under subparagraph 3(a), the information to determine the country of origin is insufficient, the importing Party may take the actions it considers appropriate, which may include denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification.

(iii) If, during or on completion of a verification conducted under subparagraph 3(a), the importing Party discovers that an enterprise has provided incorrect information as to the country of origin, the importing Party may take appropriate action, which may include denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification.

(c) The importing Party may continue to take the actions it considers appropriate under this paragraph only until it receives information sufficient to enable it to make the determination in subparagraphs 3(a)(i) or (ii), as the case may be.

8. No later than 45 days after it completes a verification conducted under subparagraph 3(a), the exporting Party shall provide the importing Party a written report on the results of the verification. The report shall include all documents and facts supporting any conclusion that the exporting Party reaches. After receiving the report, the importing Party shall notify the exporting Party of any action it will take under subparagraph 7(a)(ii) or (iii) or 7(b)(ii) or iii), based on the information provided in the report.

9. On the written request of a Party, two or more Parties shall enter into consultations to resolve any technical or interpretive difficulties that may arise or to discuss ways to improve customs cooperation regarding the application of this Article. Unless the consulting Parties otherwise agree, consultations shall begin within 30 days after delivery of the request and conclude within 90 days after delivery.

10. A Party may request technical or other assistance from any other Party in implementing this Article. The Party receiving such a request shall make every effort to respond promptly and favorably to it.

(2) The Party shall provide advance notice to the other Parties of the procedures by which such publication is to be made.

Article 3.3. Rules of Origin, Origin Procedures, and Related Matters

1. Except as provided in this Article and the Annexes to this Chapter, Chapter Four (Rules of Origin and Origin Procedures) applies with respect to textile and apparel goods.

Consultations on Rules of Origin

2. On request of a Party, the Parties shall, within 30 days after the request is delivered, consult on whether the rules of origin applicable to a particular textile or apparel good should be revised.

3. Where the consultations referred to in paragraph 2 concern an input not available in commercial quantities, each Party shall consider all data that a Party presents demonstrating that there is substantial production in its territory of such input. The Parties shall consider that there is substantial production if a Party demonstrates that its domestic producers are capable of supplying commercial quantities of the input to the Parties in a timely manner.

4. The Parties shall endeavor to conclude the consultations within 90 days after delivery of the request. If the Parties reach an agreement to revise a rule of origin for a particular good, the agreement shall supersede that rule of origin when modified by the Commission in accordance with Article 20.1.3(b).

Fabrics, Yarns, and Fibers Not Available in Commercial Quantities

5. (a) At the request of an interested entity, the United States shall, within 30 business days of receiving the request, add a fabric, fiber, or yarn in an unrestricted or restricted quantity to the list in Annex 3-B, if the United States determines, based on information supplied by interested entities, that the fabric, fiber, or yarn is not available in commercial quantities in a timely manner in the territory of any Party, or if no interested entity objects to the request.

(b) If there is insufficient information to make the determination in subparagraph (a), the United States may extend the

period within which it must make that determination by no more than 14 business days, in order to meet with interested entities to substantiate the information.

(c) If the United States does not make the determination in subparagraph (a) within 15 business days of the expiration of the period within which it must make that determination, as specified in subparagraph (a) or (b), the United States shall grant the request.

(d) The United States may, within six months after adding a restricted quantity of a fabric, fiber, or yarn to the list in Annex 3-B pursuant to subparagraph (a), modify or eliminate the restriction.

(e) If the United States determines before the date of entry into force of this Agreement that any fabrics or yarns not listed in Annex 3-B are not available in commercial quantities in the United States pursuant to section 112(b)(5)(B) of the African Growth and Opportunity Act (19 U.S.C. Â§ 3721(b)), section 204(b)(3)(B)(ii) of the Andean Trade Preference Act (19 U.S.C. § 3203(b)(3)(B)(ii)), or section 213(b)(2)(A)(v)(D of the Caribbean Basin Economic Recovery Act (19 U.S.C. § 2703(b)(2)(A)(v) (ID), the United States may, after consultation with the Parties, add such fabrics or yarns in an unrestricted quantity to the list in Annex 3-B.

6. At the request of an interested entity made no earlier than six months after the United States has added a fabric, yarn, or fiber in an unrestricted quantity to Annex 3-B pursuant to paragraph 5, the United States may, within 30 business days after it receives the request:

(a) delete the fabric, yarn, or fiber from the list in Annex 3-B; or

(b) introduce a restriction on the quantity of the fabric, yarn, or fiber added to Annex 3- B;

if the United States determines, based on the information supplied by interested entities, that the fabric, yarn, or fiber is available in commercial quantities in a timely manner in the territory of any Party. Such deletion or restriction shall not take effect until six months after the United States publishes its determination.

7. Promptly after the date of entry into force of this Agreement, the United States shall publish the procedures it will follow in considering requests under paragraphs 5 and 6. After publication of such procedures, a Party or Parties may request consultations with respect to those procedures.

De Minimis

8. A textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo the applicable change in tariff classification set out in Annex 3-A, shall nonetheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than ten percent of the total weight of that component. (3)

9. Notwithstanding paragraph 8, a good containing elastomeric yarns (4) in the component of the good that determines the tariff classification of the good shall be originating only if such yarns are wholly formed in the territory of a Party. (5)

Treatment of Sets

10. Notwithstanding the specific rules of origin in Annex 3-A textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3 of the Harmonized System, shall not be regarded as originating goods unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed ten percent of the adjusted value of the set.

Treatment of Nylon Filament Yarn

11. A textile or apparel good that is not an originating good because certain yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 3-A shall nonetheless be considered to be an originating good if the yarns are those described in Section 204(b)(3)(B)(vi)(lV) of the Andean Trade Preference Act (19 U.S.C. § 3203(b)(3)(B)(vi)dV)). Duty-free Treatment for Certain Goods

12. An importing and an exporting Party may identify at any time particular textile or apparel goods of the exporting Party that they mutually agree are:

(a) hand-loomed fabrics;

(b) hand-made goods made of such hand-loomed fabrics;

(c) traditional folklore handicraft goods; or

(d) handmade goods that substantially incorporate a historical or traditional regional design or motif.

A historical or traditional regional design or motif includes, but is not limited to, depictions of traditional geometric patterns or native objects, landscapes, animals, or people.

13. The importing Party shall grant duty-free treatment to goods identified pursuant to paragraph 12, if the competent authority of the exporting Party certifies such identification.

Regional Cumulation

14. In the light of their desire to promote regional integration, the Parties shall enter into discussions, within six months of the date of entry into force of this Agreement, or at a time to be determined by the Parties, with a view to deciding, subject to their applicable domestic legal requirements (such as a requirement to consult with the legislature and domestic industry), whether materials that are goods of countries in the region may be counted for purposes of satisfying the origin requirement under this Chapter as a step toward achieving regional integration.

(3) For greater certainty, when the good is a fiber, yarn, or fabric, the "component of the good that determines the tariff classification of the good" is all of the fibers in the yarn, fabric, or group of fibers.

(4) For greater certainty, the term "elastomeric yarns" does not include latex.

(5) For purposes of this paragraph, "wholly formed" means that all the production process and finishing operations, starting with the extrusion of all filaments, strips, films, or sheets, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn, took place in the territory of the Party.

Article 3.4. Committee on Textile and Apparel Trade Matters

The Parties hereby establish a Committee on Textile and Apparel Trade Matters. The Committee on Textile and Apparel Trade Matters shall meet upon the request of any Party or the Free Trade Commission to consider any matter arising under this Chapter.

Article 3.5. Definitions

For purposes of this Chapter:

claim of origin means a claim that a textile or apparel good is an originating good or satisfies the non-preferential rules of origin of a Party;

exporting Party means the Party from whose territory a textile or apparel good is exported; importing Party means the Party into whose territory a textile or apparel good is imported; input means a fiber, yarn, or fabric used in the production of a textile or apparel good;

interested entity means a Party, an actual or potential purchaser of a textile or apparel good, or an actual or potential supplier of a textile or apparel good;

textile or apparel good means a good listed in the Annex to the WTO Agreement on Textiles and Clothing, except for those goods listed in Annex 3-C;

textile safeguard measure means a measure applied under Article 3.1; and

transition period means the five-year period beginning on the date of entry into force of this Agreement.

Chapter Four. Rules of Origin and Origin Procedures

Section A. Rules of Origin

Article 4.1. Originating Goods

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

(a) it is a good wholly obtained or produced entirely in the territory of one or more of the Parties;

(b) it is produced entirely in the territory of one or more of the Parties and

(i) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in Annex 4.1 or Annex 3-A (Textile and Apparel Specific Rules of Origin), or

(ii) the good otherwise satisfies any applicable regional value content or other requirements specified in Annex 4.1 or Annex 3-A (Textile and Apparel Specific Rules of Origin), and the good satisfies all other applicable requirements of this Chapter; or

(c) it is produced entirely in the territory of one or more of the Parties exclusively from originating materials.

Article 4.2. Regional Value Content

1. Where Annex 4.1 specifies a regional value content test to determine whether a good is originating, each Party shall provide that the importer, exporter, or producer may, for purposes of making a claim for preferential tariff treatment in accordance with Article 4.15, calculate regional value content based on one or the other of the following methods:

(a) Method Based on Value of Non-Originating Materials ("Build-down Method")

RVC = AV - VNM/AV x 100

(b) Method Based on Value of Originating Materials ("Build-up Method")

RVC = VOM/AV x 100

AV where, RVC is the regional value content, expressed as a percentage;

AV is the adjusted value of the good;

VNM_ is the value of non-originating materials that are acquired and used by the producer in the production of the good;

VNM does not include the value of a material that is self-produced; and

VOM is the value of originating materials acquired or self-produced, and used by the producer in the production of the good.

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

3. Where Annex 4.1 specifies a regional value content test to determine if an automotive good (1) is originating, each Party shall provide that the importer, exporter, or producer shall, for purposes of making a claim for preferential tariff treatment in accordance with Article 4.15, calculate the regional value content of that good based solely on the following method:

Method for Automotive Products ("Net Cost Method")

RVC = NC - VNM/NC x 100

where,

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

NC is the net cost of the good; and

VNM is the value of non-originating materials acquired and used by the producer in the production of the good; VNM does not include the value of a material that is self- produced.

4. Each Party shall provide that, for purposes of the regional value content method in paragraph 3, the importer, exporter, or producer may use a calculation averaged over the producer's fiscal year, using any one of the following categories, on the basis of all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of one or more of the Parties:

(a) the same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a Party;

(b) the same class of motor vehicles produced in the same plant in the territory of a Party; or

(c) the same model line of motor vehicles produced in the territory of a Party.

5. Each Party shall provide that, for purposes of calculating regional value content under paragraph 3 for automotive materials (2) produced in the same plant, an importer, exporter, or producer may use a calculation:

(a) averaged:

(i) over the fiscal year of the motor vehicle producer to whom the good is sold;

(ii) over any quarter or month; or

(iii) over the automotive materials producer's fiscal year,

provided that the good was produced during the fiscal year, quarter, or month forming the basis for the calculation;

(b) in which the average in subparagraph (a) is calculated separately for such goods sold to one or more motor vehicle producers; or

(c) in which the average in subparagraph (a) or (b) is calculated separately for those goods that are exported to the territory of one or more of the Parties.

(1) Paragraph 3 applies solely to goods classified under the following Harmonized System headings and subheadings: 8407.31 through 8407.34 (engines), 8408.20 (diesel engines for vehicles), 84.09 (parts of engines) 87.01 through 87.05 (motor vehicles), 87.06 (chassis), 87.07 (bodies), and 87.08 (motor vehicle parts).

(2) Paragraph 5 applies solely to automotive materials classified in the following Harmonized System headings and subheadings: 8407.31 through 8407.34 (engines), 8408.20 (diesel engines for vehicles), 84.09 (parts of engines), 87.06 (chassis), 87.07 (bodies), and 87.08 (motor vehicle parts).

Article 4.3. Value of Materials

Each Party shall provide that, for purposes of Articles 4.2 and 4.6, the value of a material shall be:

(a) for a material imported by the producer of the good, the adjusted value of the material;

(b) for a material acquired by the producer in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15 and the corresponding interpretative notes of the Customs Valuation Agreement, i.e., in the same manner as for imported goods, with such reasonable modifications as may be required due to the absence of an importation by the producer; or

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

(i) all the expenses incurred in the production of the material, including general expenses, and

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

Article 4.4. Further Adjustments to the Value of Materials

1. Each Party shall provide that, for originating materials, the following expenses, where not included under Article 4.3, may be added to the value of the material:

(a) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within a Partyâs territory or between the territories of two or more of the Parties to the location of the producer;

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

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

2. Each Party shall provide that, for non-originating materials, the following expenses, where included under Article 4.3, may be deducted from the value of the material:

(a) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within a Partyâs territory or between the territories of two or more of the Parties to the location of the producer;

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

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

(d) the cost of originating materials used in the production of the non-originating material in the territory of a Party.

Article 4.5. Accumulation

1. Each Party shall provide that originating goods or materials of one or more of the Parties, incorporated into a good in the territory of another Party, shall be considered to originate in the territory of the other Party.

2. Each Party shall provide that a good is originating where the good is produced in the territory of one or more of the Parties by one or more producers, provided that the good satisfies the requirements in Article 4.1 and all other applicable requirements in this Chapter.

Article 4.6. De Minimis

Except as provided in Annex 4.6, each Party shall provide that a good that does not undergo a change in tariff classification pursuant to Annex 4.1 is nonetheless originating if the value of all non-originating materials used in the production of the good and that do not undergo the applicable change in tariff classification does not exceed ten percent of the adjusted value of the good, provided that the value of such non-originating materials shall be included in the value of non-originating materials for any applicable regional value content requirement and that the good meets all other applicable requirements in this Chapter.

Article 4.7. Fungible Goods and Materials

1. Each Party shall provide that an importer may claim that a fungible good or material is originating where the importer, exporter, or producer has:

(a) physically segregated each fungible good or material; or

(b) used any inventory management method, such as averaging, last-in-first-out (LIFO) or first-in-first-out (FIFO), recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by the Party in which the production is performed.

2. Each Party shall provide that the inventory management method selected under paragraph 1 for a particular fungible good or material shall continue to be used for that good or material throughout the fiscal year of the person that selected the inventory management method.

Article 4.8. Accessories, Spare Parts, and Tools

1. Each Party shall provide that a good's standard accessories, spare parts, or tools delivered with the good shall be treated as originating goods if the good is an originating good and shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification, provided that:

(a) the accessories, spare parts, or tools are classified with and not invoiced separately from the good, regardless of whether they appear specified or separately identified in the invoice itself; and

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

2. If a good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools described in paragraph 1 shall be taken into account as originating or non- originating materials, as the case may be, in calculating the regional value content of the good.

Article 4.9. Sets of Goods

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

2. Notwithstanding paragraph 1, a set of goods is originating if the value of all the non-originating goods in the set does not exceed 15 percent of the adjusted value of the set.

Article 4.10. Packaging Materials and Containers for Retail Sale

1. Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good, be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.1 or Annex 3-A (Textile and Apparel Specific Rules of Origin).

2. If a good is subject to a regional value content requirement, the value of packaging materials and containers described in paragraph 1 shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 4.11. Packing Materials and Containers for Shipment

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

Article 4.12. Indirect Materials Used In Production

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

Article 4.13. Transit and Transshipment

Each Party shall provide that a good shall not be considered to be an originating good if the good:

(a) undergoes subsequent production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or

(b) does not remain under the control of customs authorities in the territory of a non- Party.

Article 4.14. Consultation and Modifications

1. The Parties shall consult regularly to ensure that this Chapter is administered effectively, uniformly, and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this Chapter.

2. A Party that considers that a specific rule of origin set forth in Annex 4.1 requires modification to take into account developments in production processes, lack of supply of originating materials, or other relevant factors may submit a proposed modification along with supporting rationale and any studies to the other Parties for consideration.

3. On submission by a Party of a proposed modification under paragraph 2, the Commission may tefer the matter to an ad hoc working group within 60 days or on such other date as the Commission may decide. The working group shall meet to consider the proposed modification within 60 days of the date of referral or on such other date as the Commission may decide.

4. Within such period as the Commission may direct, the working group shall provide a report to the Commission, setting out its conclusions and recommendations, if any.

5. On receipt of the report, the Commission may take appropriate action under Article 20. 1.3(b).

6. With respect to a textile or apparel good, paragraphs 2 through 4 of Article 3.3 (Rules of Origin, Origin Procedures, and Related Matters) apply in place of paragraphs 2 through 5.

Section B. Origin Procedures

Article 4.15. Claims for Preferential Treatment

1. Each Party shall provide that an importer may make a claim for preferential tariff treatment based on either:

(a) a written or electronic certification by the importer, exporter, or producer; or

(b) the importer's knowledge that the good is an originating good, including reasonable reliance on information in the importer's possession that the good is an originating good.

2. Each Party shall provide that a certification need not be made in a prescribed format, provided that the certification is in written or electronic form, including but not limited to the following elements:

(a) the name of the certifying person, including as necessary contact or other identifying information;

(b) tariff classification under the Harmonized System and a description of the good;

(c) information demonstrating that the good is originating;

(d) date of the certification; and

(e) in the case of a blanket certification issued as set out in paragraph 4(b), the period that the certification covers.

3. Each Party shall provide that a certification by the producer or exporter of the good may be completed on the basis of:

(a) the producer's or exporter's knowledge that the good is originating; or

(b) in the case of an exporter, reasonable reliance on the producer's written or electronic certification that the good is originating.

No Party may require an exporter or producer to provide a written or electronic certification to another person.

4. Each Party shall provide that a certification may apply to:

(a) a single shipment of a good into the territory of a Party; or

(b) multiple shipments of identical goods within any period specified in the written or electronic certification, not exceeding 12 months from the date of the certification.

5. Each Party shall provide that a certification shall be valid for four years after the date it was issued.

6. Each Party shall allow an importer to submit a certification in the language of the importing Party or the exporting Party. In the latter case, the importing Party may require the importer to submit a translation of the certification in the language of the importing Party.

Article 4.16. Exceptions

No Party may require a certification or information demonstrating that a good is originating where:

(a) the customs value of the importation does not exceed US$1,500 or the equivalent amount in the currency of the importing Party, or such higher amount as may be established by the importing Party, unless the importing Party considers the importation to be part of a series of importations carried out or planned for the purpose of evading compliance with the Party's laws governing claims for preferential treatment under this Agreement; or

(b) it is a good for which the importing Party does not require the importer to present a certification or information demonstrating origin.

Article 4.17. Record Keeping Requirements

1. Each Party shall provide that an exporter or a producer in its territory that provides a certification in accordance with Article 4.15 shall maintain, for a minimum of five years from the date the certification was issued, all records necessary to demonstrate that a good for which the producer or exporter provided a certification was an originating good, including records concerning:

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

(b) the purchase of, cost of, value of, and payment for all materials, including indirect materials, used in the production of the exported good; and

(c) the production of the good in the form in which it was exported.

2. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the Party's territory shall maintain, for a minimum of five years from the date of importation of the good, all records necessary to demonstrate the good qualified for the preferential tariff treatment.

Article 4.18. Verification

1. For purposes of determining whether a good imported into its territory from the territory of another Party is an originating good, the importing Party may conduct a verification by means of:

(a) written requests for information from the importer, exporter, or producer;

(b) written questionnaires to the importer, exporter, or producer;

(c) visits to the premises of an exporter or producer in the territory of the other Party, to review the records referred to in Article 4.17 or observe the facilities used in the production of the good, in accordance with any guidelines that the Parties develop pursuant to Article 4.21.2; or

(d) such other procedures to which the importing and exporting Parties may agree.

2. A Party may deny preferential tariff treatment to an imported good where:

(a) the exporter, producer, or importer fails to respond to a written request for information or questionnaire within a reasonable period, as established in the importing Party's law;

(b) after receipt of a written notification for a verification visit to which the importing and exporting Parties have agreed, the exporter or producer does not provide its written consent within a reasonable period, as established by the importing Party's law; or

(c) the Party finds a pattern of conduct indicating that an importer, exporter, or producer has provided false or unsupported declarations or certifications that a good imported into its territory is an originating good.

3. A Party conducting a verification shall provide the importer a determination, in writing, of whether the good is originating. The Party's determination shall include factual findings and the legal basis for the determination.

4. If an importing Party makes a determination under paragraph 3 that a good is not originating, the Party shall not apply that determination to an importation made before the date of the determination where:

(a) the exporting Party issued an advance ruling regarding the tariff classification or valuation of one or more materials used in the good under Article 5.10 (Advance Rulings);

(b) the importing Party's determination is based on a tariff classification or valuation for such materials that is different than that provided for in the advance ruling referred to in subparagraph (a); and

(c) the exporting Party issued the advance ruling before the importing Party's determination.

5. Where an importing Party determines through verification that an importer, exporter, or producer has engaged in a pattern of conduct in providing false or unsupported statements, declarations, or certifications that a good imported into its territory is originating, the Party may suspend preferential tariff treatment to identical goods covered by subsequent statements, declarations, or certifications by that importer, exporter, or producer until the importing Party determines that the importer, exporter, or producer is in compliance with this Chapter.

Article 4.19. Obligations Relating to Importations

1. Each Party shall grant any claim for preferential tariff treatment made in accordance with this Chapter, unless the Party issues a written determination that the claim is invalid as a matter of law or fact.

2. A Party may deny preferential tariff treatment to a good if the importer fails to comply with any requirement in this Chapter.

3. No Party may subject an importer to any penalty for making an invalid claim for preferential tariff treatment, if the importer:

(a) did not engage in negligence, gross negligence, or fraud in making the claim and pays any customs duty owing; or

(b) on becoming aware that such a claim is not valid, promptly and voluntarily corrects the claim and pays any customs duty owing.

4. Each Party may require that an importer who claims preferential tariff treatment for a good imported into its territory:

(a) declare in the importation document that the good is originating;

(b) have in its possession at the time the declaration referred to in subparagraph (a) is made a written or electronic certification as described in Article 4.15, if the certification forms the basis for the claim;

(c) provide a copy of the certification, on request, to the importing Party, if the certification forms the basis for the claim;

(d) when the importer has reason to believe that the declaration in subparagraph (a) is based on inaccurate information, correct the importation document and pay any customs duty owing;

(e) when a certification by a producer or exporter forms the basis for the claim, either provide or have in place, at the importer's option, an arrangement to have the producer or exporter provide, on request of the importing Party, all information relied on by such producer or exporter in making such certification; and

(f) demonstrate, on request of the importing Party, that the good is originating under Article 4.1, including that the good satisfies the requirements of Article 4.13.

5. Each Party shall provide that, where a good was originating when it was imported into its territory, but the importer of the good did not make a claim for preferential tariff treatment at the time of importation, that importer may, no later than one year after the date of importation, make a claim for preferential tariff treatment and apply for a refund of any excess duties paid as a result of the good not having been accorded preferential tariff treatment, on presentation to the Party of:

(a) a written declaration, stating that the good was originating at the time of importation;

(b) a copy of a written or electronic certification if a certification forms the basis for the claim, or other information demonstrating that the good was originating; and

(c) such other documentation relating to the importation of the good as the importing Party may require.

6. Each Party may provide that the importer is responsible for complying with the requirements of paragraph 4, notwithstanding that the importer may have based its claim for preferential tariff treatment on a certification or information that an exporter or producer provided.

7. Nothing in this Article shall prevent a Party from taking action under Article 3.2.7.

Article 4.20. Obligations Relating to Exportations

1. Each Party shall provide that:

(a) an exporter or a producer in its territory that has provided a written or electronic certification in accordance with Article 4.15 shall, on request, provide a copy to the exporting Party;

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

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

2. No Party may impose penalties on an exporter or a producer for providing an incorrect certification if the exporter or producer voluntarily notifies in writing all persons to whom it has provided the certification that it was incorrect.

Article 4.21. Common Guidelines

1. The Parties shall agree on and publish common guidelines for the interpretation, application, and administration of this Chapter and the relevant provisions of Chapter Two (National Treatment and Market Access for Goods) and shall endeavor to do so by the date of entry into force of this Agreement. The Parties may agree to modify the common guidelines.

2. The Parties shall endeavor to develop guidelines for conducting verifications pursuant to Article 4.18.1(c).

Article 4.22. Implementation Peru Shall:

(a) implement Article 4.15.1(a), with respect to electronic certifications, no later than three years after the date of entry into force of this Agreement; and

(b) implement Article 4.15.1(b) no later than three years after the date of entry into force of the Agreement.

Article 4.23. Definitions

For purposes of this Chapter: adjusted value means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation;

class of motor vehicles means any one of the following categories of motor vehicles:

(a) motor vehicles classified under subheading 8701.20, motor vehicles for the transport of 16 or more persons classified under subheading 8702.10 or 8702.90, and motor vehicles classified under subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 87.05 or 87.06;

(b) motor vehicles classified under subheading 8701.10 or 8701.30 through 8701.90; motor vehicles for the transport of 15 or fewer persons classified under subheading 8702.10 or 8702.90, and motor vehicles of subheading 8704.21 or 8704.31; or

(c) motor vehicles classified under subheading 8703.21 through 8703.90;

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

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

good means any merchandise, product, article, or material;

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

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

(b) live animals born and raised in the territory of one or more of the Parties;

(c) goods obtained in the territory of one or more of the Parties from live animals;

(d) goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or more of the Parties;

(e) minerals and other natural resources not included in subparagraphs (a) through (d) extracted or taken from the territory of one or more of the Parties;

(f) fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside the territory of one or more of the Parties by vessels registered or recorded with a Party and flying its flag;

(g) goods produced on board factory ships from the goods referred to in subparagraph (f), provided such factory ships are registered or recorded with that Party and fly its flag;

(h) goods taken by a Party or a person of a Party from the seabed or subsoil outside territorial waters, provided that a Party has rights to exploit such seabed or subsoil;

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

(j) waste and scrap derived from:

(i) manufacturing or processing operations in the territory of one or more of the Parties, or

(ii) used goods collected in the territory of one or more of the Parties, provided such goods are fit only for the recovery of raw materials;

(k) recovered goods derived in the territory of one or more of the Parties from used goods and utilized in the territory of one or more of the Parties in the production of remanufactured goods; and

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

identical goods means goods that are the same in all respects relevant to the particular rule of origin that qualifies the goods as originating;

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

(a) fuel and energy;

(b) tools, dies, and molds;

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

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

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

(f) equipment, devices, and supplies used for testing or inspecting the good;

(g) catalysts and solvents; and

(h) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

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

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

model line means a group of motor vehicles having the same platform or model name;

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

net cost of the good means the net cost that can be reasonably allocated to the good under one of the following methods:

(a) by calculating the total cost incurred with respect to all goods produced by that producer, subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the good;

(b) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating the total cost to the good, and then subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the portion of the total cost allocated to the good; or

(c) reasonably allocating each cost that forms part of the total cost incurred with respect to the good so that the aggregate of these costs does not include any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs,

provided that the allocation of all such costs is consistent with the provisions regarding the reasonable allocation of costs set out in Generally Accepted Accounting Principles;

non-allowable interest costs means interest costs incurred by a producer that exceed 700 basis points above the yield on

debt obligations of comparable maturities issued by the central level of government of the Party in which the producer is located;

non-originating good or non-originating material means a good or material that does not qualify as originating under this Chapter;

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

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

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

reasonably allocate means to apportion in a manner appropriate under Generally Accepted Accounting Principles;

recovered goods means materials in the form of individual parts that are the result of: (a) the disassembly of used goods into individual parts; and (b) cleaning, inspecting, testing, or other processes as necessary for improvement to sound working condition;

remanufactured goods means industrial goods assembled in the territory of a Party classified under Harmonized System Chapter 84, 85, 87, or 90 or heading 94.02, except goods classified under Harmonized System heading 84.18 or 85.16, that:

(a) are entirely or partially comprised of recovered goods; and

(b) have a similar life expectancy and enjoy a factory warranty similar to such new goods;

total cost means all product costs, period costs, and other costs for a good incurred in the territory of one or more of the Parties. Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overhead. Period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses. Other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

used means utilized or consumed in the production of goods; and

value means the value of a good or material for purposes of calculating customs duties or for purposes of applying this Chapter.

Chapter Five. Customs Administration and Trade Facilitation

Article 5.1. Publication

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

2. Each Party shall designate or maintain one or more inquiry points to address inquiries by interested persons concerning customs matters and shall make available on the Internet information concerning the procedures for making such inquiries.

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

Article 5.2. Release of Goods

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties.

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

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

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

(c) allow importers to withdraw goods from customs before and without prejudice to the final determination by its customs

authority of the applicable customs duties, taxes, and fees. (1)

(1) A Party may require an importer to provide sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument, covering the ultimate payment of the customs duties, taxes, and fees in connection with the importation of the good.

Article 5.3. Automation

Each Party shall endeavor to use information technology that expedites procedures for the release of goods. When deciding on the information technology to be used for this purpose, each Party shall:

(a) endeavor to use international standards;

(b) make electronic systems accessible to customs users;

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

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

(e) work towards developing compatible electronic systems among the Parties' customs authorities, to facilitate government to government exchange of international trade data; and

ff) work towards developing a set of common data elements and processes in accordance with World Customs Organization (WCO) Customs Data Model and related WCO recommendations and guidelines.

Article 5.4. Risk Management

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

Article 5.5. Cooperation

1. With a view to facilitating the effective operation of this Agreement, each Party shall endeavor to provide each other Party with advance notice of any significant modification of administrative policy or other similar development related to its laws or regulations governing importations that is likely to substantially affect the operation of this Agreement.

2. The Parties shall cooperate in achieving compliance with their respective laws and regulations pertaining to:

(a) the implementation and operation of the provisions of this Agreement governing importations or exportations, including claims of origin and origin procedures;

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

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

(d) other customs matters as the Parties may agree.

3. Where a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importations, the Party may request that another Party provide specific confidential information normally collected in connection with the importation of goods.

4. A Party's request under paragraph 3 shall be in writing, shall specify the purpose for which the information is sought, and shall identify the requested information with sufficient specificity for the other Party to locate and provide the information.

5. The Party from whom the information is requested shall, in accordance with its law and any relevant international agreements to which it is a party, provide a written response containing such information.

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

(a) historical evidence of non-compliance with laws or regulations governing importations by an importer or exporter;

(b) historical evidence of non-compliance with laws or regulations governing importations by a manufacturer, producer, or other person involved in the movement of goods from the territory of one Party to the territory of another Party;

(c) historical evidence that some or all of the persons involved in the movement from the territory of one Party to the territory of another Party of goods within a specific product sector have not complied with a Party's laws or regulations governing importations; or

(d) other information that the requesting Party and the Party from whom the information is requested agree is sufficient in the context of a particular request.

7. Each Party shall endeavor to provide another Party with any other information that would assist that Party in determining whether imports from or exports to that Party are in compliance with the other Party's laws or regulations governing importations, in particular those related to the prevention of unlawful activities such as smuggling and similar infractions.

8. For purposes of facilitating trade between the Parties, each Party shall endeavor to provide the other Parties with technical advice and assistance for the purpose of improving risk assessment and risk management techniques, facilitating the implementation of international supply chain standards, simplifying and expediting customs procedures for the timely and efficient clearance of goods, advancing the technical skill of personnel, and enhancing the use of technologies that can lead to improved compliance with regard to a Party's laws or regulations governing importations.

9. The Parties shall endeavor to cooperate to enhance each Party's ability to enforce its regulations governing importations. The Parties shall further endeavor to establish and maintain other channels of communication to facilitate the secure and rapid exchange of information and to improve coordination on importation issues.

Article 5.6. Confidentiality

1. Where a Party providing information to another Party in accordance with this Chapter designates the information as confidential, the other Party shall maintain the confidentiality of the information. The Party providing the information may require a written assurance from the other Party that the information will be held in confidence, will be used only for the purposes specified in the other Party's request for information, and will not be disclosed without the Party's specific permission.

2. A Party may decline to provide information requested by another Party where that Party has failed to act in conformity with the assurance provided under paragraph 1.

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

Article 5.7. Express Shipments

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

(a) provide a separate and expedited customs procedure for express shipments;

(b) provide for the submission and processing of information necessary for the release of an express shipment before the express shipment arrives;

(c) allow submission of a single manifest covering all goods contained in a shipment transported by an express shipment service, through, if possible, electronic means;

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

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

(f) apply without regard to weight or customs value; and

(g) provide, under normal circumstances, that no customs duties or taxes will be assessed on, nor will formal entry documents be required for, express shipments valued at US$200 or less. (2)

(2) Notwithstanding Article 5.7(g), a Party may require that express shipments be accompanied by an airway bill or bill of lading. For greater

certainty, a Party may assess customs duties or taxes and may require formal entry documents for restricted goods.

Article 5.8. Review and Appeal

Each Party shall ensure that with respect to its determinations (3) on customs matters, importers in its territory have access to:

(a) a level of administrative review independent of the employee or office that issued the determinations; and

(b) judicial review of the determinations.

(3)For purposes of this Article, a determination, if made by a Party other than the United States means an administrative act.

Article 5.9. Penalties

Each Party shall adopt or maintain measures that allow for the imposition of civil or administrative penalties and, where appropriate, criminal sanctions for violations of its customs laws and regulations, including those governing tariff classification, customs valuation, country of origin, and claims for preferential treatment under this Agreement.

Article 5.10. Advance Rulings

1. Each Party shall issue, before a good is imported into its territory, a written advance ruling at the written request of an importer in its territory, or an exporter or producer (4) in the territory of another Party with regard to:

(a) tariff classification;

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

(c) the application of duty drawback, deferral, or other relief from customs duties;

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

(e) whether a good re-entered into the territory of a Party after being exported to the territory of the other Party for repair or alteration is eligible for duty free treatment in accordance with Article 2.6 (Goods Re-entered after Repair or Alteration);

(f) country of origin marking;

(g) the application of quotas; and

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

2. Each Party shall issue an advance ruling within 150 days after a request, provided that the requester has submitted all information that the Party requires, including, if the Party requests, a sample of the good for which the requester is seeking an advance ruling. In issuing an advance ruling, the Party shall take into account facts and circumstances the requester has provided.

3. Each Party shall provide that advance rulings shall be in force from their date of issuance, or another date specified in the ruling, provided that the facts or circumstances on which the ruling is based remain unchanged.

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

5. Subject to any confidentiality requirements in its laws, each Party shall make its advance rulings publicly available.

6. If a requester provides false information or omits relevant facts or circumstances relating to the advance ruling, or does not act in accordance with the ruling's terms and conditions, the importing Party may apply appropriate measures, including civil, criminal, and administrative actions, monetary penalties, or other sanctions.

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

Article 5.11. Implementation

1. For Peru:

(a) Articles 5.1.1, 5.1.2, and 5.7 shall enter into force two years after the date of entry into force of this Agreement;

(b) Article 5.10 shall enter into force three years after the date of entry into force of this Agreement; and

(c) Article 5.2 shall enter into force one year after the date of entry into force of this Agreement.

Chapter Six. Sanitary and Phytosanitary Measures

Objectives

The objectives of this Chapter are to protect human, animal, or plant life or health in the Parties' territories, enhance the Parties' implementation of the SPS Agreement, provide a Standing Committee for addressing sanitary and phytosanitary matters, attempt to resolve trade issues, and thereby expand trade opportunities.

Article 6.1. Scope and Coverage

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

Article 6.2. General Provisions

1. Further to Article 1.2 (Relation to Other Agreements), the Parties affirm their existing rights and obligations with respect to each other under the SPS Agreement.

2. No Party may have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.

Article 6.3. Standing Committee on Sanitary and Phytosanitary Matters

1. Not later than 30 days after the date of entry into force of this Agreement, the Parties shall establish a Standing Committee on Sanitary and Phytosanitary Matters (the "Standing Committee"). The objectives of the Standing Committee shall be to enhance the implementation by each Party of the SPS Agreement, protect human, animal, or plant life or health, enhance consultation and cooperation between the Parties on sanitary and phytosanitary matters, and address measures affecting trade between the Parties.

2. The Parties shall establish the Standing Committee through an exchange of letters identifying the primary representative of each Party to the Standing Committee and establishing the Standing Committee's terms of reference.

3. The Standing Committee shall seek to enhance any present or future relationships between the Parties' agencies and ministries with responsibility for sanitary and phytosanitary matters.

4. The Standing Committee shall provide a forum for:

(a) improving the Parties' understanding of specific issues relating to the implementation of the SPS Agreement;

(b) enhancing mutual understanding of each Party's sanitary and phytosanitary measures and the regulatory processes that relate to those measures;

(c) consulting on and attempting to resolve matters related to the development or application of sanitary and phytosanitary measures that affect, or may affect, trade between the Parties;

(d) coordinating and making recommendations on technical assistance programs on sanitary and phytosanitary matters to the Committee on Trade Capacity Building; and

(e) consulting on issues, positions, and agendas for meetings of the WTO SPS Committee, the various Codex Committees (including the Codex Alimentarius Commission), the International Plant Protection Convention, the World Organization for Animal Health, and other international and regional fora on food safety and human, animal, and plant health.

5. The Standing Committee shall meet at least once a year unless the Parties otherwise agree.

6. The Standing Committee shall perform its work in accordance with its terms of reference. The Standing Committee may revise its terms of reference and establish procedures to guide its operation.

7. The Standing Committee may establish ad hoc technical working groups, as needed, in accordance with its terms of reference.

8. Each Party shall ensure that appropriate representatives with responsibility for the development, implementation, and enforcement of sanitary and phytosanitary measures from its relevant trade and regulatory agencies or ministries participate in meetings of the Standing Committee.

9. All decisions of the Standing Committee shall be taken by consensus, unless the Committee otherwise decides.

Chapter Seven. Technical Barriers to Trade

Objectives

The objectives of this Chapter are to increase and facilitate trade and obtain effective market access through the improved implementation of the TBT Agreement, the elimination of unnecessary technical barriers to trade, and the enhancement of bilateral cooperation.

Article 7.1. Affirmation of the TBT Agreement

Further to Article 1.2 (Relation to Other Agreements), the Parties affirm their existing tights and obligations with respect to each other under the TBT Agreement.

Article 7.2. Scope and Coverage

1. This Chapter applies to the preparation, adoption, and application of all standards, technical regulations, and conformity assessment procedures of central government bodies that may, directly or indirectly, affect trade in goods between the Parties, (1) including any amendments (2) thereto and any addition to their rules or the product coverage thereof, except amendments and additions of an insignificant nature.

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

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

(b) sanitary and phytosanitary measures.

(1) For greater certainty, the Parties understand that any reference in this Chapter to a standard, technical regulation, or conformity assessment procedure includes those related to metrology.

(2) "Any amendments" includes the elimination of technical regulations.

Article 7.3. Trade Facilitation

1. The Parties shall intensify their joint work in the field of standards, technical regulations, and conformity assessment procedures with a view to facilitating trade between the Parties. In particular, the Parties shall seek to identify, develop, and promote trade facilitating initiatives regarding standards, technical regulations, and conformity assessment procedures that are appropriate for particular issues or sectors, taking into consideration the Parties' experience in other bilateral, regional, and multilateral agreements, as appropriate. Such initiatives may include cooperation on regulatory issues, such as convergence, alignment with international standards, reliance on a supplier's declaration of conformity, the recognition and acceptance of the results of conformity assessment procedures, and the use of accreditation to qualify conformity assessment bodies.

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

Annex 3 of the Agreement) issued by the WTO Committee on Technical Barriers to Trade.

3. Where a Party detains at a port of entry a good originating in the territory of another Party due to a perceived failure to comply with a technical regulation, it shall immediately notify the importer of the reasons for the detention.

4. On request of another Party, a Party shall give favorable consideration to any sector- specific proposal that the requesting Party makes for further cooperation under this Chapter.

Article 7.4. Conformity Assessment

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

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

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

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

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

(e) a Party may designate conformity assessment bodies located in the territory of another Party; and

(f) a Party may recognize the results of conformity assessment procedures conducted in the territory of another Party.

The Parties shall intensify their exchange of information on these and other similar mechanisms.

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

3. Each Party shall accredit, approve, license, or otherwise recognize conformity assessment bodies in the territories of the other Parties on terms no less favorable than those it accords to conformity assessment bodies in its territory. Where a Party accredits, approves, licenses, or otherwise recognizes a body assessing conformity with a specific technical regulation or standard in its territory and refuses to accredit, approve, license, or otherwise recognize a body assessing conformity with that technical regulation or standard in the territory of another Party, it shall, on request of that other Party, explain the reasons for its decision so that corrective action may be taken, if necessary.

4. Where a Party declines a request from another Party to engage in negotiations or conclude an agreement on facilitating recognition in its territory of the results of conformity assessment procedures conducted by bodies in the other Party's territory, it shall, on request of that other Party, explain the reasons for its decision.

Article 7.5. Technical Regulations

1. Where a Party provides that foreign technical regulations may be accepted as equivalent to a specific technical regulation of its own, and the Party does not accept a technical regulation of another Party as equivalent to that technical regulation, it shall, at the request of that other Party, explain the reasons for its decision. A Party seeking the acceptance of its technical regulation as equivalent should provide, as appropriate, information regarding the relationship of its technical regulation to international standards referenced in the technical regulation of the other Party, the circumstances which gave rise to the adoption of its technical regulation, and the similarity of the respective conformity assessment procedures.

2. Where a Party does not provide that foreign technical regulations may be accepted as equivalent to its own, it shall, at the request of another Party, explain its reasons for not accepting that other Party's technical regulations as equivalent.

3. At the request of a Party which may have an interest in developing a similar technical regulation, and in order to minimize duplicate expenses, the other Party shall provide any available information, studies, or other relevant documents, except for confidential information on which it has relied in the development of a technical regulation.

Article 7.6. Transparency

1. Each Party shall allow persons of the other Parties to participate in the development of its standards, technical regulations, and conformity assessment procedures. Each Party shall permit persons of the other Parties to participate in the development of such measures on terms no less favorable than those accorded to its own persons and to persons of any other Party.

2. Each Party shall recommend that non-governmental standardizing bodies in its territory observe paragraph 1.

3. In order to enhance the opportunity for persons to be aware of, and to understand, proposed technical regulations and conformity assessment procedures, and to be able to provide meaningful comments on such regulations and procedures, a Party publishing a notice and filing a notification under Article 2.9, 3.2, 5.6 or 7.2 of the TBT Agreement, shall:

(a) include in the notice a statement describing the objective of the proposed technical regulation or conformity assessment procedure and the rationale for the approach the Party is proposing; and

(b) transmit the proposal electronically to the other Parties through the inquiry points each Party has established under Article 10 of the TBT Agreement at the same time as it notifies other WTO Members of the proposal pursuant to the TBT Agreement.

Each Party shall publish and notify those technical regulations that are in accordance with the technical content of any relevant international standards.

Each Party should allow at least 60 days after it transmits a proposal under subparagraph (b) for persons and the other Parties to provide comments in writing on the proposal. A Party shall give favorable consideration to reasonable requests for extending the comment period.

2. Each Party shall recommend that non-governmental standardizing bodies in its territory observe paragraph 1.

3. In order to enhance the opportunity for persons to be aware of, and to understand, proposed technical regulations and conformity assessment procedures, and to be able to provide meaningful comments on such regulations and procedures, a Party publishing a notice and filing a notification under Article 2.9, 3.2, 5.6 or 7.2 of the TBT Agreement, shall:

(a) include in the notice a statement describing the objective of the proposed technical regulation or conformity assessment procedure and the rationale for the approach the Party is proposing; and

(b) transmit the proposal electronically to the other Parties through the inquiry points each Party has established under Article 10 of the TBT Agreement at the same time as it notifies other WTO Members of the proposal pursuant to the TBT Agreement.

Each Party shall publish and notify those technical regulations that are in accordance with the technical content of any relevant international standards.

Each Party should allow at least 60 days after it transmits a proposal under subparagraph (b) for persons and the other Parties to provide comments in writing on the proposal. A Party shall give favorable consideration to reasonable requests for extending the comment period.

4. Each Party shall publish or otherwise make available to the public, either in print or electronically, its responses to significant comments that it receives from persons or the other Parties under paragraph 3 no later than the date it publishes the final technical regulation or conformity assessment procedure.

5, Where a Party makes a notification under Article 2.10, 3.2, 5.7, or 7.2 of the TBT Agreement because urgent problems have arisen or threaten to arise, the notifying Party shall at the same time transmit the notification electronically to the other Parties through the inquiry points referenced in subparagraph 3(b).

Each Party also shall notify those technical regulations that are in accordance with the technical content of any relevant international standards.

6. A Party shall, on request of another Party, provide information regarding the objectives of, and rationale for, a standard, technical regulation, or conformity assessment procedure that the Party has adopted or is proposing to adopt.

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

Article 7.7. Committee on Technical Barriers to Trade

1. The Parties hereby establish the Committee on Technical Barriers to Trade, comprising representatives of each Party, as set out in Annex 7.7.

2. The Committee's functions shall include:

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

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

(c) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures and, as appropriate, designing and proposing mechanisms for technical assistance of the type described in Article 11 of the TBT Agreement, in coordination with the Committee on Trade Capacity Building, as appropriate;

(d) where appropriate, facilitating sectoral cooperation between governmental and non-governmental conformity assessment bodies in the territories of two or more Parties;

(e) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standards, technical regulations, and conformity assessment procedures;

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

(g) reviewing this Chapter in light of any developments under the TBT Agreement and developing recommendations for amendments to this Chapter in light of those developments;

(h) taking any other steps the Parties consider will assist them in implementing this Chapter and the TBT Agreement and in facilitating trade;

(i) as it considers appropriate, reporting to the Commission on the implementation of this Chapter;

(j) establishing, if necessary, for particular issues or sectors, working groups for the treatment of specific matters related to this Chapter and the TBT Agreement; and

(k) exchanging information, at a Party's request, on the Parties' respective views regarding third party issues concerning standards, technical regulations, and conformity assessment procedures so as to foster a common approach to their resolution.

3. When a Party requests consultations under subparagraph 2(f), the Parties shall make every effort to obtain a mutually satisfactory solution within 60 days .

4. Where the Parties have had recourse to consultations under subparagraph 2(f), such consultations shall constitute consultations under Article 21.4 (Consultations).

5. The Committee shall meet at least once a year unless the Parties otherwise agree. The Committee shall carry out its work through the communication channels agreed to by the Parties, which may include electronic mail, videoconferencing, or other means.

6. All decisions of the Committee shall be made by consensus unless the Committee decides otherwise.

Article 7.8. Information Exchange

1. If a Party requests any information or explanation pursuant to the provisions of this Chapter, the other Party shall provide such information or explanation in print or electronically within a reasonable time. A Party shall endeavor to respond to each such request within 60 days.

2. With respect to information exchanges, in compliance with Article 10 of the TBT Agreement, each Party shall apply the recommendations set out in Decisions and Recommendations adopted by the Committee since I January 1995, G/TBT/1/Rev. 8, 23 May 2002, Section IV (Procedure for information exchanges) issued by the WTO Committee on Technical Barriers to Trade.

Article 7.9. Definitions

For purposes of this Chapter:

Central Government Body, Conformity Assessment Procedures, Standard, and Technical regulation shall have the meanings assigned to those terms in Annex 1 of the TBT Agreement; and

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

Chapter Eight. Trade Remedies

Section A. Safeguard Measures

Article 8.1. Imposition of a Safeguard Measure

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

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

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

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

(i) the most-favored-nation (MEN) applied rate of duty in effect at the time the measure is applied, and

(ii) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement. (2)

3. A Party shall apply a safeguard measure to imports of an originating good (3) irrespective of their source.

4. No Party may apply a safeguard measure against an originating good of another Party as long as the exporting Party's share of imports of the originating good in the importing Party does not exceed three percent, provided that Parties with less than three percent import share collectively account for not more than nine percent of total imports of such originating good.

(1) The Parties note that prior to the date of entry into force of this Agreement, the United States accorded duty-free treatment under the U.S. Generalized System of Preferences and the U.S. Andean Trade Preference Act, as amended, to many of the goods imported from the other Parties.

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

(3) For greater certainty, goods imported into one Party from another Party under an Andean Community certificate of origin shall not be subject to safeguard measures under this Chapter.

Article 8.2. Standards for a Safeguard Measure

1. No Party may maintain a safeguard measure:

(a) except to the extent, and for such time, as may be necessary to prevent or remedy serious injury and to facilitate adjustment;

(b) for a period exceeding two years; except that the period may be extended by up to two years if the competent authority determines, in conformity with the procedures set out in Article 8.3, that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the domestic industry is adjusting; or

(c) beyond the expiration of the transition period.

2. In order to facilitate adjustment in a situation where the expected duration of a safeguard measure is over one year, the Party applying the measure shall progressively liberalize it at regular intervals during the period of application.

3. No Party may apply a safeguard measure more than once on the same good.

4. On the termination of a safeguard measure, the rate of duty shall be no higher than the rate that, according to the Party's Schedule to Annex 2.3 (Tariff Elimination), would have been in effect one year after the initiation of the measure. Beginning on January 1 of the year following the termination of the measure, the Party that has applied the measure shall:

(a) apply the rate of duty set out in the Party's Schedule to Annex 2.3 (Tariff Elimination) as if the safeguard measure had never been applied; or

(b) eliminate the tariff in equal annual stages ending on the date set out in the Party's Schedule to Annex 2.3 (Tariff Elimination) for the elimination of the tariff.

Article 8.3. Investigation Procedures and Transparency Requirements

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

(a) initiating a safeguard proceeding under this Chapter;

(b) making a finding of serious injury, or threat thereof, caused by increased imports under Article 8.1; and

(c) taking a decision to apply or extend a safeguard measure.

2. In the investigation described in paragraph 1, a Party shall comply with the requirements of Article 4.2(a) of the Safeguards Agreement; and to this end, Article 4.2(a) of the Safeguards Agreement is incorporated into and made part of this Agreement, mutatis mutandis.

Article 8.4. Notification and Consultation

1. a Party Shall Promptly Notify the other Parties, In Writing on:

(a) Initiating a Safeguard Proceeding Under this Chapter;

(b) making a finding of serious injury, or threat thereof, caused by increased imports under Article 8.1; and

(c) taking a decision to apply or extend a safeguard measure.

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

3. On request of a Party whose good is subject to a safeguard proceeding under this Chapter, the Party conducting that proceeding shall enter into consultations with the requesting Party to review a notification under paragraph 1 or any public notice or report that the competent investigating authority has issued in connection with the proceeding.

Article 8.5. Compensation

1. A Party applying a safeguard measure shall, after consultations with each Party against whose good the measure is applied, provide mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. The Party applying the safeguard measure shall provide an opportunity for such consultations no later than 30 days after the application of the safeguard measure.

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

3. A Party against whose good the measure is applied shall notify the Party applying the safeguard measure in writing at least 30 days before suspending concessions under paragraph 2.

4. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 shall terminate on the later of:

(a) the termination of the safeguard measure, or

(b) the date on which the rate of duty returns to the rate of duty set out in the Party's Schedule to Annex 2.3 (Tariff

Elimination).

Article 8.6. Global Safeguard Measures

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

2. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX of the GATT 1994 and the Safeguards Agreement except that a Party taking a global safeguard measure may exclude imports of an originating good of another Party if such imports are not a substantial cause of serious injury or threat thereof. 3. No Party may apply, with respect to the same good, at the same time:

(a) a safeguard measure; and

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

Article 8.9. Definitions

For purposes of this Section:

competent investigating authority means (a) for Peru the Viceministerio de Comercio Exterior del Ministerio de Comercio Exterior y Turismo and (b) for the United States, the U.S. International Trade Commission;

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

safeguard measure means a measure described in Article 8.1.2; serious injury means a significant overall impairment in the position of a domestic industry;

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

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

transition period means the 10-year period beginning on the date of entry into force of this Agreement, except that for any good for which the Schedule to Annex 2.3 (Tariff Elimination) of the Party applying the measure provides for the Party to eliminate its tariffs on the good over a period of more than 10 years, transition period means the tariff elimination period for the good set out in that Schedule.

Section B. Antidumping and Countervailing Measures

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

2. No provision of this Agreement, including the provisions of Chapter Twenty-One (Dispute Settlement), shall be construed as imposing any rights or obligations on the Parties with respect to antidumping or countervailing duty measures.

Chapter Nine. Government Procurement

Article 9.1. Scope and Coverage

Application of Chapter

1. This Chapter applies to any measure of a Party regarding covered procurement.

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

(a) by any contractual means, including purchase, rental, or lease, with or without an option to buy, build-operate-transfer contracts, and public works concession contracts;

(b) for which the value, as estimated in accordance with paragraphs 9 and 10, as appropriate, equals or exceeds the relevant threshold in Annex 9.1;

(c) that is conducted by a procuring entity; and (d) that is not excluded from coverage.

3. For greater certainty relating to the procurement of digital products as defined in Article 15.8 (Definitions):

(a) covered procurement includes the procurement of digital products; and (b) no provision of Chapter Fifteen (Electronic Commerce) shall be construed as imposing obligations on a Party with respect to the procurement of digital products.

4. This Chapter does not apply to:

(a) non-contractual agreements or any form of assistance that a Party, including a government enterprise, provides, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, and cooperative agreements;

(b) government provision of goods or services to persons or to regional or local level governments;

(c) purchases for the direct purpose of providing foreign assistance;

(d) purchases funded by international grants, loans, or other assistance, where the provision of such assistance is subject to conditions inconsistent with this Chapter;

(e) acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt; or

f) hiring of government employees and related employment measures.

5. For greater certainty, this Chapter does not apply to procurement of banking, financial, or specialized services related to the following activities:

(a) the incurring of public indebtedness; or

(b) public debt management.

6. The provisions of this Chapter shall apply only between the United States and each of the other Parties to this Agreement. Five years after this Agreement enters into force for at least the United States and two other Parties, the Parties shall consult to review the application of this Chapter and determine whether it should continue to be applied on a bilateral basis.

7. Nothing in this Chapter shall prevent a Party from developing new procurement policies, procedures, or contractual means, provided that they are consistent with this Chapter.

Compliance

8. Each Party shall ensure that its procuring entities comply with this Chapter in conducting covered procurements.

Valuation

9. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:

(a) neither divide a procurement into separate procurements nor use a particular method for estimating the value of the procurement for the purpose of avoiding the application of this Chapter;

(b) take into account all forms of remuneration, including any premiums, fees, commissions, interest, other revenue streams that may be provided for under the contract, and, where the procurement provides for the possibility of option clauses, the total maximum value of the procurement, inclusive of optional purchases; and

(c) where the procurement is to be conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers, base its calculation of the total maximum value of the procurement over its entire duration.

10. Where the total estimated maximum value of a procurement over its entire duration is not known, the procurement shall be covered by this Chapter.

Article 9.2. General Principles

National Treatment and Non-Discrimination

1. With respect to any measure covered by this Chapter, each Party shall accord unconditionally to the goods and services of

the other Party and to the suppliers of the other Party offering such goods or services, treatment no less favorable than the most favorable treatment the Party accords to domestic goods, services, and suppliers.

2. With respect to any measure covered by this Chapter, a Party may not:

(a) treat a locally established supplier less favorably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or

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

Tendering Procedures

3. A procuring entity shall use an open tendering procedure for covered procurement, except where Articles 9.7.3 through 9.7.5 and 9.8 apply.

Rules of Origin

4. Each Party shall apply to covered procurement of goods the rules of origin that it applies in the normal course of trade to those goods.

Offsets

5. A procuring entity may not seek, take account of, impose, or enforce offsets in the qualification and selection of suppliers, goods, or services, in the evaluation of tenders, or in the award of contracts, before or in the course of a covered procurement.

Measures Not Specific to Procurement

6. Paragraphs 1 and 2 shall not apply to measures respecting customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations or formalities, or measures affecting trade in services, other than measures specifically governing covered procurements.

Article 9.3. Publication of Procurement Information

1. Each Party shall promptly publish the following information relating to a covered procurement, and any modifications or additions to this information, in an electronic or paper medium that is widely disseminated and readily accessible to the public:

(a) laws, regulations, and procedures; and

(b) judicial decisions and administrative rulings of general application.

2. Each Party shall, on request, provide to the other Party an explanation relating to such information.

Article 9.4. Publication of Notices

Notice of Intended Procurement

1. For each covered procurement, except in the circumstances described in Article 9.8, a procuring entity shall publish a notice inviting interested suppliers to submit tenders ("notice of intended procurement") or, where appropriate, applications for participation in the procurement. Any such notice shall be published in an electronic or paper medium that is widely disseminated and readily accessible to the public for the entire period established for tendering. Each Party shall encourage procuring entities to publish notices of intended procurement in a single point of entry electronic publication that is accessible through the Internet or a comparable network.

2. A procuring entity shall include the following information in each notice of intended procurement:

(a) the name and address of the procuring entity and any other information necessary to contact the entity and obtain all relevant documents relating to the procurement and, if applicable, the sum payable for the tender documentation;

(b) a description of the procurement, including the nature and, where known, quantity of the goods or services to be procured, and any conditions for participation;

(c) the time frame for delivery of goods or services or the duration of the contract;

(d) the procurement method that will be used and whether it will involve negotiations;

(e) the address and the time limit for the submission of tenders and, where appropriate, any time limit for the submission of an application for participation in a procurement; and

(f) an indication that the procurement is covered by this Chapter.

Notice of Planned Procurement

3. Each Party shall encourage its procuring entities to publish as early as possible in each fiscal year notices regarding their respective procurement plans. Such notices should include the subject matter of any planned procurement and the estimated date of the publication of the notice of intended procurement. Where the notice is published in accordance with Article 9.5.4(a), a procuring entity may apply Article 9.5.4(a) for the purpose of establishing shorter time limits for tendering.

Article 9.5. Time Limits

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

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

(a) from the date on which the notice of intended procurement is published; or

(b) where the procuring entity has used selective tendering, from the date on which the entity invites suppliers to submit tenders.

3. A procuring entity may reduce the time limit for submission of tenders by up to 10 days where the entity publishes a notice of intended procurement in accordance with Article 9.4 in an electronic medium and concurrently provides the tender documentation in an electronic medium.

4. A procuring entity may establish a time limit for tendering that is less than 40 days, or 30 days where the entity has complied with paragraph 3, provided that the time given to suppliers is sufficient to enable them to prepare and submit responsive tenders and is in no case less than 10 days before the final date for the submission of tenders, where:

(a) the procuring entity published a separate notice, including a notice of planned procurement under Article 9.4.3 at least 40 days and not more than 12 months in advance, and such separate notice contains a description of the procurement, the relevant time limits for the submission of tenders or, where appropriate, applications for participation in a procurement, and the address from which documents relating to the procurement may be obtained;

(b) the procuring entity procures commercial goods or services; or

(c) a state of unforeseen urgency, duly substantiated by the procuring entity, renders impracticable the time limits specified in paragraph 2 or, where applicable, paragraph 3.

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

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

(b) in the case of negotiations, the negotiations are concluded and suppliers may submit new tenders.

Article 9.6. Information on Intended Procurements

Tender Documentation

1. A procuring entity shall promptly provide, on request, to any supplier interested in participating in a procurement tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

(a) the procurement, including the nature, scope, and, where known, the quantity of the goods or services to be procured and any requirements to be fulfilled, including any technical specifications, conformity certification, plans, drawings, or instructional materials;

(b) any conditions for participation, including any financial guarantees, information, and documents that suppliers are required to submit;

(c) all criteria to be considered in the awarding of the contract and, except where price is the determinative factor, the relative importance of such criteria;

(d) where there will be a public opening of tenders, the date, time, and place for the opening of tenders; and

(e) any other terms or conditions relevant to the evaluation of tenders.

2. A procuring entity shall promptly reply to any reasonable request for relevant information by a supplier participating in a covered procurement, except that the entity shall not make available information with regard to a specific procurement in a manner that would give the requesting supplier an advantage over its competitors in the procurement.

Technical Specifications

3. A procuring entity may not prepare, adopt, or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating an unnecessary obstacle to trade between the Parties.

4. In prescribing the technical specifications for the good or service being procured, a procuring entity shall:

(a) specify the technical specification, wherever appropriate, in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specification on international standards, where such exist and are applicable to the procuring entity, except where the use of an international standard would fail to meet the entity's program requirements or would impose a greater burden than the use of a recognized national standard.

5. A procuring entity may not prescribe any technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer, or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, words such as "or equivalent" are also included in the tender documentation.

6. A procuring entity may not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from any person that may have a commercial interest in the procurement.

7. For greater certainty, this Article is not intended to preclude a procuring entity from preparing, adopting, or applying technical specifications:

(a) to promote the conservation of natural resources and the environment; or

(b) to require a supplier to comply with generally applicable laws regarding

(i) fundamental principles and rights at work; and

(ii) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health, in the territory in which the good is produced or the service is performed.

Modifications

8. Where, in the course of a covered procurement, a procuring entity modifies the criteria or technical requirements set out in a notice or tender documentation provided to participating suppliers, it shall transmit all such modifications in writing:

(a) to all the suppliers that are participating at the time the information is modified, if the identities of such suppliers are known, and, in all other cases, in the same manner that the original information was transmitted; and

(b) in adequate time to allow such suppliers to modify and re-submit their initial tenders, as appropriate.

Article 9.7. Conditions for Participation General Requirements

1. Where a procuring entity requires suppliers to satisfy conditions for participation, the entity shall, subject to the other provisions of this Chapter:

(a) limit such conditions to those that are essential to ensure that a supplier has the legal, commercial, technical, and financial abilities to fulfill the requirements and technical specifications of the procurement;

(b) assess the commercial, technical, and financial abilities of a supplier on the basis of the supplierâs global business activities, including its activity in the territory of the Party of the supplier as well as its activity, if any, in the territory of the Party of the procuring entity;

(c) not make it a condition for participation in a procurement that a supplier has previously been awarded one or more contracts by a procuring entity of the Party of the procuring entity or that the supplier has prior work experience in the territory of the Party;

(d) base its determination of whether a supplier has satisfied the conditions for participation solely on the conditions that have been specified in advance in notices or tender documentation; and

(e) allow all domestic suppliers and suppliers of the other Party that satisfy the conditions for participation to participate in the procurement.

2. A procuring entity may exclude a supplier from a procurement on grounds such as:

(a) bankruptcy; or

(b) false declarations.

Multi-use Lists

3. A procuring entity may establish a multi-use list provided that the entity annually publishes or otherwise makes available continuously in electronic form a notice inviting interested suppliers to apply for inclusion on the list. The notice shall include:

(a) a description of the goods or services that may be procured using the list;

(b) the conditions for participation to be satisfied by suppliers and the methods that the procuring entity will use to verify a supplier's satisfaction of the conditions;

(c) the name and address of the procuring entity and any other information necessary to contact the entity and obtain all relevant documents relating to the list;

(d) any deadlines for submission of applications for inclusion on the list; and

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

4. A procuring entity that maintains a multi-use list shall:

(a) include on the list, within a reasonably short time following submission of an application, any supplier that satisfies the conditions for participation; and

(b) where an entity uses the multi-use list in any intended procurement, invite all suppliers on the multi-use list to submit tenders.

Selective Tendering

5. Where a Party's law allows the use of selective tendering procedures, a procuring entity shall, for each intended procurement:

(a) publish a notice inviting suppliers to apply for participation in the procurement sufficiently in advance to provide interested suppliers time to prepare and submit applications and for the entity to evaluate, and make its determinations based on, such applications; and

(b) allow all domestic suppliers and suppliers of the other Party that the entity has determined satisfy the conditions for participation to submit a tender, unless the entity has stated in the notice of intended procurement or, where publicly available, the tender documentation a limitation on the number of suppliers that will be permitted to tender and the criteria for such a limitation.

Information on Procuring Entity's Decisions

6. Where a supplier applies for participation in a covered procurement, a procuring entity shall promptly advise such supplier of the entity's decision with respect to the supplier's application.

7. Where a procuring entity:

(a) rejects an application for participation in a procurement conducted using the procedures described in paragraph 5;

(b) rejects a request for inclusion on a list referred to in paragraph 3; or

(c) ceases to recognize a supplier as having satisfied the conditions for participation,

the entity shall promptly inform the supplier and, on request, promptly provide the supplier with a written explanation of the reasons for the entity's decision.

Article 9.8. Limited Tendering

1. Provided that a procuring entity does not use this provision to avoid competition, to protect domestic suppliers, or in a manner that discriminates against suppliers of the other Party, the entity may contact a supplier or suppliers of its choice and may choose not to apply Articles 9.4 through 9.7, 9.9.1, and 9.9.3 through 9.9.7 in any of the following circumstances:

(a) where, in response to a prior notice or invitation to participate,

(i) no tenders were submitted,

(ii) no tenders were submitted that conform to the essential requirements in the tender documentation, or

(iii) no suppliers satisfied the conditions for participation,

and the entity does not substantially modify the essential requirements of the procurement;

(b) where a good or service can be supplied only by a particular supplier and no reasonable alternative or substitute good or service exists for any of the following reasons:

(i) the requirement is for a work of art,

(ii) protection of patents, copyrights, or other exclusive rights, or proprietary information, or

(iii) due to an absence of competition for technical reasons;

(c) for additional deliveries of goods or services by the original supplier that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services, or installations, where a change of supplier would compel the procuring entity to procure goods or services that do not meet requirements of interchangeability with existing equipment, software, services, or installations;

(d) for goods purchased on a commodity market;

(e) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development. For greater certainty, when such a contract has been fulfilled, subsequent procurements of the goods or services shall be subject to Articles 9.4 through 9.7 and 9.9;

(f) in so far as is strictly necessary, where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services cannot be obtained in time under procedures consistent with Articles 9.4 through 9.7 and the use of such procedures would result in serious injury to the procuring entity or the relevant Party; or

(g) where additional construction services that were not included in the initial contract but that were within the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein. In such cases, the total value of contracts awarded for additional construction services may not exceed 50 percent of the amount of the initial contract.

2. For each contract awarded under paragraph 1, a procuring entity shall prepare and, on request, submit to the other Party a written report that includes:

(a) the name of the procuring entity;

(b) the value and kind of goods or services procured; and

(c) a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of a procedure other than open or selective tendering procedures.

Article 9.9. Treatment of Tenders and Awarding of Contracts

Receipt and Opening of Tenders

1. A procuring entity shall receive and open all tenders under procedures that guarantee the fairness and impartiality of the procurement process.

2. A procuring entity shall treat tenders in confidence until at least the opening of the tenders. In particular, the procuring entity shall not provide information to particular suppliers that might prejudice fair competition between suppliers.

3. Where a procuring entity provides suppliers with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the entity shall provide the same opportunity to all participating suppliers.

Awarding of Contracts

4. A procuring entity shall require that, in order to be considered for an award, a tender must be submitted:

(a) in writing and, at the time of opening, must conform to the essential requirements and evaluation criteria specified in the notices and tender documentation; and

(b) by a supplier that satisfies any conditions for participation.

5. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined satisfies the conditions for participation and is fully capable of undertaking the contract and whose tender is determined to be the lowest price or the most advantageous solely on the basis of the requirements and evaluation criteria specified in the notices and tender documentation.

6. A procuring entity may not cancel a procurement or terminate or modify awarded contracts in a manner that circumvents this Chapter.

Information Provided to Suppliers

7. A procuring entity shall promptly inform suppliers that have submitted tenders of its contract award decision. Subject to Article 9.13, a procuring entity shall, on request, provide an unsuccessful supplier with the reasons that the entity did not select that supplier's tender and the relative advantages of the successful supplier's tender.

Publication of Award Information

8. Not later than 60 days after an award, a procuring entity shall publish in an officially designated publication, which may be in either an electronic or paper medium, a notice that includes at least the following information about the contract:

(a) the name and address of the procuring entity;

(b) a description of the goods or services procured;

(c) the date of award;

(d) the name and address of the successful supplier;

(e) the contract value; and

(f) the procurement method used and, in cases where a procedure has been used pursuant to Article 9.8.1, a description of the circumstances justifying the use of such procedure.

Maintenance of Records

9. A procuring entity shall maintain reports and records of tendering procedures relating to covered procurements, including the reports provided for in Article 9.8.2, and shall retain such reports and records for a period of at least three years after the award of a contract.

Article 9.10. Ensuring Integrity In Procurement Practices

Further to Article 19.9 (Anti-Corruption Measures), each Party shall establish or maintain procedures to declare ineligible for participation in the Party's procurements, either indefinitely or for a stated period of time, suppliers that the Party has determined to have engaged in fraudulent or other illegal actions in relation to procurement. On the request of a Party, the Party receiving the request shall identify the suppliers determined to be ineligible under these procedures, and, where

appropriate, exchange information regarding those suppliers or the fraudulent or illegal action.

Article 9.11. Domestic Review of Supplier Challenges

1. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent from its procuring entities to receive and review challenges that suppliers submit relating to the application by a procuring entity of a Party's measures implementing this Chapter, and to make appropriate findings and recommendations. In the event that a body other than such an authority initially reviews a supplier's challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity that is the subject of the challenge.

2. Each Party shall ensure that a supplier may invoke the review procedure without jeopardizing its participation in ongoing or future procurement activities by the Party's procuring entities.

3. Each Party shall provide that an authority established or designated under paragraph 1 may take prompt interim measures, pending the resolution of a challenge, to preserve the supplier's opportunity to participate in the procurement and to ensure that the procuring entities of the Party comply with measures implementing this Chapter. Such interim measures may include the suspension of the award of a contract or the performance of a contract that has already been awarded.

4. Each Party shall ensure that its review procedures are publicly available in writing, and are timely, transparent, effective, and consistent with the principle of due process.

5. Each Party shall ensure that its review procedures are conducted in accordance with the following:

(a) a supplier shall be allowed sufficient time to prepare and submit a written challenge, which in no case shall be less than 10 days from the time when the basis of the complaint became known, or reasonably should have become known, to the supplier;

(b) a procuring entity shall respond in writing to a supplier's complaint and disclose all relevant documents to the review authority;

(c) a supplier that initiates a complaint shall be provided an opportunity to reply to the procuring entity's response before the review authority takes a decision on the complaint; and

(d) the review authority shall provide its decision on a supplierâs challenge in a timely fashion, in writing, with an explanation of the basis for the decision.

Article 9.12. Modifications and Rectifications to Coverage

1. A Party may make rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to its Schedules in Annex 9.1, provided that it notifies the other Party in writing and the other Party does not object in writing within 30 days of the notification. A Party that makes such a rectification or minor amendment need not provide compensatory adjustments to the other Party.

2. A Party may otherwise modify its coverage under this Chapter provided that the Party:

(a) notifies the other Party in writing and the other Party does not object in writing within 30 days of the notification; and

(b) offers, within 30 days of the notification, acceptable compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification, where necessary.

3. A Party need not provide compensatory adjustments in those circumstances where the Parties agree that the proposed modification covers a procuring entity over which a Party has effectively eliminated its control or influence. Where a Party objects to the assertion that such government control or influence has been effectively eliminated, the objecting Party may request further information or consultations with a view to clarifying the nature of any government control or influence and reaching agreement on the procuring entity's continued coverage under this Chapter.

4. The Commission shall modify Annex 9.1 to reflect any agreed rectification, minor amendment, or modification. (1)

(1) For purposes of this Article, the Commission shall comprise the Parties that have agreed to the rectification, minor amendment, or modification.

Article 9.13. Disclosure of Information

Provision of Information to a Party

1. On request, a Party shall provide to the requesting Party information on the tender and evaluation procedures used in the conduct of a procurement sufficient to determine whether a particular procurement was conducted fairly, impartially, and in accordance with this Chapter. The information shall include information on the characteristics and relative advantages of the successful tender and on the contract price.

Non-Disclosure of Information

2. No Party, procuring entity or review authority, referred to in Article 9.11, may disclose information that the person providing it has designated as confidential, in accordance with domestic law, except with the authorization of such person.

3. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, to provide information disclosure of which would:

(a) impede law enforcement;

(b) prejudice fair competition between suppliers;

(c) prejudice the legitimate commercial interests of particular suppliers or procuring entities, including the protection of intellectual property; or

(d) otherwise be contrary to the public interest.

Article 9.14. Exceptions

1. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail or a disguised restriction on trade, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures:

(a) necessary to protect public morals, order, or safety;

(b) necessary to protect human, animal, or plant life or health;

(c) necessary to protect intellectual property; or

(d) relating to goods or services of handicapped persons, of philanthropic institutions, or of prison labor.

2. The Parties understand that paragraph 1(b) includes environmental measures necessary to protect human, animal, or plant life or health.

Article 9.15. Committee on Procurement

The Parties hereby establish a Committee on Procurement comprising representatives of each Party. On request of a Party, the Committee shall meet to address matters related to the implementation of this Chapter, such as:

(a) cooperation relating to the development and use of electronic communications in government procurement systems, including developments that may allow procuring entities to reduce the time limits for tendering set out in Article 9.5.2;

(b) exchange of statistics and other information to assist the Parties in monitoring the implementation and operation of this Chapter;

(c) consideration of further negotiations aimed at broadening the coverage of this Chapter; and

(d) efforts to increase understanding of their respective government procurement systems, with a view to maximizing access to government procurement opportunities, especially for small business suppliers. To that end, a Party may ask the other Party to provide trade-related technical assistance, including training of government personnel or interested suppliers on specific elements of that Party's government procurement system, in coordination with the Committee on Trade Capacity Building, as appropriate.

Article 9.16. Definitions

For purposes of this Chapter:

build-operate-transfer contract and public works concession contract mean any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government-owned works and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants to the supplier, for a specified period, temporary ownership, or a right to control and operate, and demand payment for the use of, such works for the duration of the contract;

commercial goods and services means goods and services of a type of goods and services that are sold or offered for sale to, and customarily purchased by, non-governmental buyers for non- governmental purposes; it includes goods and services with modifications customary in the commercial marketplace, as well as minor modifications not customarily available in the commercial marketplace;

conditions for participation means any registration, qualification, or other pre-requisites for participation in a procurement;

in writing and written mean any worded or numbered expression that can be read, reproduced, and later communicated, including electronically transmitted and stored information;

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

offsets means any conditions or undertakings that require use of domestic content, domestic suppliers, the licensing of technology, investment, counter-trade, or similar actions to encourage local development or to improve a Party's balance-of-payments accounts;

open tendering means a procurement method where all interested suppliers may submit a tender;

procurement official means any person who performs procurement functions; procuring entity means an entity listed in Annex 9.1;

selective tendering means a procurement method where only the suppliers satisfying the conditions for participation are invited by the procuring entity to submit tenders;

services includes construction services, unless otherwise specified;

supplier means a person that provides or could provide goods or services to a procuring entity; and

technical specification means a tendering requirement that:

(a) sets out the characteristics of:

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

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

(b) addresses terminology, symbols, packaging, marking, or labeling requirements, as they apply to a good or service.

Chapter Ten. Investment

Section A. Investment

Article 10.1. Scope and Coverage (1)

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

(a) Investors of another Party;

(b) Covered investments; and

(c) with respect to Articles 10.9 and 10.11, all investments in the territory of the Party.

2. A Party's obligations under this Section shall apply to a state enterprise or other person when it exercises any regulatory,

administrative, or other governmental authority delegated to it by that Party, such as the authority to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.

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

(1) For greater certainty, nothing in this Chapter shall be construed to impose an obligation on a Party to privatize any investment that it owns or controls or to prevent a Party from designating a monopoly, provided that, if a Party adopts or maintains a measure to privatize such an investment or a measure to designate a monopoly, this Chapter shall apply to such measure.

Article 10.2. Relation to other Chapters

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

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

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

Article 10.3. National Treatment

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

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

3. The treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.

Article 10.4. Most-Favored-Nation Treatment

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

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

(2) For greater certainty, treatment "with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments" referred to in paragraphs 1 and 2 of Article 10.4 does not encompass dispute resolution mechanisms, such as those in Section B, that are provided for in international investment treaties or trade agreements.

Article 10.5. Minimum Standard of Treatment (3)

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

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment"

and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

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

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

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

(3) Article 10.5 shall be interpreted in accordance with Annex 10-A.

Article 10.6. Treatment In Case of Strife

1. Notwithstanding Article 10.13.5(b), each Party shall accord to investors of another Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

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

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

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

the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for such loss. Any compensation shall be prompt, adequate, and effective in accordance with Article 10.7.2 through 10.7.4, mutatis mutandis.

3. Paragraph 1 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 10.3 but for Article 10.13.5(b).

Article 10.7. Expropriation and Compensation (4)

1. No Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization (âexpropriationâ), except:

(a) for a public purpose (5);

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation; and

(d) in accordance with due process of law and Article 10.5.

2. The compensation referred to in paragraph 1(c) shall:

(a) be paid without delay;

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

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

(d) be fully realizable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation referred to in paragraph 1(c) shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation referred to in paragraph 1(c) "converted into the currency of payment at the market rate of exchange prevailing on the date of payment" shall be no

less than:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter Sixteen (Intellectual Property Rights).

(4) Article 10.7 shall be interpreted in accordance with Annex 10-B.

(5) For greater certainty, for purposes of this article, the term "public purpose" refers to a concept in customary international law. Domestic law may express this or a similar concept using different terms, such as "public necessity," "public interest," or "public use."

Article 10.8. Transfers

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

(a) contributions to capital;

(b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;

(c) interest, royalty payments, management fees, and technical assistance and other fees;

(d) payments made under a contract, including a loan agreement;

(e) payments made pursuant to Article 10.6.1 and 10.6.2 and Article 10.7; and

(f) payments arising out of a dispute.

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

3. Each Party shall permit returns in kind relating to a covered investment to be made as authorized or specified in a written agreement between the Party and a covered investment or an investor of another Party.

4. Notwithstanding paragraphs 1 through 3, a Party may prevent a transfer through the equitable, non-discriminatory, and good faith application of its laws relating to:

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

(b) issuing, trading, or dealing in securities, futures, options, or derivatives;

(c) criminal or penal offenses;

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

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 10.9. Performance Requirements

1. No Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any requirement or enforce any commitment or undertaking: (6)

(a) to export a given level or percentage of goods or services;

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

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

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

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

(f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory; (7) or

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

2. No Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any requirement:

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

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

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

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

3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

(b) Paragraph 1(f) does not apply:

(i) when a Party authorizes use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

(ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws. (8)

(c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), (c), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

(i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement,

(ii) necessary to protect human, animal, or plant life or health, or

(iii) related to the conservation of living or non-living exhaustible natural resources.

(d) Paragraphs 1(a), (b), and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.

(e) Paragraphs 1(b), (c), (f), and (g), and 2(a) and (b), do not apply to procurement.

(f) Paragraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

4. For greater certainty, paragraphs 1 and 2 do not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.

5. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.

(6) For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "commitment or undertaking" for the purposes of paragraph 1.

(7) For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, from imposing or enforcing a requirement or enforcing a commitment or undertaking to train workers in its territory, provided that such training does not require the transfer of a particular technology, production process, or other proprietary knowledge to a person in its territory.

(8) The Parties recognize that a patent does not necessarily confer market power.

Article 10.10. Senior Management and Boards of Directors

1. No Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions natural persons of any particular nationality.

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

Article 10.11. Investment and Environment

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

Article 10.12. Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of any Party, other than the denying Party, and persons of a non-Party, or of the denying Party, own or control the enterprise.

Article 10.13. Non-Conforming Measures

1. Articles 10.3, 10.4, 10.9, and 10.10 do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

(i) the central level of government, as set out by that Party in its Schedule to Annex I,

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I, or

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does

not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 10.3, 10.4, 10.9, or 10.10.

2. Articles 10.3, 10.4, 10.9, and 10.10 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex II.

3. No Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Articles 10.3 and 10.4 do not apply to any measure that is an exception to, or derogation from, the obligations under paragraph 8 of Article 16.1 (General Provisions) as specifically provided in that Article.

5. Articles 10.3, 10.4, and 10.10 do not apply to:

(a) procurement; or

(b) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

Article 10.14. Special Formalities and Information Requirements

1. Nothing in Article 10.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that investors be residents of the Party or that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of another Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 10.3 and 10.4, a Party may require an investor of another Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Section B. Investor-State Dispute Settlement

Article 10.15. Consultation and Negotiation

In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures.

Article 10.16. Submission of a Claim to Arbitration

1. In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation:

(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section A,

(B) an investment authorization, or

(C) an investment agreement;

and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section A,

(B) an investment authorization, or

(C) an investment agreement;

and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach,

provided that a claimant may submit pursuant to subparagraph (a)(i)(C) or (b)(i)(C) a claim for breach of an investment agreement only if the subject matter of the claim and the claimed damages directly relate to the covered investment that was established or acquired, or sought to be established or acquired, in reliance on the relevant investment agreement.

2. At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration ("notice of intent"). The notice shall specify:

(a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise;

(b) for each claim, the provision of this Agreement, investment authorization, or investment agreement alleged to have been breached and any other relevant provisions;

(c) the legal and factual basis for each claim; and

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

3. Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1:

(a) under the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the respondent and the Party of the claimant are parties to the ICSID Convention;

(b) under the ICSID Additional Facility Rules, provided that either the respondent or the Party of the claimant is a party to the ICSID Convention;

(c) under the UNCITRAL Arbitration Rules; or

(d) if the claimant and respondent agree, to any other arbitration institution or under any other arbitration rules.

4. A claim shall be deemed submitted to arbitration under this Section when the claimantâs notice of or request for arbitration ("notice of arbitration"):

(a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;

(b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;

(c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules, are received by the respondent; or

(d) referred to under any arbitral institution or arbitral rules selected under paragraph 3(d) is received by the respondent.

A claim asserted by the claimant for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitral rules.

5. The arbitration rules applicable under paragraph 3, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.

6. The claimant shall provide with the notice of arbitration:

(a) the name of the arbitrator that the claimant appoints; or

(b) the claimant's written consent for the Secretary-General to appoint that arbitrator.

Article 10.17. Consent of Each Party to Arbitration

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:

(a) Chapter ll of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute;

(b) Article ll of the New York Convention for an "agreement in writing;" and

(c) Article I of the Inter-American Convention for an "agreement."

Article 10.18. Conditions and Limitations on Consent of Each Party

1. No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 10.16.1 and knowledge that the claimant (for claims brought under Article 10.16.1(a)) or the enterprise (for claims brought under Article 10.16.1(b)) has incurred loss or damage.

2. No claim may be submitted to arbitration under this Section unless:

(a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and

(b) the notice of arbitration is accompanied,

(i) for claims submitted to arbitration under Article 10.16.1(a), by the claimant's written waiver, and

(ii) for claims submitted to arbitration under Article 10.16.1(b), by the claimant's and the enterprise's written waivers

of any right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 10.16.

3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 10.16.1(a)) and the claimant or the enterprise (for claims brought under Article 10.16.1(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration. (9)

4. (a) No claim may be submitted to arbitration:

(i) for breach of an investment authorization under Article 10.16.1(a)(i)(B) or Article 10.16.1(b)()(B), or

(ii) for breach of an investment agreement under Article 10.16.1(a)(i)(C) or Article 10.16.1(b)G)(C),

if the claimant (for claims brought under 10.16.1(a)) or the claimant or the enterprise (for claims brought under 10.16.1(b)) has previously submitted the same alleged breach to an administrative tribunal or court of the respondent, or to any other binding dispute settlement procedure.

(b) For greater certainty, if a claimant elects to submit a claim of the type described in subparagraph (a) to an administrative tribunal or court of the respondent, or to any other binding dispute settlement procedure, that election shall be definitive, and the claimant may not thereafter submit the claim to arbitration under Section B.

(9) In an action for interim injunctive relief described in paragraph 3 (including an action seeking to preserve evidence or property during the pendency of a dispute submitted to arbitration), a judicial or administrative tribunal of the Party that is the respondent in a dispute submitted to arbitration under Section B may apply the law of that Party, including its rules on the conflict of laws, and such rules of international law as may be applicable.

Article 10.19. Selection of Arbitrators

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

3. If a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

4. For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

(a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) a claimant referred to in Article 10.16.1(a) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and

(c) a claimant referred to in Article 10.16.1(b) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

Article 10.20. Conduct of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitral tules applicable under Article 10.16.3. If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

2. A non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.

3. The tribunal shall have the authority to accept and consider amicus curiae submissions from a person or entity that is not a disputing party. Each submission shall identify the author and any person or entity that has provided, or will provide, any financial or other assistance in preparing the submission.

4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the tribunal's competence, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 10.26. (10)

(a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial (or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment).

(b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.

(c) In deciding an objection under this paragraph, the tribunal shall assume to be true claimantâs factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.

(d) The respondent does not waive any objection as to competence or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 5.

5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 and any objection that the dispute is not within the tribunal's competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.

6. When it decides a respondent's objection under paragraph 4 or 5, the tribunal may, if warranted, award to the prevailing

disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

7. A respondent may not assert as a defense, counterclaim, right of set-off, or for any other reason that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

8. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 10.16. For purposes of this paragraph, an order includes a recommendation.

9. (a) In any arbitration conducted under this Section, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties and to the non-disputing Parties. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any such comments and issue its decision or award not later than 45 days after the expiration of the 60-day comment period.

(b) Subparagraph (a) shall not apply in any arbitration conducted pursuant to this Section for which an appeal has been made available pursuant to paragraph 10 or Annex 10-D.

10. If a separate, multilateral agreement enters into force between the Parties that establishes an appellate body for purposes of reviewing awards rendered by tribunals constituted pursuant to international trade or investment arrangements to hear investment disputes, the Parties shall strive to reach an agreement that would have such appellate body review awards rendered under Article 10.26 in arbitrations commenced after the multilateral agreement enters into force between the Parties.

(10) For greater certainty, with respect to a claim submitted under Article 10.16.1(a)G)(C) or 10.16.1(b)(i)(C), an objection that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 10.26 may include, where applicable, an objection provided for under the law of the respondent.

Article 10.21. Transparency of Arbitral Proceedings

1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Parties and make them available to the public:

(a) the notice of intent;

(b) the notice of arbitration;

(c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 10.20.2 and 10.20.3 and Article 10.25;

(d) minutes or transcripts of hearings of the tribunal, where available; and

(e) orders, awards, and decisions of the tribunal.

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as protected information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

3. Nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 22.2 (Essential Security) or Article 22.4 (Disclosure of Information).

4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:

(a) subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to any non-disputing Party or to

the public any protected information where the disputing party that provided the information clearly designates it in accordance with subparagraph (b);

(b) any disputing party claiming that certain information constitutes protected information shall clearly designate the information at the time it is submitted to the tribunal;

(c) a disputing party shall, at the time it submits a document containing information claimed to be protected information, submit a redacted version of the document that does not contain the information. Only the redacted version shall be provided to the non-disputing Parties and made public in accordance with paragraph 1; and

(d) the tribunal shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may (i) withdraw all or part of its submission containing such information, or (ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c). In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under (i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under ii) of the disputing party that first submitted the information.

5. Nothing in this Section requires a respondent to withhold from the public information required to be disclosed by its laws.

Article 10.22. Governing Law

1, Subject to paragraph 3, when a claim is submitted under Article 10.16.1(a)(i)(A) or Article 10.16.1(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. Subject to paragraph 3 and the other terms of this Section, when a claim is submitted under Article 10.16.1(a)(i)(B) or (C), or Article 10.16.1(b)()(B) or (C), the tribunal shall apply:

(a) the rules of law specified in the pertinent investment authorization or investment agreement, or as the disputing parties may otherwise agree; or

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

(i) the law of the respondent, including its rules on the conflict of laws, (11) and

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

3. A decision of the Commission declaring its interpretation of a provision of this Agreement under Article 20.1.3 (Free Trade Commission) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

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

Article 10.23. Interpretation of Annexes

1. Where a respondent asserts as a defense that the measure alleged to be a breach is within the scope of an entry set out in Annex I or Annex I, the tribunal shall, on request of the respondent, request the interpretation of the Commission on the issue. The Commission shall submit in writing any decision declaring its interpretation under Article 20.1.3 (Free Trade Commission) to the tribunal within 60 days of delivery of the request.

2. A decision issued by the Commission under paragraph 1 shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Commission fails to issue such a decision within 60 days, the tribunal shall decide the issue.

Article 10.24. Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

Article 10.25. Consolidation

1. Where two or more claims have been submitted separately to arbitration under Article 10.16.1 and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:

(a) the names and addresses of all the disputing parties sought to be covered by the order;

(b) the nature of the order sought; and (c) the grounds on which the order is sought.

3. Unless the Secretary-General finds within 30 days after receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the order otherwise agree, a tribunal established under this Article shall comprise three arbitrators:

(a) one arbitrator appointed by agreement of the claimants;

(b) one arbitrator appointed by the respondent; and

(c) the presiding arbitrator appointed by the Secretary-General, provided, however, that the presiding arbitrator shall not be a national of any Party.

5. If, within 60 days after the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on the request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed. If the respondent fails to appoint an arbitrator, the Secretary-General shall appoint a national of the disputing Party, and if the claimants fail to appoint an arbitrator, the Secretary-General shall appoint a national of a Party of the claimants.

6. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 10.16.1 have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims;

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

(c) instruct a tribunal previously established under Article 10.19 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that

(i) that tribunal, at the request of any claimant not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and

(ii) that tribunal shall decide whether any prior hearing shall be repeated.

7. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 10.16.1 and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6, and shall specify in the request:

(a) the name and address of the claimant;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought. The claimant shall deliver a copy of its request to the Secretary-General.

8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A tribunal established under Article 10.19 shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 10.19 be stayed, unless the latter tribunal has already adjourned its proceedings.

Article 10.26. Awards

1. Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest; and

(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

A tribunal may also award costs and attorney' s fees in accordance with this Section and the applicable arbitration rules.

2. Subject to paragraph 1, where a claim is submitted to arbitration under Article 10.16.1(b):

(a) an award of restitution of property shall provide that restitution be made to the enterprise;

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and

(c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

3. A tribunal may not award punitive damages.

4. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

5. Subject to paragraph 6 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

6. A disputing party may not seek enforcement of a final award until:

(a) in the case of a final award made under the ICSID Convention,

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 10.16.3(d),

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or

(ii) a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.

7. Each Party shall provide for the enforcement of an award in its territory.

8. If the respondent fails to abide by or comply with a final award, on delivery of a request by the Party of the claimant, a panel shall be established under Article 21.6 (Request for an Arbitral Panel). The requesting Party may seek in such proceedings:

(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and

(b) in accordance with Article 21.13 (Initial Report), a recommendation that the respondent abide by or comply with the final award.

9. A disputing party may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention, or the Inter-American Convention regardless of whether proceedings have been taken under paragraph 8. 10. Acclaim that

is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention and Article I of the Inter-American Convention.

Article 10/27. Service of Documents

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 10-C.

Section C. Definitions

Article 10.28. Definitions

For purposes of this Chapter:

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

claimant means an investor of a Party that is a party to an investment dispute with another Party; disputing parties means the claimant and the respondent; disputing party means either the claimant or the respondent;

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

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

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

ICSID Additional Facility Rules means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;

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

Inter-American Convention means the Inter-American Convention on International Commercial Arbitration, done at Panama, January 30, 1975;

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

(a) an enterprise;

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

(c) bonds, debentures, other debt instruments, and loans; (12) (13)

(d) futures, options, and other derivatives;

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

(f) intellectual property rights;

(g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; (14) (15) and

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

investment agreement means a written agreement (16) between a national authority (17) of a Party and a covered investment or an investor of another Party, on which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, that grants rights to the covered investment or investor:

(a) with respect to natural resources that a national authority controls, such as for their exploration, extraction, refining, transportation, distribution, or sale;

(b) to supply services to the public on behalf of the Party, such as power generation or distribution, water treatment or

distribution, or telecommunications; or

(c) to undertake infrastructure projects, such as the construction of roads, bridges, canals, dams, or pipelines, that are not for the exclusive or predominant use and benefit of the government;

investment authorization means an authorization that the foreign investment authority of a Party grants to a covered investment or an investor of another Party; (18) (19)

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

investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts through concrete action to make, is making, or has made an investment in the territory of another Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;

national means a natural person who has the nationality of a Party according to Annex 1.3 (Country-Specific Definitions);

negotiated restructuring means the restructuring or rescheduling of a debt instrument that has been effected through (i) a modification or amendment of such debt instrument, as provided for under its terms, or (ii) a comprehensive debt exchange or other similar process in which the holders of no less than 75 percent of the aggregate principal amount of the outstanding debt under such debt instrument have consented to such debt exchange or other process.

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

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

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

respondent means the Party that is a party to an investment dispute; Secretary-General means the Secretary-General of ICSID; and

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

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

(13) Loans issued by one Party to another Party are not investments.

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

(15) The term "investment" does not include an order or judgment entered in a judicial or administrative action.

(16) "Written agreement" refers to an agreement in writing, executed by both parties, whether in a single instrument or in multiple instruments, that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article 10.22.2. For greater certainty, (a) a unilateral act of an administrative or judicial authority, such as a permit, license, or authorization issued by a Party solely in its regulatory capacity, or a decree, order, or judgment, standing alone; and (b) an administrative or judicial consent decree or order, shall not be considered a written agreement.

(17) For purposes of this definition, "national authority" means an authority at the central level of government.

(18) For greater certainty, actions taken by a Party to enforce laws of general application, such as competition laws, are not encompassed within this definition.

(19) The Parties recognize that no Party has a foreign investment authority that grants investment authorizations, as of the date this Agreement enters into force.

Annex 10-A. Customary International Law

The Parties confirm their shared understanding that âcustomary international lawâ generally and as specifically referenced in Article 10.5 results from a general and consistent ptactice of States that they follow from a sense of legal obligation. With regard to Article 10.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

Annex 10-B. Expropriation

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

2. Article 10.7.1 addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation addressed by Article 10.7.1 is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

(iii) the character of the government action.

(b) Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations. (20)

(20) For greater certainty, the list of "legitimate public welfare objectives" in this subparagraph is not exhaustive.

Annex 10-C. Service of Documents on a Party under Section B

Peru

Notices and other documents in disputes under Section B shall be served on Peru by delivery to:

Dirección General de Asuntos de Economía Internacional, Competencia e Inversión Privada

Ministerio de Economía y Finanzas

Jirón Lampa 277, piso 5

Lima, Pert

United States

Notices and other documents in disputes under Section B shall be served on the United States by delivery to:

Executive Director (L/EX) Office of the Legal Adviser Department of State Washington, D.C. 20520 United States of America

Annex 10-D. Appellate Body or Similar Mechanism

Within three years after the date of entry into force of this Agreement, the Parties shall consider whether to establish an appellate body or similar mechanism to review awards rendered under Article 10.26 in arbitrations commenced after they establish the appellate body or similar mechanism.

Annex 10-E. Special Dispute Settlement Provisions

1. Where a claimant submits a claim to arbitration alleging that a Party other than the United States has breached an obligation under Section A, other than Article 10.3 or 10.4, through the imposition of a restrictive measure with regard to payments and transfers, Section B shall apply, except as follows:

(a) The claimant may not submit any such claim to arbitration until one year after the events that give rise to the claim.

(b) Loss or damages arising from the restrictive measure on capital inflows shall be limited to the reduction in value of the transfers and shall exclude loss of profits or business and any similar consequential or incidental damages.

(c) Subparagraph (a) shall not apply to a claim that arises from restrictions on:

(i) payments or transfers on current transactions,

(ii) payments or transfers associated with equity investments, or

(iii) payments pursuant to a loan or bond, (21) provided that such payments are made in accordance with the terms and conditions of the loan or bond agreement.

(d) If the measure restricts outward payments or transfers:

(i) it shall not prevent investors from earning a market rate of return in the territory of the Party imposing the measure on any restricted assets;

(ii) the Party imposing the measure shall afford investors a reasonable opportunity to mitigate any losses arising from such measure; and

(iii) so long as the Party imposing the measure has complied with its obligations under this paragraph, the claimant may not recover any alleged opportunity costs or any similar consequential or incidental damages from forgoing alternative investments that were incurred during the first year after the events that give rise to the claim.

2. A Party may not request the establishment of a panel under Chapter Twenty-One (Dispute Settlement) relating to the imposition of a restrictive measure with regard to payments and transfers by a Party other than the United States until one year after the imposition of such measure.

(21) For greater certainty, the term "payments pursuant to a loan or bond" as used in this subparagraph does not include capital account transactions relating to inter-bank loans, including loans to or from financial institutions established in the territory of the Party subject to the claim.

Annex 10-F. Public Debt

1. The Parties recognize that the purchase of debt issued by a Party entails commercial risk. For greater certainty, no award may be made in favor of a claimant for a claim under Article 10.16.1(a)(i)(A) or Article 10.16.1(b)G@)(A) with respect to default or non-payment of debt issued by a Party unless the claimant meets its burden of proving that such default or non-payment constitutes an uncompensated expropriation for purposes of Article 10.7.1 or a breach of any other obligation under Section A.

2. No claim that a restructuring of debt issued by a Party other than the United States breaches an obligation under Section A may be submitted to, or if already submitted continue in, arbitration under Section B if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after such submission, except for a claim that the restructuring violates Article 10.3 or 10.4.

3. Notwithstanding Article 10.16.3, and subject to paragraph 2 of this Annex, an investor of another Party may not submit a claim under Section B that a restructuring of debt issued by a Party other than the United States breaches an obligation under Section A (other than Article 10.3 or 10.4) unless 270 days have elapsed from the date of the events giving rise to the claim

Annex 10-G. Submission of a Claim to Arbitration

1. An investor of the United States may not submit to arbitration under Section B a claim that a Party has breached an obligation under Section A either:

(a) on its own behalf under Article 10.16.1(a), or

(b) on behalf of an enterprise of a Party other than the United States that is a juridical person that the investor owns or controls directly or indirectly under Article 10.16.1(b),

if the investor or the enterprise, respectively, has alleged that breach of an obligation under Section A in proceedings before a court or administrative tribunal of that Party.

2. For greater certainty, if an investor of the United States elects to submit a claim of the type described in paragraph 1 to a court or administrative tribunal of a Party other than the United States, that election shall be definitive, and the investor may not thereafter submit the claim to arbitration under Section B.

Annex 10-H. Certain Agreements between Peru and Covered Investments or Investors of Another Party (22)

1. Pursuant to Legislative Decrees 662 and 757, Peru may enter into agreements known as "stability agreements" with covered investments or investors of another Party.

2. As part of a stability agreement referred to in paragraph 1, Peru accords certain benefits to the covered investment or the investor that is party to the agreement. These benefits typically include a commitment to maintain the existing income tax regime applicable to such covered investment or investor during a specified period of time.

3. Appendices 10-H.A and 10-H.B set forth, respectively, an illustration of a stability agreement with a covered investment and an illustration of a stability agreement with an investor.

4. A stability agreement referred to in paragraph 1 may constitute one of multiple written instruments that make up an "investment agreement," as defined in Article 10.28. (23) Where that is the case, a breach of such a stability agreement by Peru may constitute a breach of the investment agreement of which it is a part.

5. Where a stability agreement is materially identical to the illustration set forth in Appendix 10-H.A or 10-H.B, and does not constitute one of multiple instruments that make up an "investment agreement," as defined in Article 10.28, a breach of such a stability agreement by Peru shall not constitute a breach of an investment agreement.

(22) The fact that this Annex addresses only agreements entered into by Peru shall not prejudice the determination by a tribunal established under Section B regarding whether an agreement entered into by the government of another Party meets the definition of "investment agreement" in Article 10.28.

(23) For greater certainty, for multiple written instruments to make up an "investment agreement," as defined in Article 10.28, one or more of those instruments must grant rights to the covered investment or the investor as defined in subparagraph (a), (b), or (c) of that definition. A stability agreement may constitute one of multiple written instruments that make up an "investment agreement" even if the stability agreement is not itself the instrument in which such rights are granted.

Appendix 10-H.A.

The following shall constitute a Legal Stability Agreement (hereinafter "the Agreement") concluded between, on the one hand, the Peruvian State, represented by ....., and hereinafter referred to as "the STATE," and, ... , on the other hand, hereinafter referred to as "the COMPANY," under the terms and conditions set forth in the following Articles:

ONE. The Company has filed with (the appropriate Peruvian agency), an application for entering into a Legal Stability

Agreement under the provisions of Title II of Legislative Decree Nº 662; Title V, Chapter I of Legislative Decree Nº 757 and the regulations thereof approved by Executive Decree Nº 162-92- EF (including amending, regulating, and supplementing provisions).

TWO. The COMPANY, by virtue of this Agreement, undertakes to issue shares/interests to the INVESTOR, hereinafter referred to as the INVESTOR. Consequently, it undertakes the following: (Only the obligations corresponding to the type of investment selected by the Investor should be indicated)

• To issue shares/interests to the INVESTOR for US$ .....in exchange for the contributions the INVESTOR shall make within a term of ..... (no greater than two years) from the date of the conclusion of the Legal Stability Agreement by the COMPANY.

• To guarantee that the foreign investments, referred to in section 1, are channeled through the national financial system, as recorded on the certification issued by the bank participating in the transaction. (Applies only to foreign investments.)

• To register the foreign investment referred to in section 1, valued in freely convertible currency, with the appropriate Peruvian agency.

• To generate directly no fewer than 20 permanent positions within no more than three years from the date of this Agreement.

• To generate directly US$ ..... (no less than two million) in foreign exchange earnings from exports within no more than three years from the date of this Agreement.

• To apply the investments referred to in paragraph 1 to expanding productive capacity or technological development.

THREE. The STATE, by virtue of this Agreement and during the term thereof, undertakes to guarantee the legal stability of the COMPANY under the following terms:

1. Stability of the tax system with respect to Income Tax, pursuant to the provisions of Article 40 of Legislative Decree Nº 757, as amended, which implies that the income tax to be paid by the Company shall not be modified during the term of this Agreement; (A brief description of the tax security provisions follows, which may vary depending on the tax regime in force on the date of signature of the Agreement.)

2. Stability of hiring procedures for the COMPANY's workers while this Agreement is in force, under the provisions of Article 12(a) of Legislative Decree N° 662; in the various forms set forth in (reference to labor regulations in force on date of signature of the Agreement).

3. Stability of export promotion regimes used by the COMPANY under the provisions of Article 12(b) of Legislative Decree N° 662, currently in force (reference to the application of current regulations).

FOUR. In addition, as agreed upon in Two above, the Company undertakes the following: (Only the obligations corresponding to the type of investment selected by the Investor should be indicated)

• To prove that the new investment exceeds, as of the date on which this Agreement is concluded, 50% of the COMPANY's capital and reserves as indicated in a report, equivalent to an affidavit, and subject to subsequent verification, prepared by an auditing firm;

• To prove that it has complied with the obligation to receive its investment in capital from abroad, in the amount of US$ ..... by filing (list of substantiating documents required);

• To prove that the new investment has been effectively applied to the expansion of its productive capacity, by the appropriate report issued by an auditing firm;

• To show that it has complied with the obligation to generate..... .....permanent positions in the COMPANY by filing an affidavit subject to subsequent verification;

• To show that it has complied with the obligation to generate US$ .....in foreign exchange earnings from (the COMPANY's) exports, in an affidavit subject to subsequent verification.

Proof of compliance with obligations referred to in the foregoing paragraphs should be submitted to the appropriate Peruvian agency within no more than .... calendar days from the deadline for compliance therewith, pursuant to the provisions of Article Two above.

FIVE. This Legal Stability Agreement shall remain in force for ten years from the date of on which it is concluded. It may not,

therefore, be unilaterally amended by either of the parties during such period, even if domestic legislation is amended or if changes more beneficial or more detrimental to either of the parties are incorporated therein.

SIX. The COMPANY shall be entitled to a single waiver of the legal stability system granted hereunder. Such waiver should be formalized by written notice to the (appropriate Peruvian agency), which shall become effective as of the date of receipt of the notice by said agency. If the COMPANY chooses to exercise the right to waive the Stability Agreement acknowledged under this Article, it shall automatically become subject to the provisions of ordinary law.

SEVEN. This Legal Stability Agreement may be amended only by mutual consent of the Parties. It shall not be possible to amend the term established in Article Five, or the investment amount under the limit established in the laws (referred to in Article One). For such purpose, the COMPANY shall file an application with the appropriate Peruvian agency, which shall be processed in accordance with the same procedure used for the conclusion of this Agreement.

EIGHT. It being the intent of the Parties to resolve any matters involving compliance with this Agreement in the most expeditious manner possible, the Parties agree that henceforth, any dispute or claim between them regarding the interpretation, application or validity of this Agreement shall be settled through legal arbitration.

The arbitration shall be carried out in Lima, through the establishment of an Arbitral Tribunal consisting of three members. Each Contracting Party shall appoint an arbitrator, and the two shall in turn appoint the third. The arbitrators shall be expressly empowered to rule on the dispute subject of the arbitration.

If one of the Contracting Parties has not appointed its arbitrator within ten working days of receipt of the request by the party or parties requesting the arbitration, or if, within ten working days of the appointment of the second arbitrator by the parties, the two arbitrators cannot reach an agreement as to the choice of the third arbitrator, the latter shall be appointed, upon request of either Party, by the Lima Chamber of Commerce.

The term for completion of the arbitral procedure shall not exceed sixty (60) working days from the date of appointment of the last arbitrator; said procedure shall be governed by the provisions of the General Law on Arbitration, and/or any modifying or replacing regulations.

Each Contracting Party shall bear the costs incurred by the application of the provisions agreed upon herein in equal parts.

NINE. This Legal Stability Agreement shall be terminated ipso jure without any notification requirement on the following grounds:

1. Failure by The COMPANY to comply with any of the obligations stipulated in Article Two.

2. Failure by The COMPANY to comply any of the obligations set forth in Article Four.

3. The transfer by The COMPANY of its contractual status.

4. Failure by the company to generate the positions pursuant to Article Two.

5. Failure by the company to generate the foreign exchange earnings from exports pursuant to Article Two.

If the COMPANY is responsible for any of the above-mentioned grounds for termination of this Agreement, and if, as a result of the legal stability granted thereunder, it enjoyed a lower tax burden than what it would have been entitled to without this Agreement, it shall be required to reimburse the State the adjusted amount of any taxes that it would have owed had it not concluded the Agreement, in addition to the appropriate surcharges referred to in the Tax Code.

It is hereby understood that in the case referred to in the foregoing paragraph, if a greater tax burden has been imposed on the COMPANY by virtue of this Agreement, the State shall not be required to reimburse any amount whatsoever.

The Parties, having agreed on all its terms, have signed this Agreement at Lima in triplicate, all three copies being identical in content.

Appendix 10-H.B.

The following shall constitute a Legal Stability Agreement concluded between, on the one hand, the Peruvian State, represented by ....., and hereinafter referred to as the "STATE", and, on the other hand, ..., hereinafter referred to as the "INVESTOR" under the terms and conditions set forth in the following Articles:

ONE. The COMPANY has filed with the appropriate Peruvian agency an application for the conclusion of a Legal Stability Agreement under the provisions of , Title II of Legislative Decree N° 662; Title V, Chapter I, of Legislative Decree N° 757; and

the Regulations Governing Private Investment Guarantee Regimes, approved by Executive Decree N° 162-92-EF, (including amending, regulating, and supplementing provisions).

TWO. The COMPANY, by virtue of this Agreement (consistent with the form of investment stipulated in the Regulations) undertakes the following: (Only the obligations corresponding to the type of investment selected by the Investor should be included.)

• To make cash contributions to the capital of ....., in the amount of US$ ....., within a term of ..... (no more than two years) from the date of the conclusion of this Agreement;

• To channel the foreign investment referred to in paragraph 1 through the National Financial System, as recorded on the certification issued by the bank participating in the transaction.

• To register the foreign investment referred to in section 1, valued in freely convertible currency, with PROINVERSIÓN (Only for foreign direct investment.);

• To make venture capital investments with third parties, in the amount of US$..... within a term of ..... (no more than two years) from the date of the conclusion of this Agreement;

• To generate directly no fewer than 20 permanent positions within no more than three years from the date the conclusion of this Agreement;

• To generate directly US$ ..... (no less than two million) in foreign exchange earnings from exports within no more than three years from the date of this Agreement.

THREE. The STATE, by virtue of this Agreement and during the term thereof, undertakes to guarantee the legal security of THE INVESTOR, with respect to the investment referred to in Article Two, under the following terms:

1. Stability of the tax system referred to the income tax, pursuant to the provisions of Article 10(a) of Legislative Decree N° 662; (A brief description of the tax security provisions follows, which may vary depending on the tax regime in force on the date of signature of the agreement.)

2. (Only applicable to foreign investment.) Stability of the freely availably currency regime, pursuant to the provisions of Article 10(b) of Legislative Decree N° 662, which provides that the INVESTOR may freely access foreign currency on the exchange market at the most favorable exchange rate, while the STATE may not apply to the investment referred to in Article Two any exchange market regulation system or mechanism restricting this right or involving a less favorable treatment for the INVESTOR than that applied to any natural or legal person carrying out any type of exchange transaction.

3. (Only applicable to foreign investment.) Stability of the right of free remittance of profits and capital pursuant to the provisions of Article 10(b) of Legislative Decree N° 662, which provides that the INVESTOR may effect transfers abroad in freely convertible currency without previous authorization of national, regional or local government entities, provided that the pertinent investment has been registered with the appropriate Peruvian agency, and that the corresponding tax obligations have been met, it being prohibited for the State to establish any further restriction or limitations on this right, such transfers being permitted as follows:

(a) The total amount of the INVESTOR's foreign capital, including capital generated by the sale of its stocks, interest shares, or options, from capital reduction and partial or total liquidation of any companies, derived from the investment referred to in Article Two;

(b) The total amount of dividends or proven net profits generated by the investment referred to in Article Two, as well as the profits obtained from considerations for the use or enjoyment of goods or assets physically located in the investment target country; and

(c) The total amount of royalties and considerations for the use and transfer of technology, trademarks and patents and any other aspects of industrial property authorized by the appropriate Peruvian agency.

4. Stability of the right to use the most favorable exchange rate in accordance with the provisions of Article 10(b) of Legislative Decree N° 662, which provides that the INVESTOR may access foreign currency in the exchange market at the most favorable exchange rate, while the STATE may not compel the INVESTOR to carry out its exchange transactions under a system or mechanism which grants a less favorable treatment than that applied to any natural or legal person in the execution of any exchange transaction, pursuant to the following:

(a) In the case of conversion of foreign currency to Peruvian currency: THE INVESTOR may sell such currency to any natural or legal person at the most favorable purchase exchange rate on the exchange market at the time of the exchange

transaction; and

(b) In the case of conversion of local currency to foreign currency: THE INVESTOR may purchase such currency from any natural or legal person at the most favorable exchange rate on the exchange market at the time of the exchange transaction.

5. The stability of the right to non-discrimination pursuant to the provisions of Article 10(c) of Legislative Decree N° 662, which provides that the STATE, at none of its levels, whether they be national, regional or local government entities or companies, may apply to the INVESTOR different treatment based on nationality, the sector or type of economic activity pursued, or the geographic location of the companies in which it invests, or in the following matters:

(a) (Only applicable to foreign investment.) Currency exchange, in that the State may not apply to the INVESTOR, with respect to the investments referred to in Article Two, an exchange regime that involves a less favorable treatment than that applied to any natural or legal person for the execution of any kind of exchange transaction.

(b) Prices, tariffs or non-tariff duties, in that the STATE may not apply different amounts or rates in this regard to the INVESTOR for the investment referred to in Article Two.

(c) (Not applicable to banking and insurance.)

(d) Form of Incorporation, in that the STATE may not require that the INVESTOR invest in a company that adopts a specific form of incorporation.

(e) The INVESTOR's individual or corporate status, in that the STATE may not apply to the INVESTOR a different treatment in this regard; and

(f) Any other equivalent grounds, such as the application of discriminatory treatment to the INVESTOR resulting from any combination of the various sections of this item.

This item shall be applied notwithstanding the limits established in Article 3° of the Regulations.

FOUR. The INVESTOR undertakes, in addition to the provisions agreed upon in Article Two, the following:

(Only the obligations corresponding to the type of investment described in Article Two are included.)

• To prove that he has complied with a cash contribution of US$ .....to the capital of (name of company) ..... by filing (list of substantiating documents)

• To prove that he has complied with a venture capital investment of US$ .....in the company named ..... by filing (list of substantiating documents)

• To prove that he has complied with the obligation to generate .... permanent positions in (name of company) by submitting an affidavit, subject to subsequent verification.

• To prove that he has complied with the obligation to generate US$.....in foreign exchange earnings from exports from (name of company) by submitting an affidavit, subject to subsequent verification.

Proof of compliance with the obligations referred to in the foregoing paragraphs should be submitted to the appropriate Peruvian agency within no more than ..... calendar days from the deadline for compliance therewith, pursuant to the provisions of Article Two above. Noncompliance with these provisions shall be grounds for termination of this Agreement.

FIVE. This Legal Stability Agreement shall remain in force for ten years from the date on which it is concluded. It may not, therefore, be unilaterally amended by either of the parties during such period, even if domestic legislation is amended or if changes more beneficial or more detrimental to either of the parties are incorporated therein.

SIX. The INVESTOR shall be entitled to a single waiver of the legal stability system granted hereunder. Such waiver should be formalized by written notice to the appropriate Peruvian agency, which shall become effective as of the date of receipt of the notice by said agency.

If the INVESTOR chooses to exercise the right to waive the Legal Stability Agreement acknowledged under this Article, it shall automatically become subject to the provisions of ordinary law.

SEVEN. The INVESTOR shall have the right to assign his contractual status under this Agreement, with the prior authorization of the appropriate Peruvian agency, to be formalized by means of an addendum to this Agreement.

It is hereby understood that the assignment of contractual status by the INVESTOR to another shall not extend the term of

the Agreement stipulated in Article Five.

EIGHT. This Legal Stability Agreement may be amended only by mutual consent of the Parties. It shall not be possible to amend the term established in Article Five, or the investment amount under the limit established in (specify pertinent regulation).

For such purpose, the INVESTOR shall file an application with the appropriate Peruvian agency, which shall be processed in accordance with the same procedure used for the conclusion of this Agreement.

NINE. It being the intent of the Parties to resolve any matters involving compliance with this Agreement in the most expeditious manner possible, the Parties agree that henceforth, any dispute or claim between them regarding the interpretation, application or validity of this Agreement shall be settled through legal arbitration.

The arbitration shall be carried out in Lima, through the establishment of an Arbitral Tribunal consisting of three members. Each Contracting Party shall appoint an arbitrator, and the two shall in turn appoint the third. The arbitrators shall be expressly empowered to rule on the dispute subject of the arbitration.

If one of the Contracting Parties has not appointed its arbitrator within ten working days of receipt of the request by the party or parties requesting the arbitration, of if, within ten working days of the appointment of the second arbitrator by the parties, the two arbitrators cannot reach an agreement as to the choice of the third arbitrator, the latter shall be appointed, upon request of either Party, by the Lima Chamber of Commerce.

The term for completion of the arbitral procedure shall not exceed sixty (60) working days from the date of appointment of the last arbitrator; said procedure shall be governed by the provisions of the General Law on Arbitration, and/or any modifying or replacing regulations.

Each Contracting Party shall bear the costs incurred by the application of the provisions agreed upon herein in equal parts.

TEN. This Legal Stability Agreement shall be terminated ipso jure on the following grounds:

1. Failure by the INVESTOR to comply with any of the obligations stipulated in Article Two;

2. Failure by the INVESTOR to comply any of the obligations set forth in Article Four;

3. The assignment by the INVESTOR of its contractual status to another investor without the pertinent prior authorization of the appropriate Peruvian agency, as stipulated in Article Seven;

4. Failure by the COMPANY to generate the positions pursuant to Article Two;

5. Failure by the COMPANY to generate the foreign exchange earnings from exports pursuant to Article Two.

If the INVESTOR is responsible for any of the above-mentioned grounds for termination of this Agreement, and if, as a result of the legal stability granted thereunder, it enjoyed a lower tax burden than what it would have been entitled to without this Agreement, it shall be required to reimburse the State the adjusted amount of any taxes that it would have owed had it not concluded the Agreement, in addition to the appropriate surcharges referred to in the Tax Code.

It is hereby understood that in the case referred to in the foregoing paragraph, if a greater tax burden has been imposed on the INVESTOR by virtue of this Agreement, the State shall not be required to reimburse any amount whatsoever.

The Parties, having agreed on all its terms, have signed this Agreement at Lima in duplicate, both copies of which are identical in content.

Chapter Eleven. Cross-Border Trade In Services

Article 11.1. Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of another Party. Such measures include measures affecting:

(a) the production, distribution, marketing, sale, and delivery of a service;

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

(c) the access to and use of distribution, transport, or telecommunications networks and services in connection with the supply of a service;

(d) the presence in its territory of a service supplier of another Party; and

(e) the provision of a bond or other form of financial security as a condition for the supply of a service.

2. For the purposes of this Chapter, "measures adopted or maintained by a Party" means measures adopted or maintained by:

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

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

3. Articles 11.4, 11.7, and 11.8 also apply to measures by a Party affecting the supply of a service in its territory by a covered investment.â

4. This Chapter does not apply to:

(a) financial services as defined in Article 12.20 (Definitions), except that paragraph 3 applies where the financial service is supplied by a covered investment that is not a covered investment in a financial institution (as defined in Article 12.20) in the Party's territory;

The Parties understand that nothing in this Chapter, including this paragraph, is subject to investor-state dispute settlement pursuant to Section B of Chapter Ten (Investment).

(b) "government procurement" or "procurement" , as defined in Article 1.3 (Definitions of General Application);

(c) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service, and

(ii) specialty air services; or

(d) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

Annex 11-A sets forth an understanding of the Parties related to subparagraph (d).

5. This Chapter does not impose any obligation on a Party with respect to a national of another Party seeking access to its employment market, or employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment.

6. This Chapter does not apply to services supplied in the exercise of governmental authority in a Party's territory. A "service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

7. Nothing in this Chapter or any other provision of this Agreement shall be construed to impose any obligation on a Party regarding its immigration measures, including admission or conditions of admission for temporary entry.

Article 11.2. National Treatment

1. Each Party shall accord to service suppliers of another Party treatment no less favorable than that it accords, in like circumstances, to its own service suppliers.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

Article 11.3. Most-Favored-Nation Treatment

Each Party shall accord to service suppliers of another Party treatment no less favorable than that it accords, in like circumstances, to service suppliers of any other Party or any non- Party.

Article 11.4. Market Access

No Party may adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures

that:

(a) impose limitations on:

(i) the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test,

(ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test,

(iii) the total number of service operations or the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test,â or

(iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; or

(b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

Article 11.5. Local Presence

No Party may require a service supplier of another Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

Article 11.6. Non-Conforming Measures

1. Articles 11.2, 11.3, 11.4, and 11.5 do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

(i) This clause does not cover measures of a Party that limit inputs for the supply of services.

(ii) the central level of government, as set out by that Party in its Schedule to Annex I,

(iii) a regional level of government, as set out by that Party in its Schedule to Annex I, or

(iv) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 11.2, 11.3, 11.4, or 11.5.

2. Articles 11.2, 11.3, 11.4, and 11.5 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities as set out in its Schedule to Annex II.

Article 11.7. Domestic Regulation

1. Where a Party requires authorization for the supply of a service, the Partyâs competent authorities shall, within a reasonable time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the Partyâs competent authorities shall provide, without undue delay, information concerning the status of the application. This obligation shall not apply to authorization requirements that are within the scope of Article 11.6.2.

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall endeavor to ensure, as appropriate for individual sectors, that such measures are:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service; and

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. If the results of the negotiations related to Article VI:4 of the GATS (or the results of any similar negotiations undertaken in other multilateral fora in which each of the Parties participate) enter into effect, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. The Parties shall coordinate on such negotiations, as appropriate.

Article 11.8. Transparency In Developing and Applying Regulations (3)

Further to Chapter Nineteen (Transparency):
(a) each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its regulations relating to the subject matter of this Chapter; (4)

(b) if a Party does not provide advance notice and opportunity for comment pursuant to Article 19.2 (Publication), it shall, to the extent possible, address in writing the reasons therefor;

(c) at the time it adopts final regulations relating to the subject matter of this Chapter, each Party shall, to the extent possible, including upon request, address in writing substantive comments received from interested persons with respect to the proposed regulations; and

(d) to the extent possible, each Party shall allow reasonable time between publication of final regulations and their effective date.

(3) For greater certainty, "regulations" includes regulations establishing or applying to licensing authorization or criteria.

(4) Peru's implementation of its obligations to establish appropriate mechanisms for small administrative agencies may need to take into account resource and budget constraints.

Article 11.9. Recognition

1. For the purposes of fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing, or certification of services suppliers, and subject to the requirements of paragraph 4, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. Where a Party recognizes, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, nothing in Article 11.3 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of another Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for another Party, if that other Party is interested, to negotiate accession to such an agreement or arrangement or to negotiate one comparable with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognized.

4. No Party may accord recognition in a manner that would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing, or certification of services suppliers, or a disguised restriction on trade in services.

5. Annex 11-B (Professional Services) applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service suppliers as set out in that Annex.

Article 11.10. Transfers and Payments

1. Each Party shall permit all transfers and payments relating to the cross-border supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit such transfers and payments relating to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer.

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

(a) bankruptcy, insolvency, or the protection of the rights of creditors; (b) issuing, trading, or dealing in securities, futures, options, or derivatives;

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

(d) criminal or penal offences; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 11.11. Denial of Benefits 1. a Party May Deny the Benefits of this Chapter to a Service Supplier of Another Party If the

service supplier is an enterprise owned or controlled by persons of a non-Party, and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party or a person of the non- Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

2. Subject to Article 21.4 (Consultations), a Party may deny the benefits of this Chapter to a service supplier of another Party if the service supplier is an enterprise owned or controlled by persons of a non-Party or of the denying Party that has no substantial business activities in the territory of that other Party.

Article 11.12. Specific Commitments

1. Annex 11-C sets out certain obligations with regard to certain limitations on the employment of specialty personnel and professionals.

2. Annex 11-D sets out obligations with regard to the supply of express delivery services. 3. Annex 11-E will set out other specific commitments that the Parties may agree.

Article 11.13. Implementation

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

Article 11.14. Definitions

For the Purposes of this Chapter:

cross-border trade in services or cross-border supply of services means the supply of a service:

(a) from the territory of one Party into the territory of another Party;

(b) in the territory of one Party by a person of that Party to a person of another Party; or

(c) by a national of a Party in the territory of another Party; but does not include the supply of a service in the territory of a Party by a covered investment;

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

enterprise of a Party means an enterprise organized or constituted under the laws of that Party; and a branch located in the territory of that Party and carrying out business activities there;

professional services means services, the supply of which requires specialized (5) post-secondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Party, but does not include services supplied by trades-persons or vessel and aircraft crew members;

service supplier of a Party means a person of that Party that seeks to supply or supplies a service; (6) and

specialty air services means any non-transportation air services, such as aerial fire-fighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

(5) For greater certainty, the term "specialized post-secondary education" includes education beyond the high-school level that is related to a specific area of knowledge.

(6) For the purposes of Articles 11.2 and 11.3, "services suppliers" has the same meaning as "services and service suppliers" as used in Articles II and XVII of the GATS.

Chapter Twelve . Financial Services

Article 12.1. Scope and Coverage

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

(a) financial institutions of another Party;

(b) investors of another Party, and investments of such investors, in financial institutions in the Party's territory; and

(c) cross-border trade in financial services.

2. Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) apply to measures described in paragraph 1 only to the extent that such Chapters or Articles of such Chapters are incorporated into this Chapter.

(a) Articles 10.7 (Expropriation and Compensation), 10.8 (Transfers), 10.11 (Investment and Environment), 10.12 (Denial of Benefits), 10.14 (Special Formalities and Information Requirements), and 11.11 (Denial of Benefits) are hereby incorporated into and made a part of this Chapter.

(b) Section B (Investor-State Dispute Settlement) of Chapter Ten (Investment) is hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Articles 10.7 (Expropriation and Compensation), 10.8 (Transfers), 10.12 (Denial of Benefits), or 10.14 (Special Formalities and Information Requirements), as incorporated into this Chapter.

(c) Article 11.10 (Transfers and Payments) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 12.5.

3. This Chapter does not apply to measures adopted or maintained by a Party relating to:

(a) activities or services forming part of a public retirement plan or statutory system of social security; or

(b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities, except that this Chapter shall apply if a Party allows any of the activities or services referred to in subparagraph (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

4. Annex 12.1.3(a) sets out the Parties' understanding with respect to certain activities or services described in subparagraph 3(a)

Article 12.2. National Treatment

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

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

3. For purposes of the national treatment obligations in Article 12.5.1, a Party shall accord to cross-border financial service suppliers of another Party treatment no less favorable than that it accords to its own financial service suppliers, in like

circumstances, with respect to the supply of the relevant service.

Article 12.3. Most-Favored-Nation Treatment

1. Each Party shall accord to investors of another Party, financial institutions of another Party, investments of investors in financial institutions, and cross-border financial service suppliers of another Party treatment no less favorable than that it accords to the investors, financial institutions, investments of investors in financial institutions, and cross-border financial service suppliers of any other Party or of a non-Party, in like circumstances.

2. A Party may recognize prudential measures of another Party or of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

(a) accorded autonomously;
(b) achieved through harmonization or other means; or
(c) based upon an agreement or arrangement with another Party or a non-Party.

3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to another Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the relevant Parties.

4. Where a Party accords recognition of prudential measures under paragraph 2(c) and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to another Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 12.4. Market Access for Financial Institutions

No Party may adopt or maintain, with respect to financial institutions of another Party or investors of another Party seeking to establish such institutions, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

(i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirements of an economic needs test,

(ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test,

(iii) the total number of financial service operations or on the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test, (1) or

(iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of numerical quotas or the requirement of an economic needs test; or

(b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

(1) This clause does not cover measures of a Party that limit inputs for the supply of financial services.

Article 12.5. Cross-Border Trade

1. Each Party shall permit, under terms and conditions that accord national treatment, cross- border financial service suppliers of another Party to supply the services specified in Annex 12.5.1.

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of another Party located in the territory of that other Party or of any other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define “doing business” and “solicitation” for purposes of this obligation, provided that those definitions are not inconsistent with paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require

the registration of cross-border financial service suppliers of another Party and of financial instruments.

Article 12.6. New Financial Services (2)

Each Party shall permit a financial institution of another Party established in its territory to supply any new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without additional legislative action by the Party. Notwithstanding Article 12.4(b), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party requires authorization to supply a new financial service, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons.

(2) The Parties understand that nothing in Article 12.6 prevents a financial institution of a Party from applying to another Party to request that it authorize the supply of a financial service that is not supplied in the territory of any Party. Such application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of Article 12.6.

Article 12.7. Treatment of Certain Information

(a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or

(b) any confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

Article 12.8. Senior Management and Boards of Directors

1. A Party may not require financial institutions of another Party to engage individuals of any particular nationality as senior managerial or other essential personnel.

2. A Party may not require that more than a minority of the board of directors of a financial institution of another Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

Article 12.9. Non-Conforming Measures

1. Articles 12.2 Through 12.5 and 12.8 Do Not Apply to:
(a) Any Existing Non-conforming Measure That Is Maintained by a Party at

(i) the central level of government, as set out by that Party in Section A of its Schedule to Annex II (Non-Conforming Measures),

(ii) a regional level of government, as set out by that Party in Section A of its Schedule to Annex II (Non-Conforming Measures), or

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 12.2, 12.3, 12.4, or 12.8. (3)

2. Articles 12.2 through 12.5 and 12.8 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities as set out in Section B of its Schedule to Annex ITI.

3. A non-conforming measure set out in a Party's Schedule to Annex I or II as a measure to which Article 10.3 (National Treatment), 10.4 (Most-Favored-Nation Treatment), 11.2 (National Treatment), or 11.3 (Most-Favored-Nation Treatment) does not apply shall be treated as a non-conforming measure not subject to Article 12.2 or 12.3, as the case may be, to the extent that the measure, sector, subsector, or activity set out in the non-conforming measure is covered by this Chapter.

(3) For greater certainty, Article 12.5 does not apply to an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed on the date of entry into force of the Agreement,

with Article 12.5.

Article 12.10. Exceptions

1. Notwithstanding any other provision of this Chapter or Chapter Ten (Investment), Fourteen (Telecommunications), or Fifteen (Electronic Commerce), including specifically Articles 14.16 (Relationship to Other Chapters) and 11.1 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by a covered investment, a Party shall not be prevented from adopting or maintaining measures for prudential reasons, (4) including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

2. Nothing in this Chapter or Chapter Ten (Investment), Fourteen (Telecommunications), or Fifteen (Electronic-Commerce), including specifically Articles 14.16 (Relationship to Other Chapters) and 11.1 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by a covered investment, applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit or exchange rate policies. This paragraph shall not affect a Partyâs obligations under Article 10.9 (Performance Requirements) with respect to measures covered by Chapter Ten (Investment) or under Article 10.8 (Transfers) or 11.10 (Transfers and Payments).

3. Notwithstanding Articles 10.8 (Transfers) and 11.10 (Transfers and Payments), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory, and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services.

(4) It is understood that the term “prudential reasons” includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers.

Article 12.11. Transparency and Administration of Certain Measures

1. the Parties recognize that transparent regulations and policies governing the activities of financial institutions and cross-border financial service suppliers are important in facilitating their ability to gain access to and operate in another Party's markets. Each Party commits to promote regulatory transparency in financial services.

2. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective, and impartial manner.

3, In lieu of Article 19.2.2, each Party shall, to the extent practicable:

(a) publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt and the purpose of the regulations; and

(b) provide interested persons and Parties a reasonable opportunity to comment on the proposed regulations.

4. At the time it adopts final regulations, a Party should, to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations. (5)

5. To the extent practicable, each Party should allow reasonable time between publication of final regulations and their effective date.

6. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organizations of the

Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

7. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding measures of general application covered by this Chapter.

8. Each Party's regulatory authorities shall make publicly available the requirements, including any documentation required, for completing applications relating to the supply of financial services.

9. On the request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

10. A Party's regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution, or a cross-border financial service supplier of another Party relating to the supply of a financial service within 120 days and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.

11. On the request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for denial of the application.

12. Annex 12.11 sets out the Parties's understanding with regard to certain provisions of this Article.

(5) For greater certainty, a Party may consolidate its responses to the comments received from interested persons and publish them in a separate document from that setting forth the final regulations.

Article 12.12. Self-Regulatory Organizations

Where a Party requires a financial institution or a cross-border financial service supplier of another Party to be a member of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into its territory, the Party shall ensure observance of the obligations of Articles 12.2 and 12.3 by such self-regulatory organization.

Article 12.13. Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant financial institutions of another Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the Party's lender of last resort facilities.

Article 12.14. Expedited Availability of Insurance Services

1. The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers.

2. Annex 12.14 sets out certain commitments of the Parties with regard to the expedited availability of insurance services.

Article 12.15. Specific Commitments

Annex 12.15 sets out certain specific commitments by each Party.

Article 12.16. Financial Services Committee

1. the Parties Hereby Establish a Financial Services Committee (Committee). the Principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 12.16.1.

2. The Committee shall: (a) supervise the implementation of this Chapter and its further elaboration; (b) consider issues regarding financial services that are referred to it by a Party; and (c) participate in the dispute settlement procedures in accordance with Article 12.19.

3. The Committee shall meet annually, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each meeting.

Article 12.17. Consultations

1. A Party may request consultations with another Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The consulting Parties shall report the results of their consultations to the Committee.

2. Consultations under this Article shall include officials of the authorities specified in Annex 12.16.1.

3. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 1 to disclose information or take any action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.

4. Nothing in this Article shall be construed to require a Party to derogate from its relevant law regarding sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of two or more Parties.

Article 12.18. Dispute Settlement

1. Section A (Dispute Settlement) of Chapter Twenty-One (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. When a Party claims that a dispute arises under this Chapter, Article 21.9 (Panel Selection) shall apply, except that:

(a) where the disputing Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 3; and

(b) in any other case,
(i) each disputing Party may select panelists meeting the qualifications set out in paragraph 3 or in Article 21.8 (Qualifications of Panelists), and

(ii) if the Party complained against invokes Article 12.10, the chair of the panel shall meet the qualifications set out in paragraph 3, unless the disputing Parties agree otherwise.

3. Financial services panelists shall:
(a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;
(b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
(c) be independent of, and not be affiliated with or take instructions from, a disputing Party; and
(d) comply with the code of conduct to be established by the Commission.

4. Notwithstanding Article 21.16 (Non-Implementation---Suspension of Benefits), where a panel finds a measure to be inconsistent with this Agreement and the measure under dispute affects:

(a) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector; or

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Partyâs financial services sector.

Article 12.19. Investment Disputes In Financial Services

1. Where an investor of a Party submits a claim to arbitration under Section B of Chapter Ten, (Investor-State Dispute Settlement) and the respondent invokes Article 12.10 as a defense, the following provisions shall apply:

(a) The respondent shall, within 120 days of the date the claim is submitted to arbitration under Section B of Chapter Ten (Investor-State Dispute Settlement) submit in writing to the authorities responsible for financial services for the respondent and for the Party of the claimant, as set out in Annex 12.16.1, a request for a joint determination on the issue of whether and to what extent Article 12.10 is a valid defense to the claim. The respondent shall promptly provide the tribunal, if constituted, a copy of such request. The arbitration may proceed with respect to the claim only as provided in subparagraph (d).

(b) If a non-disputing Party other than the Party of the claimant considers that it has a substantial interest in the joint determination, such non-disputing Party may request that its authorities responsible for financial services, as set out in Annex 12.16.1, be included in any consultations held with a view to making that determination. They shall be included in such consultations if the respondent and the Party of the claimant agree that the claim of substantial interest is well founded. Where the substantial interest of the non-disputing Party is based on ownership or control of the claimant by a person of the non-disputing Party, the substantial interest shall be deemed to be well founded.

(c) The authorities referred to in subparagraph (a) shall attempt in good faith to make a joint determination as described in that subparagraph. Any such joint determination shall be transmitted promptly to the disputing parties, the Financial Services Committee, and, if constituted, to the tribunal. The joint determination shall be binding on the tribunal.

(d) If the authorities referred to in subparagraph (a), within 60 days of the date by which they have received the respondent's written request for a joint determination under that subparagraph, have not made a joint determination as described in that subparagraph, the tribunal shall decide the issue left unresolved by the authorities. The provisions of Section B of Chapter Ten (Investor-State Dispute Settlement) shall apply, except as modified by this subparagraph.

(i) In the appointment of all arbitrators not yet appointed to the tribunal, each disputing party shall take appropriate steps to ensure that the tribunal has expertise or experience as described in Article 12.18.3(a). The expertise or experience of particular candidates with respect to financial services shall be taken into account to the greatest extent possible in the appointment of the presiding arbitrator.

(ii) If, prior to the submission of the request for a joint determination in conformance with subparagraph (a), the presiding arbitrator has been appointed pursuant to Article 10.19.2, such arbitrator shall be replaced upon the request of either disputing party and the tribunal shall be reconstituted consistent with subparagraph (d)(i). If, within 30 days of the date the arbitration proceedings are resumed under subparagraph (e), the disputing parties have not agreed on the appointment of a new presiding arbitrator, the Secretary-General, on the request of a disputing party, shall appoint the presiding arbitrator consistent with subparagraph (d)(i).

(iii) The Party of the claimant may make oral and written submissions to the tribunal regarding the issue of whether and to what extent Article 12.10 is a valid defense to the claim. Unless it makes such a submission, the Party of the claimant shall be presumed, for purposes of the arbitration, to take a position on Article 12.10 not inconsistent with that of the respondent.

(e) The arbitration referred to in subparagraph (a) may proceed with respect to the claim:
(i)10 days after the date the joint determination has been received, in accordance with subparagraph (c), by the disputing parties, the Committee, and, if constituted, the tribunal, or
(ii) 10 days after the expiration of the 60-day period extended to the authorities in subparagraph (d).

2. For purposes of this Article, the definitions of the following terms set out in Article 10.28 (Definitions) are incorporated, mutatis mutandis: disputing parties, disputing party, respondent, and Secretary-General.

Article 12.20. Definitions

For Purposes of this Chapter:
claimant means an investor of a Party that is a party to an investment dispute with another Party;

cross-border financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such services;

cross-border trade in financial services or cross-border supply of financial services means the supply of a financial service:

(a) from the territory of one Party into the territory of another Party,

(b) in the territory of one Party by a person of that Party to a person of another Party, or

(c) by a national of one Party in the territory of another Party,

but does not include the supply of a financial service in the territory of a Party by an investment in that territory;

financial institution means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

financial institution of another Party means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of another Party;

financial service means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

Insurance and insurance-related services

(a) Direct insurance (including co-insurance):

(i) life,

(ii) non-life;

(b) Reinsurance and retrocession;

(c) Insurance intermediation, such as brokerage and agency; and

(d) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services.

Banking and other financial services (excluding insurance)

(e) Acceptance of deposits and other repayable funds from the public;

(f) Lending of all types, including consumer credit, mortgage credit, factoring, and financing of commercial transactions;

(g) Financial leasing;

(h) All payment and money transmission services, including credit, charge and debit cards, travelers checks, and bankers drafts;

(i) Guarantees and commitments;

(j) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:

(i) money market instruments (including checks, bills, certificates of deposits),

(ii) foreign exchange,

(iii) derivative products including, but not limited to, futures and options,

(iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements,

(v) transferable securities,

(vi) other negotiable instruments and financial assets, including bullion;

(k) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(l) Money broking;

(m) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;

(n) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(o) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and

(p) Advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial

service within the territory of that Party;

investment means "investment" as defined in Article 10.28 (Definitions), except that, with respect to "loans" and "debt instruments" referred to in that Article:

(a) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and

(b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment for purposes of Chapter Ten (Investment), if such loan or debt instrument meets the criteria for investments set out in Article 10.28 (Definitions).

investor of a Party means a Party or state enterprise thereof, or a person of a Party, that attempts to make, is making, or has made an investment in the territory of another Party; provided, however, that a natural person who is a dual citizen shall be deemed to be exclusively a citizen of the State of his or her dominant and effective nationality;

new financial service means a financial service not supplied in the Party's territory that is supplied within the territory of another Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

person of a Party means "person of a Party" as defined in Article 1.3 (Definitions of General Application) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

public entity means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party;

for greater certainty, a public entity (6) shall not be considered a designated monopoly or a state enterprise for purposes of Chapter Thirteen (Competition Policy, Designated Monopolies, and State Enterprises); and **self-regulatory organization** means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions;

for greater certainty, a self-regulatory organization shall not be considered a designated monopoly for purposes of Chapter Thirteen (Competition Policy, Designated Monopolies, and State Enterprises).

(6) The Federal Deposit Insurance Corporation of the United States shall be deemed to be within the definition of public entity for purposes of Chapter Thirteen (Competition Policy, Designated Monopolies, and State Enterprises).

Chapter Thirteen. Competition Policy, Designated Monopolies, and State Enterprises

Article 13.1. Objectives

Recognizing that the conduct subject to this Chapter has the potential to restrict bilateral trade and investment, the Parties believe that proscribing such conduct, implementing economically sound competition policies, and cooperating on matters covered by this Chapter will help secure the benefits of this Agreement.

Article 13.2. Competition Law and Anticompetitive Business Conduct

1. Each Party shall adopt or maintain national competition laws that proscribe anticompetitive business conduct and promote economic efficiency and consumer welfare, and shall take appropriate action with respect to such conduct.

2. Each Party shall maintain an authority responsible for the enforcement of its national competition laws. The enforcement policy of each Party's central government competition authorities is not to discriminate on the basis of the nationality of the subjects of their proceedings.

3. Each Party shall ensure that:

(a) before it imposes a sanction or remedy against any person for violating its competition law, it affords the person the right to be heard and to present evidence, except that it may provide for the person to be heard and present evidence within a reasonable time after it imposes an interim sanction or remedy; and

(b) a court or other independent tribunal established under that Partyâs laws imposes or, at the personâs request, reviews any such sanction or remedy.

4. Each Party other than the United States may implement its obligations under this Article through Andean Community competition laws or an Andean Community enforcement authority.

Article 13.3. Cooperation 1. the Parties Agree to Cooperate In the Area of Competition Policy. the Parties Recognize

the importance of cooperation and coordination between their respective authorities to further effective competition law enforcement in the free trade area.

2. Accordingly, the Parties shall cooperate on issues of competition law enforcement, including notification of cases that affect the important interests of another Party, consultation, and exchange of information relating to the enforcement of each Partyâs competition laws and policies.

Article 13.4. Working Group

The Parties shall establish a working group comprising representatives of each Party. The working group shall endeavor to promote greater understanding, communication, and cooperation between the Parties with respect to matters covered by this Chapter. The working group shall report on the status of its efforts to the Commission within three years of entry into force of this Agreement and may make any appropriate recommendations for future action that may further promote the achievement of the objectives of this Article.

Article 13.5. Designated Monopolies

1. Recognizing that designated monopolies should not operate in a manner that creates obstacles to trade and investment, each Party shall ensure that any privately-owned monopoly that it designates after the date of entry into force of this Agreement and any government monopoly that it designates or has designated:

(a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions, or impose quotas, fees, or other charges;

(b) acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, except to comply with any terms of its designation that are not inconsistent with subparagraph (c) or (d);

(c) provides non-discriminatory treatment to covered investments, to goods of another Party, and to service suppliers of another Party in its purchase or sale of the monopoly good or service in the relevant market; and

(d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other enterprises with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect covered investments.

2. Nothing in this Chapter shall be construed to prevent a Party from designating a monopoly.

3. This Article does not apply to procurement, as defined in Article 1.3 (Definitions of General Application).

Article 13.6. State Enterprises

1. The Parties recognize that state enterprises should not operate in a manner that creates obstacles to trade and investment. In that light, each Party shall ensure that any state enterprise that it establishes or maintains:

(a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such enterprise exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it, such as the

power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges; and

(b) accords non-discriminatory treatment in the sale of its goods or services to covered investments.

2. Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining a state enterprise.

Article 13.7. Differences In Pricing

The charging of different prices in different markets, or within the same market, where such differences are based on normal commercial considerations, such as taking account of supply and demand conditions, is not in itself inconsistent with Articles 13.5 and 13.6.

Article 13.8. Transparency and Information Requests

1. The Parties recognize the value of transparency of government competition policies.

2. On request, each Party shall make available to another Party public information concerning its:

(a) competition law enforcement activities;

(b) state enterprises and designated monopolies, public or private, at any level of government; and

(c) export associations registered or certified as such to the central government, including any conditions the Party imposes on them.

In a request under subparagraph (b), a Party shall indicate the entities or localities involved, specify the particular goods or services and markets concerned, and include indicia of practices that may restrict trade or investment between the Parties.

In a request under subparagraph (c), a Party shall specify the particular goods or services concerned.

3. On request, each Party shall make available to the other Party public information concerning exemptions provided under its competition laws. The requesting Party shall specify the particular goods or services and markets of interest and include indicia that the exemption may restrict trade or investment between the Parties.

Article 13.9. Consultations

To foster understanding between the Parties, or to address specific matters that arise under this Chapter, each Party shall, on request of another Party, enter into consultations. In its request, the Party shall indicate, if relevant, how the matter affects trade or investment between the Parties. The Party addressed shall accord full and sympathetic consideration to the concerns of the other Party.

Article 13.10. Dispute Settlement

No Party may have recourse to dispute settlement under this Agreement for any matter arising under Article 13.2, 13.3, 13.4, or 13.9.

Article 13.11. Definitions

For purposes of this Chapter:

a **delegation** includes a legislative grant, and a government order, directive, or other act, transferring to the monopoly or state enterprise, or authorizing the exercise by the monopoly or state enterprise of, governmental authority;

designate means to establish, designate, or authorize a monopoly or to expand the scope of a monopoly to cover an additional good or service, whether formally or in effect;

government monopoly means a monopoly that is owned, or controlled through ownership interests, by the central government of a Party or by another such monopoly;

in accordance with commercial considerations means consistent with normal business ptactices of privately-held enterprises in the relevant business or industry;

market means the geographic and commercial market for a good or service;

monopoly means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant; and

non-discriminatory treatment means the better of national treatment and most-favored- nation treatment, as set out in the relevant provisions of this Agreement.

Chapter Fourteen. Telecommunications

Article 14.1. Scope and Coverage

1. this Chapter Applies to:

(a) Measures Relating to Access to and Use of Public Telecommunications Services;

(b) measures relating to obligations of suppliers of public telecommunications services;

(c) other measures relating to public telecommunications networks or services; and

(d) measures relating to the supply of information services.

2. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications services, as set out in Article 14.2, this Chapter does not apply to any measure relating to broadcast or cable distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

(a) require a Party (or require a Party to compel any enterprise) to establish, construct, acquire, lease, operate, or provide telecommunications networks or services where such networks or services are not offered to the public generally;

(b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network; or

(c) prevent a Party from prohibiting persons operating private networks from using their networks to supply public telecommunications networks or services to third persons.

Article 14.2. Access to and Use of Public Telecommunications Servicesâ (1)

1. Each Party shall ensure that enterprises of another Party have access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 6.

2. Each Party shall ensure that such enterprises are permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications network;

(b) provide services to individual or multiple end-users over leased or owned circuits;
(c) connect owned or leased circuits with public telecommunications networks and services in the territory, or across the borders, of that Party or with circuits leased or owned by another person;
(d) perform switching, signaling, processing, and conversion functions; and (e) use operating protocols of their choice. 3. Each Party shall ensure that enterprises of another Party may use public telecommunications services for the movement of information in its territory or across its borders and for access to information contained in databases or otherwise stored in machine-readable form in the territory of any Party. 4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to:

(a) ensure the security and confidentiality of messages; or

(b) protect the privacy of non-public personal data of subscribers to public telecommunications services,

provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services, other than that necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their networks or services available to the public generally; or

(b) protect the technical integrity of public telecommunications networks or services.

6. Provided that conditions for access to and use of public telecommunications networks or services satisfy the criteria set out in paragraph 5, such conditions may include:

(a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks and services;

(b) type approval of terminal or other equipment that interfaces with the network and technical requirements relating to the attachment of such equipment to such networks; and

(c) a licensing, permit, registration, or notification procedure which, if adopted or maintained, is transparent and provides for the processing of applications filed thereunder in accordance with the Partyâs national law or regulation.

(1) For greater certainty, this Article does not prohibit any Party from requiring an enterprise to obtain a license, concession, or other type of authorization to supply any public telecommunications service within its territory.

Article 14.3. Obligations Relating to Suppliers of Public Telecommunications Services (2)

Interconnection

1. (a) Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly, interconnection with the suppliers of public telecommunications services of another Party at reasonable rates.

(b) In carrying out subparagraph (a), each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services obtained as a result of interconnection arrangements and only use such information for the purpose of providing those services.

Resale

2. Each Party shall ensure that suppliers of public telecommunications services do not impose unreasonable or discriminatory conditions or limitations on the resale of those services.

Number Portability

3. Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability to the extent technically feasible, on a timely basis, and on reasonable terms and conditions. (3)

Dialing Parity

4. Each Party shall ensure that suppliers of a particular public telecommunications service in its territory provide dialing parity to suppliers of the same public telecommunications service of the other Party and provide suppliers of public telecommunications services of the other Party non-discriminatory access to telephone numbers, directory assistance, directory listing, and operator services with no unreasonable dialing delays.

(2) This Article is subject to Annex 14-A. Paragraphs 2 through 4 of this Article do not apply with respect to suppliers of commercial mobile services. This exclusion shall not be construed to preclude a Party from imposing the requirements set forth in this Article on suppliers of commercial mobile services.

(3) In complying with this paragraph, any Party other than the United States may take into account the economic feasibility of providing number portability.

Article 14.4. Additional Obligations Relating to Major Suppliers of Public Telecommunications Services (4)

Treatment by Major Suppliers

1. Each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications services of another Party treatment no less favorable than such major suppliers accord to their subsidiaries, their affiliates, or non-affiliated service suppliers regarding:

(a) the availability, provisioning, rates, or quality of like public telecommunications services; and

(b) the availability of technical interfaces necessary for interconnection. Competitive Safeguards 2. (a) Each Party shall maintain appropriate measures for the purpose of preventing suppliers that, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.

(b) The anti-competitive practices referred to in subparagraph (a) include in particular:

(i) engaging in anti-competitive cross-subsidization;

(ii) using information obtained from competitors with anti-competitive results; and

(iii) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential

Resale

3. Each Party shall ensure that major suppliers in its territory:

(a) offer for resale, at reasonable rates, to suppliers of public telecommunications services of another Party, public telecommunications services that such major suppliers provide at retail to end-users that are not suppliers of public

telecommunications services; and

(b) do not impose unreasonable or discriminatory conditions or limitations on the resale of such services. (5)

Unbundling of Network Elements

4. (a) Each Party shall provide its telecommunications regulatory body or other relevant body (6) the authority to require major suppliers in its territory to offer access to network elements on an unbundled basis on terms and conditions, and at costoriented rates, that are reasonable, non-discriminatory, and transparent for the supply of public telecommunications services.

(b) Each Party may determine the network elements required to be made available in its territory, and the suppliers that may obtain such elements, in accordance with its law or regulations.

Interconnection

5. (a) General Terms and Conditions Each Party shall ensure that major suppliers in its territory provide interconnection for the facilities and equipment of suppliers of public telecommunications services of another Party:

(i) at any technically feasible point in the major suppliers' networks;

(ii) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;

(iii) of a quality no less favorable than that provided by such major suppliers for their own like services, for like services of non-affiliated service suppliers, or for their subsidiaries or other affiliates;

(iv) in a timely fashion, on terms, conditions (including technical standards and specifications), and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that suppliers need not pay for network components or facilities that they do not require for the service to be provided; and

(v) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

(b) Options for Interconnecting with Major Suppliers Each Party shall ensure that suppliers of public telecommunications services of another Party may interconnect their facilities and equipment with those of major suppliers in its territory pursuant to at least one of the following options:

(i) a reference interconnection offer or another standard interconnection offer containing the rates, terms, and conditions that the major suppliers offergenerally to suppliers of public telecommunications services;

(ii) the terms and conditions of an interconnection agreement in force; or

(iii) through negotiation of a new interconnection agreement.

(c) Public Availability of Interconnection Offers Each Party shall require major suppliers in its territory to make publicly available reference interconnection offers or other standard interconnection offers containing the rates, terms, and conditions that the major suppliers offer generally to suppliers of public telecommunications services.

(d) Public Availability of Procedures for Interconnection Negotiations Each Party shall make publicly available the applicable procedures for interconnection negotiations with major suppliers in its territory.

(e) Public Availability of Interconnection Agreements Concluded with Major Suppliers

(i) Each Party shall require major suppliers in its territory to file all interconnection agreements to which they are party with its telecommunications regulatory body. (7)

(ii) Each Party shall make publicly available interconnection agreements in force between major suppliers in its territory and other suppliers of public telecommunications services in its territory.

Provisioning and Pricing of Leased Circuits Services

6. (a) Each Party shall ensure that major suppliers in its territory provide enterprises of another Party leased circuits services that are public telecommunications services on terms and conditions, and at rates that are reasonable and non-discriminatory.

(b) In carrying out subparagraph (a), each Party shall provide its telecommunications regulatory body the authority to require major suppliers in its territory to offer leased circuits services that are public telecommunications services to enterprises of another Party at capacity-based, cost-oriented prices.

Co-location

7. (a) Subject to subparagraphs (b) and (c), each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications services of another Party physical co-location of equipment necessary for interconnection on terms and conditions, and at cost-oriented rates, that are reasonable, nondiscriminatory, and transparent.

(b) Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers in its territory provide an alternative solution, such as facilitating virtual co-location, on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.

(c) Each Party may specify in its law or regulations which premises are subject to subparagraphs (a) and (b).

Access to Poles, Ducts, Conduits, and Rights-of-way

8. Each Party shall ensure that major suppliers in its territory afford access to poles, ducts, conduits, and rights-of-way owned or controlled by such major suppliers to suppliers of public telecommunications services of another Party on terms and conditions, and at rates, that are reasonable and non-discriminatory

(4) This Article is subject to Annex 14-A. Paragraph 1, subparagraph (2)(b)(iii), and paragraphs 3 through 8 of this Article do not apply with respect to major suppliers of commercial mobile services. This exclusion is without prejudice to any rights or obligations that a Party may have under the GATS and shall not be construed to preclude a Party from imposing the requirements set out in this Article on major suppliers of commercial mobile services.

(5) Where provided in its law or regulations, a Party may prohibit a reseller that obtains, at wholesale rates, a public telecommunications service available at retail to only a limited category of subscribers from offering the service to a different category of subscribers.

(6) For purposes of this paragraph, Peru's "other relevant body" is the Ministry of Transportation and Communications.

(7) In the United States, this obligation may be satisfied by requiring filing with a regulatory authority at the regional level.

Article 14.5. Submarine Cable Systems

Each Party shall ensure that any enterprise that it authorizes to operate a submarine cable system in its territory as a public telecommunications service accords reasonable and non- discriminatory treatment with respect to access to that system (including landing facilities) to suppliers of public telecommunications services of another Party.

Article 14.6. Conditions for the Supply of Information Services

1. No Party may require an enterprise in its territory that it classifies as a supplier of information services (8) and that supplies those services over facilities that it does not own to:

(a) supply those services to the public generally;

(b) cost-justify its rates for those services;

(c) file a tariff for those services;

(d) connect with any particular customer for the supply of those services; or

(e) conform with any particular standard or technical regulation for connecting to any network, other than a public telecommunications network.

2. Notwithstanding paragraph 1, a Party may take the actions described in subparagraphs (a) through (e) to remedy a practice of a supplier of information services that the Party has found in a particular case to be anti-competitive under its law or regulations, or to otherwise promote competition or safeguard the interests of consumers.

(8) For purposes of applying this Article, each Party may classify which services in its territory are information services.

Article 14.7. Independent Regulatory Bodies and Government-owned Telecommunications Suppliers

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. To this end, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest or maintain an operating role in any such supplier.

2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all interested persons. To this end, each Party shall ensure that any financial interest that it holds in a supplier of public telecommunications services does not influence the decisions and procedures of its telecommunications regulatory body.

3. No Party may accord more favorable treatment to a supplier of public telecommunications services or to a supplier of information services than that accorded to a like supplier of another Party on the basis that the supplier receiving more favorable treatment is owned, wholly or in part, by the central level of government of the Party.

Article 14.8. Universal Service

Each Party has the right to define the kind of universal service obligations it wishes to maintain and shall administer those obligations in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

Article 14.9. Licenses and other Authorizations

1. Where a Party requires a supplier of public telecommunications services to have a license, concession, permit, registration, or other type of authorization, the Party shall make publicly available:

(a) all applicable licensing or authorization criteria and procedures;

(b) the time it normally requires to reach a decision concerning an application for a license, concession, permit, registration, or other type of authorization; and

(c) the terms and conditions of all licenses or authorizations it has issued.

2. Each Party shall ensure that, on request, an applicant receives the reasons for the denial of a license, concession, permit, registration, or other type of authorization.

Article 14.10. Allocation and Use of Scarce Resources

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers, and rights-of-way, in an objective, timely, transparent, and non-discriminatory manner.

2. Each Party shall make publicly available the current state of allocated frequency bands but shall not be required to provide detailed identification of frequencies allocated for specific government uses.

3. A Party's measures allocating and assigning spectrum and managing frequencies are not measures that are per se inconsistent with Article 11.4 (Market Access), either as it applies to cross-border trade in services or, through the operation of Article 11.1.3 (Scope and Coverage), to a covered investment of another Party. Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies that may have the effect of limiting

the number of suppliers of public telecommunications services, provided that it does so in a manner that is consistent with other provisions of this Agreement. This includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

4. When making a spectrum allocation for non-government telecommunications services, each Party shall endeavor to rely on an open and transparent public comment process that considers the overall public interest. Each Party shall endeavor to rely generally on market- based approaches in assigning spectrum for terrestrial non-government telecommunications services.

Article 14. Enforcement

Each Party shall provide its competent authority with the authority to enforce compliance with the Party's measures relating to the obligations set out in Articles 14.2 through 14.5. Such authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension, and revocation of licenses or other authorizations.

Article 14.12. Resolution of Telecommunications Disputes

Further to Articles 19.4 (Administrative Proceedings) and 19.5 (Review and Appeal), each Party shall ensure the following:

Recourse to Telecommunications Regulatory Bodies

(a) (i) Enterprises of another Party may seek review by a telecommunications regulatory body or other relevant body to resolve disputes regarding the Party's measures relating to a matter set out in Articles 14.2 through 14.5.

(ii) Suppliers of public telecommunications services of another Party that have requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable and publicly specified period after the supplier requests interconnection, by a telecommunications regulatory body (9) to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier.

Reconsideration

(b) Any enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may petition the body to reconsider (10) that determination or decision. No Party may permit such a petition to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body unless an appropriate authority stays such determination or decision.

Judicial Review

(c) Any enterprise that is aggrieved or whose interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may obtain judicial review of such determination or decision by an independent judicial authority. An application for judicial review shall not constitute grounds for non-compliance with such a determination or decision unless stayed by the relevant judicial body.

(9) The United States may comply with this obligation by providing for review by a regulatory authority at the regional level.

(10) With respect to the obligations of a Party other than the United States under this subparagraph, enterprises may not petition for reconsideration of rulings of general application, as defined in Article 19.6 (Definitions), unless provided for under its law and regulation.

Article 14.13. Transparency

Further to Articles 19.2 (Publication) and 19.3 (Notification and Provision of Information), each Party shall ensure that:

(a) rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body and end-user tariffs filed with its telecommunications regulatory body are promptly published or otherwise made publicly available;

(b) interested persons are provided, to the extent possible, with adequate advance public notice of, and the opportunity to comment on, any rulemaking that its telecommunications regulatory body proposes; and

(c) its measures relating to public telecommunications services are made publicly available, including measures relating to:

(i) tariffs and other terms and conditions of service;

(ii) procedures relating to judicial and other adjudicatory proceedings;
(iii) specifications of technical interfaces;

(iv) bodies responsible for preparing, amending, and adopting standards- related measures affecting access and use;

(v) conditions for attaching terminal or other equipment to the public telecommunications network; and

(vi) notification, permit, registration, or licensing requirements, if any.

Article 14.14.

Flexibility in the Choice of Technologies No Party may prevent suppliers of public telecommunications services from having the flexibility to choose the technologies that they use to supply their services, including commercial mobile wireless services, subject to requirements necessary to satisfy legitimate public policy interests.

Article 14.15. Forbearance

The Parties recognize the importance of relying on market forces to achieve wide choices in the supply of telecommunications services. To this end, each Party may forbear from applying a regulation to a service that the Party classifies as a public telecommunications service, if its telecommunications regulatory body determines that:

(a) enforcement of that regulation is not necessary to prevent unreasonable or discriminatory practices;

(b) enforcement of that regulation is not necessary for the protection of consumers; and

(c) forbearance is consistent with the public interest, including promoting and enhancing competition between suppliers of public telecommunications services.

Article 14.16. Relationship to other Chapters

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

Article 14.17. Definitions

For purposes of this Chapter:

co-location (physical) means physical access to and control over space in order to install, maintain, or repair equipment, at premises owned or controlled and used by a major supplier to supply public telecommunications services;

commercial mobile services means public telecommunications services supplied through mobile wireless means;

cost-oriented means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

dialing parity means the ability of an end-user to use an equal number of digits to access a particular public telecommunications service, regardless of the public telecommunications service supplier chosen by such end-user;

end-user means a final consumer of or subscriber to a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;

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

enterprise of another Party means both an enterprise constituted or organized under the law of another Party and an enterprise owned or controlled by a person of another Party;

essential facilities means facilities of a public telecommunications network or service that:

(a) are exclusively or predominantly provided by a single or limited number of suppliers, and

(b) cannot feasibly be economically or technically substituted in order to supply a service;

information service means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service;

interconnection means linking with suppliers providing public telecommunications services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

leased circuits means telecommunications facilities between two or more designated points that are set aside for the dedicated use of or availability to a particular customer or other users of the customerâs choosing;

major supplier means a supplier of public telecommunications services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of:

(a) control over essential facilities or

(b) use of its position in the market;

network element means a facility or equipment used in supplying a public telecommunications service, including features, functions, and capabilities provided by means of such facility or equipment;

non-discriminatory means treatment no less favorable than that accorded to any other user of like public telecommunications services in like circumstances;

number portability means the ability of end-users of public telecommunications services to retain, at the same location, the same telephone numbers without impairment of quality, reliability, or convenience when switching between like suppliers of public telecommunications services;

private network means a telecommunications network that is used exclusively for intra- enterprise communications;

public telecommunications network means telecommunications infrastructure which a Party requires to provide public telecommunications services between defined network termination points;

public telecommunications service means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include, inter alia, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, but does not include information services;

reference interconnection offer means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body that is sufficiently detailed to enable a supplier of public telecommunications services that is willing to accept its rates, terms, and conditions to obtain interconnection without having to engage in negotiations with the major supplier;

telecommunications means the transmission and reception of signals by any electromagnetic means, including by photonic means;

telecommunications regulatory body means a national body responsible for the regulation of telecommunications; and user means an end-user or a supplier of public telecommunications services.

Chapter Fifteen. Electronic Commerce

Article 15.1. General

1. The Parties recognize the economic growth and opportunity that electronic commerce provides, the importance of avoiding barriers to its use and development, and the applicability of the WTO Agreement to measures affecting electronic commerce.

2. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from imposing internal taxes or other internal charges on the domestic sale of digital products, provided that such taxes or charges are imposed in a manner consistent with this Agreement.

Article 15.2. Electronic Supply of Services

For greater certainty, the Parties affirm that measures affecting the supply of a service delivered or performed electronically fall within the scope of the obligations contained in the relevant provisions of Chapters Ten (Investment), Eleven (Cross-Border Trade in Services), and Twelve (Financial Services), subject to any exceptions or non-conforming measures set out in this Agreement that are applicable to such obligations.

Article 15.3. Digital Products

1. No Party may apply customs duties, fees, or other charges on or in connection with the importation or exportation of digital products by electronic transmission.

2. For purposes of determining applicable customs duties, each Party shall determine the customs value of an imported carrier medium bearing a digital product based on the cost or value of the carrier medium alone, without regard to the cost or value of the digital product stored on the carrier medium.

3. No Party may accord less favorable treatment to some digital products than it accords to other like digital products:

(a) on the basis that @ the digital products receiving less favorable treatment are created,

produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms outside its territory, or

(ii) the author, performer, producer, developer, or distributor of such digital products is a person of another Party or a non-Party, or

(b) so as otherwise to afford protection to other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in its territory.

4. (a) No Party may accord less favorable treatment to digital products created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of another Party than it accords to like digital products created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of a non-Party.

(b) No Party may accord less favorable treatment to digital products whose author, performer, producer, developer, or distributor is a person of another Party than it accords to like digital products whose author, performer, producer, developer, or distributor is a person of a non-Party.

5. Paragraphs 3 and 4 do not apply to measures adopted or maintained in accordance with Articles 10.13 (Non-Conforming Measures), 11.6 (Non-Conforming Measures), and 12.9 (Non- Conforming Measures).

Article 15.4. Transparency

Each Party shall publish or otherwise make publicly available its laws, regulations, and other measures of general application that pertain to electronic commerce.

Article 15.5. Consumer Protection

1. The Parties recognize the importance of maintaining and adopting transparent and effective measures to protect

consumers from fraudulent and deceptive commercial practices when they engage in electronic commerce.

2. The Parties recognize the importance of cooperation between their respective national consumer protection agencies on activities related to cross-border electronic commerce in order to enhance consumer protection.

Article 15.6. Authentication

No Party may adopt or maintain legislation for electronic authentication that would:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction; or

(b) prevent parties from having the opportunity to establish before judicial or administrative authorities that their electronic transaction complies with any legal requirements with respect to authentication.

Article 15.7. Paperless Trade Administration

1. Each Party shall endeavor to make all trade administration documents available to the public in electronic form.

2. Each Party shall endeavor to accept trade administration documents submitted electronically as the legal equivalent of the paper version of such documents.

Article 15.8. Definitions

For Purposes of this Chapter:

authentication means the process or act of establishing the identity of a party to an electronic communication or transaction or ensuring the integrity of an electronic communication;

carrier medium means any physical object designed principally for use in storing a digital product by any method now known or later developed, and from which a digital product can be perceived, reproduced, or communicated, directly or indirectly, and includes, but is not limited to, an optical medium, a floppy disk, or a magnetic tape;

digital products means computer programs, text, video, images, sound recordings, and other products that are digitally encoded, regardless of whether they are fixed on a carrier medium or transmitted electronically;

electronic transmission or transmitted electronically means the transfer of digital products using any electromagnetic or photonic means; and

trade administration documents means forms that a Party issues or controls that must be completed by or for an importer or exporter in connection with the import or export of goods.

(1) For greater certainty, digital products do not include digitized representations of financial instruments, including money.

Chapter Sixteen . Intellectual Property Rights

Article 16.1. General Provisions

1. Each Party Shall, at a Minimum, Give Effect to this Chapter.

International Agreements

2. Each Party shall ratify or accede to the following agreements by the date of entry into force of this Agreement:

(a) the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974);

(b) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977), as amended in 1980;

(c) the WIPO Copyright Treaty (1996); and

(d) the WIPO Performances and Phonograms Treaty (1996).

3. Each Party shall ratify or accede to the following agreements by January 1, 2008, or the date of entry into force of this Agreement, whichever is later:

(a) the Patent Cooperation Treaty (1970), as amended in 1979; (b) the Trademark Law Treaty (1994); and

(c) the International Convention for the Protection of New Varieties of Plants (1991) (UPOV Convention).

4. Except as otherwise provided in Annex 16.1, each Party shall make all reasonable efforts to ratify or accede to the following agreements:

(a) the Patent Law Treaty (2000);

(b) the Hague Agreement Concerning the International Registration of Industrial Designs (1999); and

(c) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989).

5. Nothing in this Chapter shall be construed to prevent a Party from adopting measures necessary to prevent anticompetitive practices that may result from the abuse of the intellectual property rights set forth in this Chapter, provided that such measures are consistent with this Chapter.

6. Further to Article 1.2 (Relation to Other Agreements), the Parties affirm their existing rights and obligations under the TRIPS Agreement and intellectual property agreements concluded or administered under the auspices of the World Intellectual Property Organization (WIPO) to which they are party.

More Extensive Protection and Enforcement

7. A Party may, but shall not be obliged to, implement in its domestic law more extensive protection and enforcement of intellectual property rights than is required under this Chapter, provided that such protection and enforcement do not contravene this Chapter.

National Treatment

8. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals (1) of the other Parties treatment no less favorable than it accords to its own nationals with regard to the protection (2) and enjoyment of such intellectual property rights and any benefits derived from such rights.

9. A Party may derogate from paragraph 8 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter and is not applied in a manner that would constitute a disguised restriction on trade.

10. Paragraph 8 does not apply to procedures provided in multilateral agreements to which the Parties are party concluded under the auspices of the WIPO in relation to the acquisition or maintenance of intellectual property rights.

(1) For purposes of Articles 16.1.8, 16.1.9, 16.3.1, and 16.6.4, a national of a Party shall also mean, in respect of the relevant right, an entity located in such Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Articles 16.1.2 through 16.1.4 and the TRIPS Agreement.

(2) For purposes of this paragraph, "protection" includes matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter. Further, for purposes of this paragraph, "protection" also includes the prohibition on circumvention of effective technological measures set out in Article 16.7.4 and the rights and obligations concerning rights management information set out in Article 16.7.5.

Application of this Agreement to Existing Subject Matter and Prior Acts

11. Except as it provides otherwise, including in Article 16.7.2, this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement that is protected on that date in the territory of the Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

12. Except as otherwise provided in this Chapter, including Article 16.7.2, a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement has fallen into the public domain in the Party where the protection is claimed.

13. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.

Transparency

14. Further to Article 19.2 (Publication), and with the object of making the protection and enforcement of intellectual property rights transparent, each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights shall be in writing and shall be published, (3) or where publication is not practicable made publicly available, in a national language in such a manner as to enable governments and right holders to become acquainted with them.

(3) For greater certainty, a Party may satisfy the requirement to publish a law, regulation, or procedure by making it available to the public on the Internet.

Article 16.2. Trademarks

1. No Party shall require, as a condition of registration, that signs be visually perceptible, nor may a Party deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound or a scent.

2. Each Party shall provide that trademarks shall include collective and certification marks. Each Party shall also provide that signs that may serve, in the course of trade, as geographical indications may constitute certification or collective marks. (4)

3. In view of the obligations of Article 20 of the TRIPS Agreement, each Party shall ensure that its measures mandating the use of the term customary in common language as the common name for a good or service ("common name") including, *inter alia*, requirements concerning the relative size, placement, or style of use of the trademark in relation to the common name, do not impair the use or effectiveness of trademarks used in relation to such good or service. (5)

4. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, including geographical indications, for goods or services that are related to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion.

5. Each Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interest of the owner of the trademark and of third parties.

6. Article 6bis of the Paris Convention for the Protection of Industrial Property (1967) shall apply, mutatis mutandis, to goods or services that are not identical or similar to those identified by a well-known trademark, whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.

7. In determining whether a trademark is well known, no Party shall require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services. For greater certainty, the sector of the public that normally deals with the relevant goods or services is determined according to each Party's domestic law.

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

(a) a requirement to provide to the applicant a communication in writing, which may be electronic, of the reasons for a refusal to register a trademark;

(b) an opportunity for the applicant to respond to communications from the trademark authorities, to contest an initial refusal, and to appeal judicially a final refusal to register;

(c) an opportunity for interested parties to petition to oppose a trademark application or to seek cancellation of a trademark after it has been registered; and

(d) a requirement that decisions in opposition or cancellation proceedings be reasoned and in writing.

9. Each Party shall provide:

(a) a system for the electronic application for, and electronic processing, registration, and maintenance of, trademarks; (6) and

(b) a publicly available electronic database, including an online database, of trademark applications and registrations.

10. Each Party shall provide that:

(a) each registration or publication that concerns a trademark application or registration and that indicates goods or services shall indicate the goods or services by their names, grouped according to the classes of the classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1979), as tevised and amended (Nice Classification); and

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

11. Each Party shall provide that initial registration and each renewal of registration of a trademark shall be for a term of no less than ten years.

12. No Party may require recordation of trademark licenses to establish the validity of the license, to assert any rights in a trademark, or for other purposes. (7)

(4) Geographical indications means indications that identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin. Any sign or combination of signs, in any form whatsoever, shall be eligible to be a geographical indication. The term "originating" in this Chapter does not have the meaning ascribed to that term in Article 1.3 (Definitions of General Application).

(5) For greater certainty, the existence of such measures does not, *per se*, amount to impairment.

(6) For greater certainty, such a system will be established according to each Party's domestic law.

(7) Nothing in this paragraph prevents a Party from requesting the presentation of evidence of a license for informational purposes.

Article 16.3. Geographical Indications

1. If a Party provides the means to apply for protection or petition for recognition of geographical indications, through a system of protection of trademarks or otherwise, it shall accept those applications and petitions without the requirement for intercession by a Party on behalf of its nationals, and shall:

(a) process applications or petitions, as the case may be, for geographical indications with a minimum of formalities;

(b) make its regulations governing filing of such applications or petitions, as the case may be, readily available to the public;

(c) provide that applications or petitions, as the case may be, for geographical indications are published for opposition, and shall provide procedures for opposing geographical indications that are the subject of applications or petitions. Each Party shall also provide procedures to cancel a registration resulting from an application or a petition; and

(d) provide that measures governing the filing of applications or petitions for geographical indications set out clearly the procedures for these actions. Such procedures shall include contact information sufficient for applicants or petitioners, as the case may be, to obtain specific procedural guidance regarding the processing of applications and petitions.

2. Each Party shall provide that grounds for refusing protection or recognition of a geographical indication include the following:

(a) the geographical indication is likely to cause confusion with a trademark that is the subject of good-faith pending application or registration; and

(b) the geographical indication is likely to cause confusion with a pre-existing trademark, the rights to which have been acquired in accordance with the Party's law.

Article 16.4. Domain Names on the Internet

1. In order to address the problem of trademark cyber-piracy, each Party shall require that the management of its country-code top-level domain (ccTLD) provide an appropriate procedure for the settlement of disputes, based on the principles established in the Uniform Domain-Name Dispute-Resolution Policy (1999).

2. Each Party shall require that the management of its ccTLD provide online public access to a reliable and accurate database of contact information on domain-name registrants.

Article 16.5. Copyrights

1, Further to Article 1.2 (Relation to Other Agreements), the Parties affirm their existing rights and obligations under the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention).

2. Each Party shall provide that authors (8) have the right to authorize or prohibit (9) all reproductions of their works, in any manner or form, permanent or temporary (including temporary storage in electronic form).

3. Each Party shall provide to authors the right to authorize the making available to the public of the original and copies (10) of their works through sale or other transfer of ownership.

4. Without prejudice to Articles 11(1)(ii), 11*bis*(1) (i) and (ii), 11*ter*(1)(ii), 14(1)(ii), and 14*bis*(1) of the Berne Convention, each Party shall provide to authors the exclusive right to authorize or prohibit the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.

5. Each Party shall provide that, where the term of protection of a work (including a photographic work) is to be calculated:

(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death; and

(b) on a basis other than the life of a natural person, the term shall be

(i) not less than 70 years from the end of the calendar year of the first authorized publication of the work, or

(ii) failing such authorized publication within 50 years from the creation of the work, not less than 70 years from the end of the calendar year of the creation of the work.

6. Ownership of copyright in an artistic or literary work shall vest initially in the author or authors of the work.

(8) References in this Chapter to “authors” include any successors in interest.

(9) With respect to copyrights in this Chapter, a right to authorize or prohibit, or a right to authorize, means an exclusive right.

(10) The expressions “copies” and “original and copies,” being subject to the right of distribution under this paragraph, refer exclusively to fixed copies that can be put into circulation as tangible objects.

Article 16.6. Related Rights

1, Further to Article 1.2 (Relation to Other Agreements), the Parties affirm their existing rights and obligations under the WIPO Performances and Phonograms Treaty (1996).

2. Each Party shall provide that performers and producers of phonograms (11) have the right to authorize or prohibit (12) all reproductions of their performances (13) and phonograms, in any manner or form, permanent or temporary (including temporary storage in electronic form).

3. Each Party shall provide to performers and producers of phonograms the right to authorize the making available to the public of the original and copies (14) of their performances and phonograms through sale or other transfer of ownership.

4. Each Party shall accord the rights provided for in this Chapter with respect to performers and producers of phonograms to the performers and producers of phonograms who are nationals of another Party and to performances or phonograms first published or first fixed in the territory of a Party. A performance or phonogram shall be considered first published in

the territory of a Party in which it is published within 30 days of its original publication. (15)

5. Each Party shall provide to performers the right to authorize or prohibit (a) the broadcasting and communication to the public of their unfixed performances, except where the performance is already a broadcast performance; and (b) the fixation of their unfixed performances.

6. (a) Each Party shall provide to performers and producers of phonograms the right to authorize or prohibit the broadcasting or any communication to the public of their performances or phonograms, by wire or wireless means, including the making available to the public of those performances and phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

(b) Notwithstanding subparagraph (a) and Article 16.7.8, the application of this right to analog transmissions and free over-the-air broadcasts, and exceptions or limitations to this right for such activity, shall be a matter of each Party's law.

(c) Any limitations to this right in respect of other noninteractive transmissions shall be in accordance with Article 16.7.8 and shall not prejudice the right of the performer or producer of phonograms to obtain equitable remuneration.

7. Each Party shall provide that, where the term of protection of a performance or phonogram is to be calculated:

(a) on the basis of the life of a natural person, the term shall be not less than the life of that person and 70 years after that person's death; and

(b) on a basis other than the life of a natural person, the term shall be

(i) not less than 70 years from the end of the calendar year of the first authorized publication of the performance or phonogram, or

(ii) failing such authorized publication within 50 years from the creation of the performance or phonogram, not less than 70 years from the end of the calendar year of the creation of the performance or phonogram.

8. For purposes of this Article and Article 16.7, the following definitions apply with respect to performers and producers of phonograms:

(a) **broadcasting** means the transmission by wireless means or satellite to the public of sounds or sounds and images, or of the representations thereof, including wireless transmission of encrypted signals where the means for decrypting are provided to the public by the broadcasting organization or with its consent; âbroadcastingâ does not include transmissions over computer networks or any transmissions where the time and place of reception may be individually chosen by members of the public;

(b) **communication to the public of a performance or a phonogram** means the transmission to the public by any medium, other than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For purposes of paragraph 6, âcommunication to the publicâ includes making the sounds or representations of sounds fixed in a phonogram audible to the public;

(c) **fixation** means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;

(d) **performers** means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

(e) **phonogram** means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

(f) **producer of a phonogram** means the person who, or the legal entity which, takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds; and

(g) **publication of a performance or a phonogram** means the offering of copies of the performance or the phonogram to the public, with the consent of the rightholder, and provided that copies are offered to the public in reasonable quantity.

(11) References in this Chapter to “performers” and “producers of phonograms” include any successors in interest.

(12) With respect to related rights in this Chapter, a right to authorize or prohibit, or a right to authorize, means an exclusive right.

(13) With respect to related rights in this Chapter, a “performance” refers to a performance fixed in a phonogram unless otherwise specified.

(14) The expressions “copies” and “original and copies,” being subject to the right of distribution under this paragraph, refer exclusively to fixed copies that can be put into circulation as tangible objects.

(15) For purposes of this Article and Article 16.7, fixation includes the finalization of the master tape or its equivalent

Article 16.7. Obligations Common to Copyright and Related Rights

1. In order to ensure that no hierarchy is established between rights of authors, on the one hand, and rights of performers and producers of phonograms, on the other hand, each Party shall provide that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required. Likewise, each Party shall provide that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the performer or producer does not cease to exist because the authorization of the author is also required.

2. Each Party shall apply Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement, mutatis mutandis, to the subject matter, rights, and obligations in Articles 16.5 through 16.7.

3. Each Party shall provide that for copyright and related rights, any person acquiring or holding any economic right in a work, performance, or phonogram:

(a) may freely and separately transfer that right by contract; and

(b) by virtue of a contract, including contracts of employment underlying performances, the production of phonograms, and the creation of works, shall be able to exercise that right in that person's own name and enjoy fully the benefits derived from that right.

4. (a) In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, each Party shall provide that any person who:

(i) circumvents without authority any effective technological measure that controls access to a protected work, performance, or phonogram; or

(ii) manufactures, imports, distributes, offers to the public, provides or otherwise traffics in devices, products, or components, or offers to the public or provides services, that:

(A) are promoted, advertised, or marketed for the purpose of circumvention of any effective technological measure;

(B) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure; or

(C) are primarily designed, produced, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measure,

shall be liable and subject to the remedies set out in Article 16.11.15. Each Party shall provide for criminal procedures and penalties to be applied when any person, other than a nonprofit library, archive, educational institution, or public noncommercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in any of the foregoing activities.

(b) Effective technological measure means any technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, or phonogram, or protects any copyright or any rights related to copyright.

(c) In implementing subparagraph (a), no Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as such product does not otherwise violate any measures implementing

subparagraph (a).

(d) Each Party shall provide that a violation of a measure implementing this paragraph is a separate civil or criminal offense, independent of any infringement that might occur under the Party's law on copyright and related rights.

(e) Each Party shall confine exceptions and limitations to measures implementing subparagraph (a) to the activities below and in subparagraph (f), which shall be applied to relevant measures in accordance with subparagraph (g):

(i) noninfringing reverse engineering activities with regard to a lawfully obtained copy of a computer program, carried out in good faith with respect to particular elements of that computer program that have not been readily available to the person engaged in those activities, for the sole purpose of achieving interoperability of an independently created computer program with other programs;

(ii) noninfringing good faith activities, carried out by an appropriately qualified researcher who has lawfully obtained a copy, unfixed performance or display of a work, performance, or phonogram, and who has made a good faith effort to obtain authorization for such activities, to the extent necessary for the sole purpose of identifying and analyzing flaws and vulnerabilities of technologies for scrambling and descrambling of information;

(iii) the inclusion of a component or part for the sole purpose of preventing the access of minors to inappropriate on-line content in a technology, product, service, or device that itself is not prohibited under the measures implementing subparagraph (a)(ii);

(iv) noninfringing good faith activities that are authorized by the owner of a computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting the security of that computer, computer system, or computer network;

(v) access by a nonprofit library, archive, or educational institution to a work, performance, or phonogram, not otherwise available to it, for the sole purpose of making acquisition decisions; and

(vi) noninfringing activities for the sole purpose of identifying and disabling a capability to carry out undisclosed collection or dissemination of personally identifying information reflecting the on-line activities of a natural person in a way that has no other effect on the ability of any person to gain access to any work.

(f) Noninfringing uses of a work, performance, or phonogram, in a particular class of works, performances, or phonograms, provided that any exception or limitation adopted in reliance on this subparagraph shall be based on the existence of substantial evidence, as found in a legislative or administrative proceeding, of an actual or likely adverse impact on those noninfringing uses; and provided further that a review of such finding, conducted in an administrative or legislative proceeding, shall be completed at intervals of not more than four years to determine whether there still exists substantial evidence of an actual or likely adverse impact on those noninfringing uses.

(g) The exceptions and limitations to measures implementing subparagraph (a) for the activities set forth in subparagraphs (e) and (f) may only be applied as follows, and only to the extent that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures:

(i) measures implementing subparagraph (a)(i) may be subject to exceptions and limitations with respect to each activity set forth in subparagraphs (e) and (f);

(ii) measures implementing subparagraph (a)(ii), as they apply to effective technological measures that control access to a work, performance, or phonogram, may be subject to exceptions and limitations with respect to activities set forth in subparagraphs (e)(i), (ii), (iii), and (iv); and

(h) Each Party may provide exceptions to any measure implementing the prohibitions referred to in subparagraph (a) for lawfully authorized investigative, protective, information security or intelligence activity carried out by government employees, agents or contractors. For the purposes of this paragraph, the term âinformation securityâ means activities carried out in order to identify and address the vulnerabilities of a government computer, computer system, or computer network.

5. In order to provide adequate and effective legal remedies to protect rights management information:

(a) Each Party shall provide that any person who without authority, and knowing, or, with respect to civil remedies, having reasonable grounds to know, that it would induce, enable, facilitate, or conceal an infringement of any copyright or related right,

(i) knowingly removes or alters any rights management information;

(ii) distributes or imports for distribution rights management information knowing that the rights management information has been removed or altered without authority; or

(iii) distributes, imports for distribution, broadcasts, communicates or makes available to the public copies of works, performances, or phonograms, knowing that rights management information has been removed or altered without authority,

shall be liable and subject to the remedies set out in Article 16.11.15. Each Party shall provide for criminal procedures and penalties to be applied when any person, other than a nonprofit library, archive, educational institution, or public noncommercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in any of the foregoing activities.

(b) To the extent a Party adopts exceptions and limitations to measures implementing subparagraph (a), such exceptions and limitations shall be confined to lawfully authorized investigative, protective, information security or intelligence activity carried out by government employees, agents, or contractors. For the purposes of this paragraph, the term "information security" means activities carried out in order to identify and address the vulnerabilities of a government computer, computer system or computer network.

(c) **Rights management information** means:

(i) information that identifies a work, performance, or phonogram,; the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of any right in the work, performance, or phonogram,;

(ii) information about the terms and conditions of the use of the work, performance, or phonogram; or

(iii) any numbers or codes that represent such information,

when any of these items is attached to a copy of the work, performance, or phonogram or appears in connection with the communication or making available of a work, performance, or phonogram, to the public.

6. Each Party shall issue appropriate laws, orders, regulations, or administrative or executive decrees mandating that its agencies use computer software only as authorized by the right holder. These measures shall actively regulate the acquisition and management of software for government use.

7. The Parties recognize the important role that collective management societies with voluntary membership can play in appropriate cases by facilitating, in a transparent manner, the collection and distribution of royalties.

8. With respect to Articles 16.5 through 16.7, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.

9. Notwithstanding Articles 16.7.8 and 16.6.6(b), no Party may permit the retransmission of television signals (whether terrestrial, cable, or satellite) on the Internet without the authorization of the right holder or right holders of the content of the signal and, if any, of the signal.

10. No Party may subject the enjoyment and exercise of the rights of authors, performers, and producers of phonograms provided for in this Chapter to any formality.

Article 16.8. Protection of Encrypted Program-Carrying Satellite Signals

1. Each Party Shall Make It a Criminal Offense:
(a) to Manufacture, Assemble, Modify, Import, Export, Sell, Lease, or Otherwise Distribute a Tangible or Intangible Device or System, Knowing or Having Reason to know that the device or system is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal; and
(b) willfully to receive or further distribute a program-carrying signal that originated as an encrypted satellite signal knowing that it has been decoded without the authorization of the lawful distributor of the signal.

2. Each Party shall provide for civil remedies, including compensatory damages, for any person injured by any activity described in paragraph 1, including any person that holds an interest in the encrypted programming signal or its content.

Article 16.9. Patents

1. Each Party shall make patents available for any invention, whether a product or process, in all fields of technology,

provided that the invention is new, involves an inventive step, and is capable of industrial application. For the purposes of this Article, a Party may treat the terms "inventive step" and "capable of industrial application" as being synonymous with the terms "non-obvious" and "useful"respectively.

2. Nothing in this Chapter shall be construed to prevent a Party from excluding inventions from patentability as set out in Articles 27.2 and 27.3 of the TRIPS Agreement. Notwithstanding the foregoing, a Party that does not provide patent protection for plants by the date of entry into force of this Agreement shall undertake all reasonable efforts to make such patent protection available consistent with paragraph 1. Any Party that provides patent protection for plants or animals on or after the date of entry into force of this Agreement shall maintain such protection.

3. Each Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

4. Without prejudice to Article 5.A(3) of the Paris Convention, each Party shall provide that a patent may be revoked or nullified only on grounds that would have justified a refusal to grant the patent according to its laws. However, a Party may also provide that fraud, misrepresentation, or inequitable conduct may be the basis for revoking, nullifying, or holding a patent unenforceable.

5. Consistent with paragraph 3, if a Party permits a third person to use the subject matter of a subsisting patent to generate information necessary to support an application for marketing approval of a pharmaceutical product or agricultural chemical product, that Party shall provide that any product produced under such authority shall not be made, used, sold, offered for sale, or imported in the territory of that Party other than for purposes related to generating information to meet requirements for approval to market the product once the patent expires, and if the Party permits exportation, the product shall only be exported outside the territory of that Party for purposes of meeting marketing approval requirements of that Party.

6. (a) Each Party shall make best efforts to process patent applications and marketing approval applications expeditiously with a view to avoiding unreasonable delays. The Parties shall cooperate and provide assistance to one another to achieve these objectives.

(b) Each Party shall provide the means to and shall, at the request of the patent owner, compensate for unreasonable delays in the issuance of a patent, other than a patent for a pharmaceutical product, by restoring patent term or patent rights. Each Party may provide the means to and may, at the request of the patent owner, compensate for unreasonable delays in the issuance of a patent for a pharmaceutical product by restoring patent term or patent rights. Any restoration under this subparagraph shall confer all of the exclusive rights of a patent subject to the same limitations and exceptions applicable to the original patent. For purposes of this subparagraph, an unreasonable delay shall at least include a delay in the issuance of the patent of more than five years from the date of filing of the application in the territory of the Party, or three years after a request for examination of the application has been made, whichever is later, provided that periods attributable to actions of the patent applicant need not be included in the determination of such delays.

(c) With respect to any pharmaceutical product that is covered by a patent, each Party may make available a restoration of the patent term or patent rights to compensate the patent owner for unreasonable curtailment of the effective patent term resulting from the marketing approval process related to the first commercial marketing of the product in that Party. Any restoration under this subparagraph shall confer all of the exclusive rights of a patent subject to the same limitations and exceptions applicable to the original patent.

7. Each Party shall disregard information contained in public disclosures used to determine if an invention is novel or has an inventive step if the public disclosure (a) was made or authorized by, or derived from, the patent applicant, and (b) occurred within 12 months prior to the date of filing of the application in the territory of the Party.

8. Each Party shall provide patent applicants with at least one opportunity to make amendments, corrections, and observations in connection with their applications. Each Party shall provide that no amendment or correction shall introduce new matter into the disclosure of the invention as filed in the original application.

9. Each Party shall provide that a disclosure of a claimed invention shall be considered to be sufficiently clear and complete if it provides information that allows the invention to be carried out by a person skilled in the art, without undue experimentation, as of the filing date and may require the applicant to indicate the best mode for carrying out the invention known to the inventor as of the filing date.

10. With the aim of ensuring that the claimed invention is sufficiently described, each Party shall provide that a claimed invention is sufficiently supported by its disclosure if the disclosure reasonably conveys to a person skilled in the art that the applicant was in possession of the claimed invention as of the filing date.

11. Each Party shall provide that a claimed invention is industrially applicable if it has a specific, substantial, and credible utility. (16)

(16) For greater certainty, this paragraph is without prejudice to paragraphs 1 and 2.

Article 16.10. Measures Related to Certain Regulated Products

Agricultural Chemical Products

1. (a) If a Party requires or permits, as a condition of granting marketing approval for a new agricultural chemical product, the submission of information concerning safety or efficacy of the product, the Party shall not, without the consent of a person that previously submitted such safety or efficacy information to obtain marketing approval in the Party, authorize another to market a same or a similar product based on:

(i) the safety or efficacy information submitted in support of the marketing approval; or

(ii) evidence of the marketing approval,

for at least ten years from the date of marketing approval in the territory of the Party.

(b) If a Party requires or permits, in connection with granting marketing approval for a new agricultural chemical product, the submission of evidence concerning the safety or efficacy of a product that was previously approved in another territory, such as evidence of prior marketing approval in the other territory, the Party shall not, without the consent of a person that previously submitted the safety or efficacy information to obtain marketing approval in another territory, authorize another to market a same or a similar product based on:

(i) the safety or efficacy information submitted in support of the prior marketing approval in the other territory; or

(ii) evidence of prior marketing approval in the other territory, for at least ten years from the date of marketing approval of the new product in the territory of the Party. In order to receive protection under this subparagraph, a Party may require that the person providing the information in the other territory seek approval in the territory of the Party within five years after obtaining marketing approval in the other territory.

(c) For purposes of this Article, a new agricultural chemical product is one that contains a chemical entity that has not been previously approved in the territory of the Party for use in an agricultural chemical product.

Pharmaceutical Products

2. (a) If a Party requires, as a condition for approving the marketing of a pharmaceutical product that utilizes a new chemical entity, the submission of undisclosed test or other data necessary to determine whether the use of such products is safe and effective, the Party shall protect against disclosure of the data of persons making such submissions, where the origination of such data involves considerable effort, except where the disclosure is necessary to protect the public or unless steps are taken to ensure that the data are protected against unfair commercial use.

(b) Each Party shall provide that for data subject to subparagraph (a) that are submitted to the Party after the date of entry into force of this Agreement, no person other than the person that submitted them may, without the latterâs permission, rely on such data in support of an application for product approval during a reasonable period of time after their submission. For this purpose, a reasonable period shall normally mean five years from the date on which the Party granted approval to the person that produced the data for approval to market its product, taking account of the nature of the data and person's efforts and expenditures in producing them. Subject to this provision, there shall be no limitation on any Party to implement abbreviated approval procedures for such products on the basis of bioequivalence or bioavailability studies.

(c) Where a Party relies on a marketing approval granted by the other Party, and grants approval within six months of the filing of a complete application for marketing approval filed in the Party, the reasonable period of exclusive use of the data submitted in connection with obtaining the approval relied on shall begin with the date of the first marketing approval relied on.

(d) A Party need not apply the provisions of subparagraphs (a), (b), and (c) with respect to a pharmaceutical product that contains a chemical entity that has been previously approved in the territory of the Party for use in a pharmaceutical product.

(e) Notwithstanding subparagraphs (a), (b), and (c), a Party may take measures to protect public health in accordance with:

(i) the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2) (the "Declaration");

(ii) any waiver of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement to implement the Declaration and in force between the Parties; and

(iii) any amendment of the TRIPS Agreement to implement the Declaration that enters into force with respect to the Parties.

3. Each Party shall provide:

(a) procedures, such as judicial or administrative proceedings, and remedies, such as preliminary injunctions or equivalent effective provisional measures, for the expeditious adjudication of disputes concerning the validity or infringement of a patent with respect to patent claims that cover an approved pharmaceutical product or its approved method of use;

(b) a transparent system to provide notice to a patent holder that another person is seeking to market an approved pharmaceutical product during the term of a patent covering the product or its approved method of use; and

(c) sufficient time and opportunity for a patent holder to seek, prior to the marketing of an allegedly infringing product, available remedies for an infringing product.

4. Where a Party permits, as a condition of approving the marketing of a pharmaceutical product, persons, other than the person originally submitting safety or efficacy information, to rely on evidence of safety or efficacy information of a product that was previously approved, such as evidence of prior marketing approval in the territory of the Party or in another territory, the Party may implement the provisions of paragraph 3 by:

(a) implementing measures in its marketing approval process to prevent such other persons from marketing a product covered by a patent claiming the product or its approved method of use during the term of that patent, unless by consent or acquiescence of the patent owner; (17)and

(b) providing that the patent owner shall be informed of the identity of any such other person who requests marketing approval to enter the market during the term of a patent identified to the approving authority as covering that product;

provided that the Party also provides:

(c) an expeditious administrative or judicial procedure in which the person requesting marketing approval can challenge the validity or applicability of the identified patent; and

(d) effective rewards for a successful challenge of the validity or applicability of the patent. (18)

General Provisions

5. Subject to paragraph 2(e), when a product is subject to a system of marketing approval in the territory of a Party pursuant to paragraph 1 or 2 and is also covered by a patent in the territory of that Party, the Party shall not alter the term of protection that it provides pursuant to paragraph 1 or 2 in the event that the patent protection terminates on a date earlier than the end of the term of protection specified in paragraph 1 or 2.

(17) For greater certainty, the Parties recognize that this provision does not imply that the marketing approval authority should make patent validity or infringement determinations.

(18) A Party may comply with clause (d) by providing a period of marketing exclusivity for the first applicant to successfully challenge the validity or applicability of the patent.

Article 16.11. Enforcement of Intellectual Property Rights

General Obligations

1. Each Party understands that procedures and remedies set forth in this Article for enforcement of intellectual property rights are established in accordance with the principles of due process that each Party recognizes and the foundations of its own legal system.

2. Each Party shall provide that final judicial decisions and administrative rulings of general applicability pertaining to the enforcement of intellectual property rights shall be in writing and shall state any relevant findings of fact and the reasoning or the legal basis on which the decisions or rulings are based. Each Party shall also provide that such decisions or rulings

shall be published (19) or, where publication is not practicable, otherwise made available to the public, in a national language in such a manner as to enable governments and right holders to become acquainted with them.

3. Each Party shall publicize information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative, and criminal systems, including any statistical information that the Party may collect for such purposes.

4. This Article does not create for the Parties any obligation:

(a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general; or

(b) with respect to the distribution of resources for enforcement of intellectual property rights and the enforcement of law in general.

The Parties understand that a decision that a Party makes on the distribution of enforcement resources shall not be a reason for not complying with the provisions of this Chapter.

5. In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide for a presumption that, in the absence of proof to the contrary, the person whose name is indicated in the usual manner is the right holder in the work, performance, or phonogram as designated. (20) Each Party shall also provide for a presumption that, in the absence of proof to the contrary, the copyright or related right subsists in such subject matter.

Civil and Administrative Procedures and Remedies

6. Each Party shall make available to right holders (21) civil judicial procedures concerning the enforcement of any intellectual property right.

7. Each Party shall provide that:

(a) in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer to pay the right holder:

(i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement; and

(ii) at least in the case of copyright or related rights infringement and trademark counterfeiting, the profits of the infringer that are attributable to the infringement and that are not taken into account in computing the amount of the damages referred to in clause (i); and

(b) in determining the amount of damages for infringement of intellectual property rights, its judicial authorities shall consider, *inter alia*, the value of the infringed- on good or service, according to the suggested retail price or other legitimate measure of value submitted by the right holder.

8. In civil judicial proceedings, each Party shall, at least with respect to infringement concerning copyright or related rights and trademark counterfeiting, establish or maintain pre- established damages, which shall be available on the election of the right holder as an alternative to actual damages. Such pre-established damages shall be set out in domestic law and determined by the judicial authorities, taking into account the aims of the intellectual property system, in an amount sufficient to compensate the right holder for the harm caused by the infringement and constitute a deterrent to future infringements. (22)

9. Each Party shall provide that its judicial authorities, except in exceptional circumstances, shall have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of copyright or related rights and trademark infringement, that the prevailing party shall be awarded payment of court costs or fees and reasonable attorney's fees by the losing party.

10. In civil judicial proceedings concerning copyright and related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority to order the seizure of suspected infringing goods, any related materials and implements, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.

11. Each Party shall provide that:

(a) in civil judicial proceedings, at the right holder's request, goods that have been found to be pirated or counterfeit shall be destroyed, except in exceptional circumstances;

(b) its judicial authorities shall have the authority to order that materials and implements that have been used in the manufacture or creation of such pirated or counterfeit goods be, without compensation of any sort, promptly destroyed or,

in exceptional circumstances, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements; and

(c) in regard to counterfeit trademarked goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of goods into the channels of commerce.

12. Each Party shall provide that in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to order the infringer to provide any information that the infringer possesses regarding any person or persons involved in any aspect of the infringement and regarding the means of production or distribution channel of such goods or services, including the identification of third persons involved in the production and distribution of the infringing goods or services or in their channels of distribution, and to provide this information to the right holder. (23)

13. Each Party shall provide that the judicial authorities shall have the authority to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and their channels of distribution. Each Party shall provide that its judicial authorities shall have the authority to impose sanctions, in appropriate cases, on a party to a proceeding that fails to abide by valid orders issued by such authorities.

14. To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, each Party shall provide that such procedures conform to principles equivalent in substance to those set out in this Chapter.

15. Each Party shall provide for civil remedies concerning the acts described in Articles 16.7.4 and 16.7.5. Available civil remedies shall include at least:

(a) provisional measures, including seizure of devices and products suspected of being involved in the prohibited activity;

(b) the opportunity for the right holder to elect between actual damages (plus any profits attributable to the prohibited activity not taken into account in computing those damages) or pre-established damages as provided in paragraph 8;

(c) payment to the prevailing right holder at the conclusion of civil judicial proceedings of court costs and fees, and reasonable attorney's fees, by the party engaged in the prohibited conduct; and

(d) destruction of devices and products found to be involved in the prohibited activity, at the discretion of the judicial authorities, as provided in subparagraphs (a) and (b) of paragraph 11.

No Party may make damages under this paragraph available against a nonprofit library, archive, educational institution, or public broadcasting entity that sustains the burden of proving that it was not aware and had no reason to believe that its acts constituted a prohibited activity.

16. In civil judicial proceedings concerning the enforcement of intellectual property rights, each Party shall provide that its judicial authorities shall have the authority to order a party to desist from an infringement, in order, inter alia, to prevent the entry into the channels of commerce in the jurisdiction of those authorities of imported goods that involve the infringement of an intellectual property right immediately after customs clearance of such goods, or to prevent their exportation.

17. In the event that a Party's judicial or other authorities appoint technical or other experts in civil proceedings concerning the enforcement of intellectual property rights and require that the parties to the litigation bear the costs of such experts, the Party should seek to ensure that such costs are closely related, inter alia, to the quantity and nature of work to be performed and do not unreasonably deter recourse to such proceedings.

Provisional Measures

18. Each Party shall act on requests for relief in audita altera parte and execute such requests expeditiously according to its rules of judicial procedure.

19. Each Party shall provide that its judicial authorities shall have the authority to require the plaintiff to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the plaintiff's right is being infringed or that such infringement is imminent, and to order the plaintiff to provide a reasonable security or equivalent assurance sufficient to protect the defendant and to prevent abuse, and so as not to unreasonably deter recourse to such procedures.

Special Requirements Related to Border Measures

20. Each Party shall provide that any right holder initiating procedures for its competent authorities to suspend release of suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods, (24) into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of

importation, there is prima facie an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods reasonably recognizable by its competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to these procedures.

21. Each Party shall provide that the competent authorities shall have the authority to require a right holder initiating procedures to suspend the release of suspected counterfeit or confusingly similar trademarked goods, or pirated copyright goods, to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance shall not unreasonably deter recourse to these procedures. Each Party may provide that such security may be in the form of a bond conditioned to hold the importer or owner of the imported merchandise harmless from any loss or damage resulting from any suspension of the release of goods in the event the competent authorities determine that the article is not an infringing good.

22. Where its competent authorities have made a determination that goods are counterfeit or pirated, a Party shall grant its competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer, and the consignee, and of the quantity of the goods in question.

23. Each Party shall provide that its competent authorities may initiate border measures ex officio with respect to merchandise for importation, exportation, or in transit, without the need for a formal complaint from a private party or right holder. Such measures shall be used when there is reason to believe or suspect that such merchandise is counterfeit or pirated.

24. Each Party shall provide that goods that have been determined by its competent authorities to be pirated or counterfeit shall be destroyed, pursuant to a judicial order where required, unless the right holder consents to an alternate disposition. Counterfeit trademark goods may, in appropriate cases, be donated to charity for use outside the channels of commerce, when the removal of the trademark eliminates the infringing characteristic of the good and the good is no longer identifiable with the removed trademark. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of the goods into the channels of commerce. In no event shall the competent authorities be authorized to permit the exportation of counterfeit or pirated goods, nor shall they be authorized to permit such goods to be subject to other customs procedures, except in exceptional circumstances.

25. When a Party establishes, in relation to border measures to obtain the enforcement of an intellectual property right, an application fee or merchandise storage fee, such fee shall not be set at an amount that unreasonably deters recourse to these measures.

Criminal Procedures and Remedies

26. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright or related rights piracy on a commercial scale. Willful copyright or related rights piracy on a commercial scale includes:

(a) significant willful copyright or related rights infringements that have no direct or indirect motivation of financial gain; and

(b) willful infringements for purposes of commercial advantage or private financial gain.

Each Party shall treat willful importation or exportation of counterfeit or pirated goods as unlawful activities subject to criminal penalties to the same extent as the trafficking or distribution of such goods in domestic commerce.

27. Specifically, each Party shall provide:

(a) remedies that include sentences of imprisonment as well as monetary fines sufficient to provide a deterrent to future infringements, consistent with a policy of removing the monetary incentive of the infringer. Each Party shall encourage its judicial authorities to impose fines at levels sufficient to provide a deterrent to future infringements; (25)

(b) that its judicial authorities shall have the authority to order the seizure of suspected counterfeit or pirated goods, any related materials and implements that have been used in the commission of the offense, any assets traceable to the infringing activity, (26) and any documentary evidence relevant to the offense. Each Party shall provide that items that are subject to seizure pursuant to any such judicial order need not be individually identified so long as they fall within general categories specified in the order;

(c) that its judicial authorities have the authority to order, among other measures, the forfeiture of any assets traceable to the infringing activity and shall, except in exceptional cases, order the forfeiture and destruction of all counterfeit or pirated goods, and, at least with respect to willful copyright or related rights piracy, order the forfeiture and destruction of materials and implements that have been used in the creation of infringing goods. Each Party shall further provide that such forfeiture

and destruction shall occur without compensation of any kind to the defendant; and

(d) that its authorities may initiate legal action ex officio with respect to the offenses described in this Chapter, without the need for a formal complaint by a private party or right holder.

28. Each Party shall also provide for criminal procedures and penalties to be applied in the following cases, even absent willful trademark counterfeiting or copyright piracy:

(a) knowing trafficking in counterfeit labels affixed or designed to be affixed to a phonogram, a copy of a computer program, documentation or packaging for a computer program, or a copy of a motion picture or other audiovisual work; and

(b) knowing trafficking in counterfeit documentation or packaging for a computer program.

Limitations on Liability for Service Providers

29. For the purpose of providing enforcement procedures that permit effective action against any act of copyright infringement covered under this Chapter, including expeditious remedies to prevent infringements and criminal and civil remedies, each Party shall provide, consistent with the framework set out in this Article:

(a) legal incentives for service providers to cooperate with copyright (27) owners in deterring the unauthorized storage and transmission of copyrighted materials; and

(b) limitations in its law regarding the scope of remedies available against service providers for copyright infringements that they do not control, initiate or direct, and that take place through systems or networks controlled or operated by them or on their behalf, as set forth in this subparagraph (b). (28)

(i) These limitations shall preclude monetary relief and provide reasonable restrictions on court-ordered relief to compel or restrain certain actions for the following functions, and shall be confined to those functions: (29)

(A) transmitting, routing, or providing connections for material without modification of its content, or the intermediate and transient storage of such material in the course thereof;

(B) caching carried out through an automatic process;

(C) storage at the direction of a user of material residing on a system or network controlled or operated by or for the service provider; and

(D) referring or linking users to an online location by using information location tools, including hyperlinks and directories.

(ii) These limitations shall apply only where the service provider does not initiate the chain of transmission of the material, and does not select the material or its recipients (except to the extent that a function described in clause (i)(D) in itself entails some form of selection).

(iii) Qualification by a service provider for the limitations as to each function in clauses (i)(A) through (D) shall be considered separately from qualification for the limitations as to each other function, in accordance with the conditions for qualification set forth in clauses (iv) through (vii).

(iv) With respect to functions referred to in clause (i)(B), the limitations shall be conditioned on the service provider:

(A) permitting access to cached material in significant part only to users of its system or network who have met conditions on user access to that material;

(B) complying with rules concerning the refreshing, reloading, or other updating of the cached material when specified by the person making the material available online in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available;

(C) not interfering with technology consistent with industry standards accepted in the Partyâs territory used at the originating site to obtain information about the use of the material, and not modifying its content in transmission to subsequent users; and

(D) expeditiously removing or disabling access, on receipt of an effective notification of claimed infringement, to cached material that has been removed or access to which has been disabled at the originating site.

(v) With respect to functions referred to in clauses (i)(C) and (D), the limitations shall be conditioned on the service provider:

(A) not receiving a financial benefit directly attributable to the infringing activity, in circumstances where it has the right and

ability to control such activity;

(B) expeditiously removing or disabling access to the material residing on its system or network on obtaining actual knowledge of the infringement or becoming aware of facts or circumstances from which the infringement was apparent, such as through effective notifications of claimed infringement in accordance with clause (ix); and

(C) publicly designating a representative to receive such notifications.

(vi) Eligibility for the limitations in this subparagraph shall be conditioned on the service provider:

(A) adopting and reasonably implementing a policy that provides for termination in appropriate circumstances of the accounts of repeat infringers; and

(B) accommodating and not interfering with standard technical measures accepted in the Partyâs territory that protect and identify copyrighted material, that are developed through an open, voluntary process by a broad consensus of copyright owners and service providers, that are available on reasonable and nondiscriminatory terms, and that do not impose substantial costs on service providers or substantial burdens on their systems or networks.

(vii) Eligibility for the limitations in this subparagraph may not be conditioned on the service provider monitoring its service, or affirmatively seeking facts indicating infringing activity, except to the extent consistent with such technical measures.

(viii) If the service provider qualifies for the limitations with respect to the function referred to in clause (i)(A), court-ordered relief to compel or restrain certain actions shall be limited to terminating specified accounts, or to taking reasonable steps to block access to a specific, non-domestic online location. If the service provider qualifies for the limitations with respect to any other function in clause (i), court-ordered relief to compel or restrain certain actions shall be limited to removing or disabling access to the infringing material, terminating specified accounts, and other remedies that a court may find necessary, provided that such other remedies are the least burdensome to the service provider among comparably effective forms of relief. Each Party shall provide that any such relief shall be issued with due regard for the relative burden to the service provider and harm to the copyright owner, the technical feasibility and effectiveness of the remedy and whether less burdensome, comparably effective enforcement methods are available. Except for orders ensuring the preservation of evidence, or other orders having no material adverse effect on the operation of the service providerâs communications network, each Party shall provide that such relief shall be available only where the service provider has received notice of the court order proceedings referred to in this subparagraph and an opportunity to appear before the judicial authority.

(ix) For purposes of the notice and take down process for the functions referred to in clauses (i)(C) and (D), each Party shall establish appropriate procedures for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification that causes injury to any interested party as a result of a service provider relying on the misrepresentation.

(x) If the service provider removes or disables access to material in good faith based on claimed or apparent infringement, each Party shall provide that the service provider shall be exempted from liability for any resulting claims, provided that, in the case of material residing on its system or network, it takes reasonable steps promptly to notify the person making the material available on its system or network that it has done so and, if such person makes an effective counter-notification and is subject to jurisdiction in an infringement suit, to restore the material online unless the person giving the original effective notification seeks judicial relief within a reasonable time.

(xi) Each Party shall establish an administrative or judicial procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer.

(xii) For purposes of the function referred to in clause (i)(A), service provider means a provider of transmission, routing, or connections for digital online communications without modification of their content between or among points specified by the user of material of the userâs choosing, and for purposes of the functions referred to in clauses (i)(B) through (D) service provider means a provider or operator of facilities for online services or network access.

(19) A Party may satisfy the requirement for publication by making the decision or ruling available to the public on the Internet.

(20) For greater certainty, the Parties recognize that this provision does not address the allocation of rights among the right holders.

(21) For purposes of this Article, “right holder” includes federations and associations as well as exclusive licensees and other duly authorized licensees having the legal standing and authority to assert such rights. “Licensee” shall include the licensee of any one or more of the exclusive intellectual property rights.

(22) For greater certainty, the Parties understand that the damages set forth in this paragraph do not constitute punitive damages.

(23) For greater certainty, this provision does not apply to the extent that it would conflict with constitutional, common law, or statutory privilege.

(25) For purposes of paragraphs 20 through 25:
(a) counterfeit trademark goods means any goods, including packaging, bearing without authorization a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the country of importation; and
(b) pirated copyright goods means any goods that are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

(26) For greater certainty, each Party recognizes that such authority may be provided under its general domestic criminal law.

(27) For purposes of this paragraph, “copyright” shall also include related rights.

(28) For greater certainty, the failure of a service provider to qualify for the limitations in subparagraph (b) does not itself result in liability. Furthermore, subparagraph (b) is without prejudice to the availability of defenses to copyright infringement that are of general applicability.

(29) Each Party may request consultations with another Party to consider how to address under this paragraph functions of a similar nature that a Party identifies after the date of entry into force of this Agreement.

Article 16.12. Promotion of Innovation and Technological Development

1. The Parties recognize the importance of promoting technological innovation, disseminating technological information, and building technological capacity, including, as appropriate, through collaborative scientific research projects between or among the Parties. Accordingly, the Parties will seek and encourage opportunities for science and technology cooperation and identify areas for such cooperation and, as appropriate, engage in collaborative scientific research projects.

2. The Parties shall give priority to collaborations that advance common goals in science, technology, and innovation and support partnerships between public and private research institutions and industry. Any such collaborative activities or transfer of technology shall be based on mutually agreed terms.

3. Each Party shall designate a contact point to facilitate the development of collaborative projects from the following offices responsible for science and technology cooperation, which shall review periodically the state of collaboration through mutually agreed means of communication:

(a) in the case of the United States, Office of Science and Technology Cooperation, Bureau of Oceans, and International Environmental and Scientific Affairs, U.S. Department of State;

(b) in the case of Peru, el Consejo Nacional de Ciencia, Tecnologia e InnovaciÃ©n TecnolÃ©gica (CONCYTEC); or

their successors.

Article 16.13. Understandings Regarding Certain Public Health Measures

1. The Parties affirm their commitment to the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2).

2. The Parties have reached the following understandings regarding this Chapter.

(a) The obligations of this Chapter do not and should not prevent a Party from taking measures to protect public health by promoting access to medicines for all, in particular concerning cases such as HIV/AIDS, tuberculosis, malaria, and other epidemics as well as circumstances of extreme urgency or national emergency. Accordingly, while reiterating their commitment to this Chapter, the Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party's right to protect public health and, in particular, to promote access to medicines for all.

(b) In recognition of the commitment to access to medicines that are supplied in accordance with the Decision of the General Council of 30 August 2003 on the Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/540) and the WTO General Council Chairman's statement accompanying the Decision (JOB(03)/177, WT/GC/M/82) (collectively, the "TRIPS/health solution"), this Chapter does not and should not prevent the effective utilization of the TRIPS/health solution.

(c) With respect to the aforementioned matters, if an amendment of the TRIPS Agreement enters into force with respect to the Parties and a Party's application of a measure in conformity with that amendment violates this Chapter, the Parties shall immediately consult in order to adapt this Chapter as appropriate in the light of the amendment.

Article 16.14. Final Provisions

1. Except as otherwise provided in Annex 16.1 and Article 16.1.3 and 16.1.4, each Party shall give effect to this Chapter on the date of entry into force of this Agreement.

2. A Party may delay giving effect to certain provisions of this Chapter as specified in Annex 16.1.

3. The Parties shall periodically review the implementation and operation of this Chapter and shall have the opportunity to undertake further negotiations to modify any of its provisions, including, as appropriate, consideration of an improvement in a Partyâs level of economic development.

Chapter Seventeen. Labor

Article 17.1. Statement of Shared Commitments

The Parties reaffirm their obligations as members of the International Labor Organization (ILO).

Article 17.2. Fundamental Labor Rights (1)

1. Each Party Shall Adopt and Maintain In Its Statutes and Regulations, and Practices thereunder, the following rights, as stated in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998) ILO Declaration): (2)

(a) freedom of association;

(b) the effective recognition of the right to collective bargaining;
(c) the elimination of all forms of compulsory or forced labor;
(d) the effective abolition of child labor and, for purposes of this Agreement, a prohibition on the worst forms of child labor; and
(e) the elimination of discrimination in respect of employment and occupation.

2. Neither Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its statutes or regulations implementing paragraph 1 in a manner affecting trade or investment between the Parties, where the waiver or derogation would be inconsistent with a fundamental right set out in that paragraph.

(1) To establish a violation of an obligation under Article 17.2.1 a Party must demonstrate that the other Party has failed to adopt or maintain a statute, regulation, or practice in a manner affecting trade or investment between the Parties.

(2) The obligations set out in Article 17.2, as they relate to the ILO, refer only to the ILO Declaration.

Article 17.3. Enforcement of Labor Laws

1. (a) A Party shall not fail to effectively enforce its labor laws, including those it adopts or maintains in accordance with Article 17.2.1, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties, after the date of entry into force of this Agreement.

(b) A decision a Party makes on the distribution of enforcement resources shall not be a reason for not complying with the provisions of this Chapter. Each Party retains the right to the reasonable exercise of discretion and to bona fide decisions with regard to the allocation of resources between labor enforcement activities among the fundamental labor rights enumerated in Article 17.2.1, provided the exercise of such discretion and such decisions are not inconsistent with the obligations of this Chapter. (3)

2. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of another Party.

(3) For greater certainty, a Party retains the right to exercise reasonable enforcement discretion and to make bona fide decisions regarding the allocation of enforcement resources with respect to labor laws other than those relating to fundamental rights enumerated in Article 17.2.1.

Article 17.4. Procedural Guarantees and Public Awareness

1. Each Party shall ensure that persons with a legally recognized interest in a particular matter have appropriate access to tribunals for the enforcement of the Party's labor laws. Such tribunals may include administrative, quasi-judicial, judicial, or labor tribunals, as provided in the Party's law.

2. Each Party shall ensure that proceedings before such tribunals for the enforcement of its labor laws are fair, equitable, and transparent and, to this end, each Party shall ensure that:

(a) such proceedings comply with due process of law;

(b) any hearings in such proceedings are open to the public, except where the administration of justice otherwise requires;

(c) the parties to such proceedings are entitled to support or defend their respective positions including by presenting information or evidence; and

(d) such proceedings do not entail unreasonable charges, or time limits, or unwarranted delays.

3. Each Party shall provide that final decisions on the merits of the case in such proceedings are:

(a) in writing and state the reasons on which the decisions are based;

(b) made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and

(c) based on information or evidence in respect of which the parties to the proceedings were offered the opportunity to be heard.

4. Each Party shall provide, as appropriate, that parties to such proceedings have the right to seek review and, where warranted, correction of final decisions issued in such proceedings.

5. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

6. Each Party shall provide that the parties to such proceedings may seek remedies to ensure the enforcement of their rights under its labor laws. Such remedies may include measures such as orders, fines, penalties, or temporary workplace closures.

7. Each Party shall promote public awareness of its labor laws, including by:

(a) ensuring the availability of public information related to its labor laws and enforcement and compliance procedures; and

(b) encouraging education of the public regarding its labor laws.

Article 17.5. Institutional Arrangements

1. The Parties hereby establish a Labor Affairs Council (Council) comprising cabinet-level or equivalent representatives of the Parties, who may be represented on the Council by their deputies or high-level designees.

2. The Council shall meet within the first year after the date of entry into force of this Agreement and thereafter as often as it considers necessary. The Council shall:

(a) oversee the implementation of and review progress under this Chapter, including the activities of the Labor Cooperation and Capacity Building Mechanism established under Article 17.6;

(b) develop general guidelines for consideration of communications referred to in paragraph 5(c);

(c) prepare reports, as appropriate, on matters related to the implementation of this Chapter and make such reports available to the public;

(d) endeavor to resolve matters referred to it under Article 17.7.4; and

(e) perform any other functions as the Parties may agree.

3. All decisions of the Council shall be taken by consensus, and shall be made public unless the Council otherwise decides.

4. Unless the Council otherwise decides, each of its meetings shall include a session at which members of the Council have an opportunity to meet with the public to discuss matters relating to the implementation of this Chapter.

5. Each Party shall designate an office within its labor ministry or equivalent entity that shall serve as a contact point with the other Parties and with the public. The contact points of each Party shall meet as often as they consider necessary or at the request of the Council. Each Party's contact point shall:

(a) assist the Council in carrying out its work, including coordination of the Labor Cooperation and Capacity Building Mechanism;

(b) cooperate with the other Parties' contact points and with relevant government organizations and agencies to:

(i) establish priorities, with a particular emphasis on the issues identified in paragraph 2 of Annex 17.6, regarding cooperative activities on labor matters,

(ii) develop specific cooperative and capacity-building activities according to such priorities,

(iii) exchange information on the labor laws and practices of each Party, including best practices and ways to improve them, and

(iv) seek support, as appropriate, from international organizations such as the ILO, the Inter-American Development Bank, the World Bank, and the Organization of American States, to advance common commitments regarding labor matters;

(c)provide for the submission, receipt, and consideration of communications from persons of a Party on matters related to this Chapter and make such communications available to the other Party and, as appropriate, to the public; and

(d) provide for the receipt of cooperative consultation requests referred to in Article 17.7.1 and 17.7.4.

6. Each Party shall review communications received under paragraph 5(c) in accordance with domestic procedures.

7. Each Party may convene a new, or consult an existing, national labor advisory or consultative committee comprising representatives of its labor and business organizations and other members of its public to provide views on any issues related to this Chapter.

Article 17.6. Labor Cooperation and Capacity Building Mechanism

1. Recognizing that cooperation on labor issues plays an important role in advancing development in the territory of the Parties and in enhancing opportunities to improve labor standards, and to further advance common commitments regarding labor matters, including the principles embodied in the ILO Declaration and ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999), the Parties hereby establish a Labor Cooperation and Capacity Building Mechanism, as set out in Annex 17.6. This Mechanism shall operate in a manner that respects each Party's law and sovereignty.

2. The Parties shall strive to ensure that the activities undertaken through that Mechanism:

(a) are consistent with each Party's national programs, development strategies, and priorities;

(b) provide opportunities for public participation in the development and implementation of such activities; and

(c) take into account each Party's economy, culture, and legal system.

Article 17.7. Cooperative Labor Consultations

1. A Party may request cooperative labor consultations with another Party regarding any matter arising under this Chapter by delivering a written request to the contact point that the other Party has designated under Article 17.5.5.

2. The cooperative labor consultations shall begin promptly after delivery of the request. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond.

3. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter, taking into account opportunities for cooperation related to the matter, and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue.

4. If the consulting Parties fail to resolve the matter pursuant to paragraph 3, a consulting Party may request that the Council be convened to consider the matter by delivering a written request to the contact point of each of the Parties. (4)

5. The Council shall promptly convene and shall endeavor to resolve the matter, including, where appropriate, by consulting outside experts and having recourse to such procedures as good offices, conciliation, or mediation.

6. If the consulting Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may request consultations under Article 21.4 (Consultations) or a meeting of the Commission under Article 21.5 (Intervention of the Commission) and, as provided in Chapter Twenty-One (Dispute Settlement), thereafter have

recourse to the other provisions of that Chapter. The Council may inform the Commission of how the Council has endeavored to resolve the matter through consultations.

7. No Party may have recourse to dispute settlement under this Agreement for a matter arising under this Chapter without first seeking to resolve the matter in accordance with this Article.

Article 17.8. Definitions

For purposes of this Chapter:

labor laws means a Party's statutes and regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights:

(a) freedom of association; (b) the effective recognition of the right to collective bargaining; (c) the elimination of all forms of forced or compulsory labor;

(d) the effective abolition of child labor, a prohibition on the worst forms of child labor, and other labor protections for children and minors;

(e) the elimination of discrimination in respect of employment and occupation; and

(f) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

For greater certainty, the setting of standards and levels in respect of minimum wages by each Party shall not be subject to obligations under this Chapter. Each Party's obligations under this Chapter pertain to enforcing the level of the general minimum wage established by that Party; and

statutes and regulations and statutes or regulations means: for the United States, acts of Congress or regulations promulgated pursuant to acts of Congress that are enforceable by action of the central level of government and, for purposes of this Chapter, includes the Constitution of the United States.

(4) For purposes of paragraphs 4, 5, and 6, the Council shall consist of the cabinet-level representatives of the consulting Parties or their high-level designees.

Chapter Eighteen. Environment

Objectives

Recognizing that each Party has sovereign rights and responsibilities with respect to its natural resources, the objectives of this Chapter are to contribute to the Parties' efforts to ensure that trade and environmental policies are mutually supportive, to promote the optimal use of resources in accordance with the objective of sustainable development, and to strive to strengthen the links between the Parties' trade and environmental policies and practices, which may take place through environmental cooperation and collaboration.

Article 18.1. Levels of Protection

Recognizing the sovereign right of each Party to establish its own levels of domestic environmental protection and environmental development priorities, and to adopt or modify accordingly its environmental laws and policies, each Party shall strive to ensure that those laws and policies provide for and encourage high levels of environmental protection and shall strive to continue to improve its respective levels of environmental protection.

Article 18.2. Environmental Agreements (1)

A Party shall adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under the multilateral environmental agreements listed in Annex 18.2 ("covered agreements") (2)

(1) To establish a violation of Article 18.2 a Party must demonstrate that the other Party has failed to adopt, maintain, or implement laws, regulations, or other measures to fulfill an obligation under a covered agreement in a manner affecting trade or investment between the Parties.

(2) For purposes of Article 18.2: (1) “covered agreements” shall encompass those existing or future protocols, amendments, annexes, and adjustments under the relevant agreement to which both Parties are party; and (2) a Party’s “obligations” shall be interpreted to reflect, inter alia, existing and future reservations, exemptions, and exceptions applicable to it under the relevant agreement.

Article 18.3. Enforcement of Environmental Laws

1. (a) A Party shall not fail to effectively enforce its environmental laws, and its laws, regulations, and other measures to fulfill its obligations under the covered agreements, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties, after the date of entry into force of this Agreement.

(b)(i)The Parties recognize that each Party retains the right to exercise prosecutorial discretion and to make decisions regarding the allocation of environmental enforcement resources with respect to other environmental laws determined to have higher priorities. Accordingly, the Parties understand that with respect to the enforcement of environmental laws and all laws, regulations, and other measures to fulfill a Party's obligations under the covered agreements, a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable, articulable, bona fide exercise of such discretion, or results from a reasonable, articulable, bona fide decision regarding the allocation of such resources.

(ii) The Parties recognize the importance of the covered agreements. Accordingly, where a course of action or inaction relates to laws, regulations, and other measures to fulfill its obligations under covered agreements, that shall be relevant to a determination under clause (i) regarding whether an allocation of resources is reasonable and bona fide.

2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in their respective environmental laws. Accordingly, a Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws in a manner affecting trade or investment between the Parties.

3. Paragraph 2 shall not apply where a Party waives or derogates from an environmental law pursuant to a provision in law providing for waivers or derogations, provided that the waiver or derogation is not inconsistent with the Party's obligations under a covered agreement. (3)

4. Annex 18.3.4 sets out additional provisions with respect to forest sector governance.

5. Nothing in this Chapter shall be construed to empower a Partyâs authorities to undertake environmental law enforcement activities in the territory of another Party other than as specifically provided in Annex 18.3.4.

(3) Paragraph 3 does not apply with respect to any law of Peru with respect to the forest sector.

Article 18.4. Procedural Matters

1. Each Party shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws, and that each Party's competent authorities shall give such requests due consideration in accordance with its law.

2. Each Party shall ensure that judicial, quasi-judicial, or administrative proceedings are available under its law to provide sanctions or remedies for violations of its environmental laws.

(a) Such proceedings shall be fair, equitable, and transparent and, to this end, shall comply with due process of law, and be open to the public except where the administration of justice otherwise requires.

(b) Tribunals that conduct or review such proceedings shall be impartial and independent and shall not have any substantial interest in the outcome of the matter.

3. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter shall have appropriate access to the proceedings referred to in paragraph 2.

4. Each Party shall provide persons with a legally recognized interest under its law in a particular matter appropriate and effective access to remedies for violations of that Party's environmental laws or for violations of a legal duty under that Party's law relating to the environment or environmental conditions affecting human health, which may include rights such as:

(a) to sue another person under that Party's jurisdiction for damages under that Party's laws;

(b) to seek injunctive relief where a person suffers, or may suffer, loss, damage, or injury as a result of conduct by another person subject to that Party's jurisdiction;

(c) to seek sanctions or remedies such as monetary penalties, emergency closures, temporary suspension of activities, or orders to mitigate the consequences of such violations; or

(d) to request a tribunal to order that Party's competent authorities to take appropriate action to enforce its environmental laws in order to protect the environment or to avoid environmental harm.

5. Each Party shall provide appropriate and effective sanctions or remedies for violations of that Party's environmental laws that:

(a) take into consideration, as appropriate, the nature and gravity of the violation, any economic benefit the violator has derived from the violation, the economic condition of the violator, and other relevant factors; and

(b) may include administrative, civil, and criminal remedies and sanctions, such as compliance agreements, penalties, fines, imprisonment, injunctions, closure of facilities, or requirements to take remedial action or pay for the cost of containing or cleaning up pollution.

Article 18.5. Mechanisms to Enhance Environmental Performance

1. the Parties recognize that flexible, Vvoluntary, and incentive-based mechanisms can contribute to the achievement and maintenance of environmental protection, complementing the procedures set out in Article 18.4, as appropriate, and in accordance with its law and policy, each Party shall encourage the development and use of such mechanisms, which may include:

(a) mechanisms that facilitate voluntary action to protect or enhance the environment, such as:

(i) partnerships involving businesses, local communities, non-governmental organizations, government agencies, or scientific organizations,

(ii) voluntary guidelines for environmental performance, or

(iii) voluntary sharing of information and expertise among authorities, interested parties, and the public concerning: methods for achieving high levels of environmental protection, voluntary environmental auditing and reporting, ways to use resources more efficiently or reduce environmental impacts, environmental monitoring, and collection of baseline data; or

(b) incentives, including market-based incentives where appropriate, to encourage conservation, restoration, sustainable

use, and protection of natural resources and the environment, such as public recognition of facilities or enterprises that are superior environmental performers, or programs for exchanging permits or other instruments to help achieve environmental goals.

2. As appropriate and feasible and in accordance with its law, each Party shall encourage:

(a) the maintenance, development, or improvement of performance goals and standards used in measuring environmental performance; and

(b) flexible means to achieve such goals and meet such standards.

Article 18.6. Environmental Affairs Council

1. The Parties hereby establish an Environmental Affairs Council (Council). Each Party shall designate a senior level official with environmental responsibilities to represent it on the Council and an office in its appropriate ministry or government entity to serve as its contact point for carrying out the work of the Council.

2. The Council shall:

(a) consider and discuss the implementation of this Chapter;

(b) provide periodical reports to the Free Trade Commission regarding the implementation of this Chapter;

(c) provide for public participation in its work, including by:

(i) establishing mechanisms to exchange information and discuss matters related to the implementation of this Chapter with the public,

(ii) receiving and considering input in setting the agenda for Council meetings, and

(iii) receiving public views and comments on the issues the public considers relevant to the Council's work and requesting public views and comments on the issues the Council considers relevant to its work;

(d) consider and discuss the implementation of the environmental cooperation agreement (ECA) signed by the Parties, including its work program and cooperative activities, and submit any comments and recommendations, including comments and recommendations received from the public, to the Parties and to the Environmental Cooperation Commission established under the ECA;

(e) endeavor to resolve matters referred to it under Article 18.12.4; and
(f) perform any other functions as the Parties may agree.

3. The Council shall meet within the first year after the date of entry into force of this Agreement and annually thereafter, unless the Parties otherwise agree.

4. All decisions of the Council shall be taken by consensus except as provided in Article 18.9.2 and 18.9.7. All decisions of the Council shall be made public, unless the Council decides otherwise.

5. Unless the Parties otherwise agree, each meeting of the Council shall include a session in which members have an opportunity to meet with the public to discuss matters related to the implementation of this Chapter.

Article 18.7. Opportunities for Public Participation

1. Each Party shall promote public awareness of its environmental laws by ensuring that information is available to the public regarding its environmental laws, enforcement, and compliance procedures, including procedures for interested persons to request a Party's competent authorities to investigate alleged violations of its environmental laws.

2. Each Party shall seek to accommodate requests from persons of any Party for information or to exchange views regarding the Party's implementation of this Chapter.

3. Each Party shall provide for the receipt of written submissions from persons of that Party that concern matters related to the implementation of specific provisions of this Chapter. A Party shall respond in writing, except for good cause, to each such submission that states that it is made pursuant to this Article. Each Party shall make such submissions and responses available to the public in a timely and easily accessible manner.

4. Each Party shall convene a new, or consult an existing, national consultative or advisory committee, comprising persons of

the Party with relevant experience, including experience in business and environmental matters. Each Party shall solicit the committee's views on matters related to the implementation of this Chapter including, as appropriate, on issues raised in submissions the Party receives pursuant to this Article.

5. Each Party shall solicit public views on matters related to the implementation of this Chapter including, as appropriate, on issues raised in submissions it receives and shall make such views it receives in writing available to the public in a timely and easily accessible manner.

6. Each time it meets, the Council shall consider input received from each Party's consultative or advisory committee concerning implementation of this Chapter. After each meeting, the Council shall provide the public a written summary of its discussions on these matters and shall, as appropriate, provide recommendations to the Environmental Cooperation Commission on such matters.

Article 18.8. Submissions on Enforcement Matters

1. Any Person of a Party May File a Submission Asserting That a Party Is Failing to Effectively Enforce Its Environmental Laws. such Submissions Shall Be Filed with a Secretariat or other appropriate body (secretariat) that the Parties designate. (4)

2. The secretariat may consider a submission under this Article if the secretariat finds that the submission:

(a) is in writing in either English or Spanish;

(b) clearly identifies the person making the submission;

(c) provides sufficient information to allow the secretariat to review the submission, including any documentary evidence on which the submission may be based and identification of the environmental laws of which the failure to enforce is asserted;

(d) appears to be aimed at promoting enforcement rather than at harassing industry;

(e) indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any; and

f) is filed by a person of a Party, except as provided in paragraph 3.

3. The Parties recognize that the North American Agreement on Environmental Cooperation (NAAEC) provides that a person or organization residing or established in the territory of the United States may file a submission under that agreement with the Secretariat of the NAAEC Commission for Environmental Cooperation asserting that the United States is failing to effectively enforce its environmental laws. (5) In light of the availability of that procedure, a person of the United States who considers that the United States is failing to effectively enforce its environmental laws may not file a submission under this Article. For greater certainty, a person of a Party other than the United States who considers that the United States is failing to effectively enforce its environmental laws may file a submission with the secretariat.

4. Where the secretariat determines that a submission meets the criteria set out in paragraph 2, the secretariat shall determine whether the submission merits requesting a response from the Party. In deciding whether to request a response, the secretariat shall be guided by whether:

(a) the submission is not frivolous and alleges harm to the person making the submission;

(b) the submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of this Chapter and the ECA, taking into account guidance regarding those goals provided by the Council and the Environmental Cooperation Commission established under the ECA;

(c) private remedies available under the Party's law have been pursued; and
(d) the submission is drawn exclusively from mass media reports.

Where the secretariat makes such a request, it shall forward to the Party a copy of the submission and any supporting information provided with the submission.

5. The Party shall advise the secretariat within 45 days or, in exceptional circumstances and on notification to the secretariat, within 60 days of delivery of the request:

(a) whether the precise matter at issue is the subject of a pending judicial or administrative proceeding, in which case the secretariat shall proceed no further; and

(b) of any other information the Party wishes to submit, such as:

(i) whether the matter was previously the subject of a judicial or administrative proceeding,

5 Arrangements will be made for the United States to make available in a timely manner to the other Parties all such submissions, U.S. written responses, and factual records developed in connection with those submissions. At the request of any Party, the Council shall discuss such documents.

(i) whether private remedies in connection with the matter are available to the person making the submission and whether they have been pursued, or

(ii) information concerning relevant capacity-building activities under the ECA.

(4) The Parties shall designate the secretariat and provide for related arrangements through an exchange of letters or understanding between the Parties.

(5) Arrangements will be made for the United States to make available in a timely manner to the other Parties all such submissions, U.S. written responses, and factual records developed in connection with those submissions. At the request of any Party, the Council shall discuss such documents.

Article 18.9. Factual Records and Related Cooperation

1. If the Secretariat Considers That the Submission, In Light of Any Response Provided by the Party, warrants developing a factual record, the secretariat shall so inform the Council and provide its reasons.

2. The secretariat shall prepare a factual record if any member of the Council instructs it to do so.

3. The preparation of a factual record by the secretariat pursuant to this Article shall be without prejudice to any further steps that may be taken with respect to any submission.

4. In preparing a factual record, the secretariat shall consider any information furnished by a Party and may consider any relevant technical, scientific, or other information:

(a) that is publicly available;

(b) submitted by interested persons;

(c) submitted by national advisory or consultative committees; (d) developed by independent experts; or

(e) developed under the ECA.

5. The secretariat shall submit a draft factual record to the Council. Any Party may provide comments on the accuracy of the draft within 45 days thereafter.

6. The secretariat shall incorporate, as appropriate, any such comments in the final factual record and submit it to the Council.

7. The secretariat shall make the final factual record publicly available, normally within 60 days following its submission, if any member of the Council instructs it to do so.

8. The Council shall consider the final factual record in light of the objectives of this Chapter and the ECA. The Council shall, as appropriate, provide recommendations to the Environmental Cooperation Commission related to matters addressed in the factual record, including recommendations related to the further development of the Party's mechanisms for monitoring its environmental enforcement.

9. The Council shall, after five years, review the implementation of this Article and Article 18.8 and report the results of its review, and any associated recommendations, to the Commission.

Article 18.10. Environmental Cooperation

1. The Parties recognize the importance of strengthening their capacity to protect the environment and of promoting sustainable development in concert with strengthening their trade and investment relations.

2. The Parties are committed to expanding their cooperative relationship on environmental matters, recognizing it will help

them achieve their shared environmental goals and objectives, including the development and improvement of environmental protection, practices, and technologies.

3. The Parties are committed to undertaking cooperative environmental activities pursuant to the ECA, including activities related to implementation of this Chapter. Activities that the Parties undertake pursuant to the ECA will be coordinated and reviewed by the Environmental Cooperation Commission established under the ECA. The Parties also acknowledge the importance of environmental cooperation activities in other fora.

4. Each Party shall take into account public comments and recommendations it receives regarding cooperative environmental activities undertaken pursuant to this Chapter and the ECA.

5. The Parties shall, as appropriate, share information on their experiences in assessing and taking into account environmental effects of trade agreements and policies.

Article 18.11. Biological Diversity

1. The Parties recognize the importance of the conservation and sustainable use (6) of biological diversity and their role in achieving sustainable development.

2. Accordingly, the Parties remain committed to promoting and encouraging the conservation and sustainable use of biological diversity and all its components and levels, including plants, animals, and habitat, and reiterate their commitments in Article 18.1.

3. The Parties recognize the importance of respecting and preserving traditional knowledge and practices of indigenous and other communities that contribute to the conservation and sustainable use of biological diversity.

4. The Parties also recognize the importance of public participation and consultations, as provided by domestic law, on matters concerning the conservation and sustainable use of biological diversity. The Parties may make information publicly available about programs and activities, including cooperative programs, it undertakes related to the conservation and sustainable use of biological diversity.

5. To this end, the Parties will enhance their cooperative efforts on these matters, including through the ECA.

(6) For purposes of this Chapter, sustainable use means non-consumptive or consumptive use in a sustainable manner.

Article 18.12. Environmental Consultations and Panel Procedure

1. A Party may request consultations with another Party regarding any matter arising under this Chapter by delivering a written request to a contact point designated by the other Party for this purpose.

2. The consultations shall begin promptly after delivery of the request. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond.

3. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue. If the matter arises under Article 18.2, or under both that Article and another provision of this Chapter, and involves an issue related to a Party's obligations under a covered agreement, the Parties shall endeavor to address the matter through a mutually agreeable consultative or other procedure, if any, under the relevant agreement, unless the procedure could result in unreasonable delay. (7)

4. If the consulting Parties fail to resolve the matter pursuant to paragraph 3, a consulting Party may request that the Council be convened to consider the matter by delivering a written request to the contact point of each of the other consulting Parties.(8)

5. (a) The Council shall promptly convene and shall endeavor to resolve the matter expeditiously, including, where appropriate, by consulting governmental or outside experts and having recourse to such procedures as good offices, conciliation, or mediation.

(b) When the matter arises under Article 18.2, or under both that Article and another provision of this Chapter, and involves an issue relating to a Party's obligations under a covered agreement, the Council shall:

(i) through a mechanism that the Council establishes, consult fully with any entity authorized to address the issue under the

relevant agreement; and

(ii) defer to interpretative guidance on the issue under the agreement to the extent appropriate in light of its nature and status, including whether the Party's relevant laws, regulations, and other measures are in accordance with its obligations under the agreement.

6. If the consulting Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may request consultations under Article 21.4 (Consultations) or a meeting of the Commission under Article 21.5 (Intervention of the Commission) and, as provided in Chapter Twenty-One (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter. The Council may inform the Commission of how the Council has endeavored to resolve the matter through consultations.

7. No Party may have recourse to dispute settlement under this Agreement for a matter arising under this Chapter without first seeking to resolve the matter in accordance with paragraphs 1 through 5.

8. In a dispute arising under Article 18.2, or under both that Article and another provision of this Chapter, that involves an issue relating to a Party's obligations under a covered agreement, a panel convened under Chapter Twenty-One (Dispute Settlement) shall in making its findings and determination under Articles 21.13 (Initial Report) and 21.14 (Final Report) (9):

(a) consult fully, through a mechanism that the Council establishes, concerning that issue with any entity authorized to address the issue under the relevant environmental agreement;

(b) defer to any interpretative guidance on the issue under the agreement to the extent appropriate in light of its nature and status, including whether the Party's relevant laws, regulations, and other measures are in accordance with its obligations under the agreement; and

(c) where the agreement admits of more than one permissible interpretation relevant to an issue in the dispute and the Party complained against relies on one such interpretation, accept that interpretation for purposes of its findings and determination under Articles 21.13 and 21.14.(10)

(7) The Parties understand that for purposes of paragraph 3, where a covered agreement requires a decision to be taken by consensus, such a requirement could create an unreasonable delay.

(8) For purposes of paragraphs 4, 5, and 6, the Council shall consist of senior level officials with environmental responsibilities of the consulting Parties or their designees.

(9) For greater certainty, the consultations and guidance in this paragraph are without prejudice to a panel’s ability to seek information and technical guidance from any person or body consistent with Article 21.12 (Role of Experts).

(10) The guidance in subparagraph (c) shall prevail over any other interpretative guidance.

Article 18.13. Relationship to Environmental Agreements

1. The Parties recognize that multilateral environmental agreements to which they are all party, play an important role globally and domestically in protecting the environment and that their respective implementation of these agreements is critical to achieving the environmental objectives thereof. The Parties further recognize that this Chapter and the ECA can contribute to realizing the goals of those agreements. Accordingly, the Parties shall continue to seek means to enhance the mutual supportiveness of multilateral environmental agreements to which they are all party and trade agreements to which they are all party.

2. To this end, the Parties shall consult, as appropriate, with respect to negotiations on environmental issues of mutual interest.

3. Each Party recognizes the importance to it of the multilateral environmental agreements to which it is a party.

4. In the event of any inconsistency between a Party's obligations under this Agreement and a covered agreement, the Party shall seek to balance its obligations under both agreements, but this shall not preclude the Party from taking a particular measure to comply with its obligations under the covered agreement, provided that the primary purpose of the measure is

not to impose a disguised restriction on trade. (11)

(11) For greater certainty, paragraph 4 is without prejudice to multilateral environmental agreements other than covered agreements.

Article 18.14. Definitions

For Purposes of this Chapter:
environmental law means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health, through:

(a) the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants;

(b) the control of environmentally hazardous or toxic chemicals, substances, materials, and wastes, and the dissemination of information related thereto;

(c) the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas; or

(d) for Peru, the management of forest resources,

in areas with respect to which a Party exercises sovereignty, sovereign rights, or jurisdiction, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health.

laws, regulations, and all other measures to fulfill its obligations under a covered agreement means a Party's laws, regulations, and other measures at the central level of government.

For the United States, **statute or regulation** means an act of Congress or regulation promulgated pursuant to an act of Congress that is enforceable by action of the central level of government.

For Peru, **statute or regulation** means a law of Congress or Decree or Resolution promulgated by the central level of government to implement a law of Congress that is enforceable by action of the central level of government.

For Peru, **indigenous and other communities** means those communities which are defined in Article 1 of Andean Decision 391.

Chapter Nineteen . Transparency

Section A. Transparency

Section A. Transparency

Article 19.1. Contact Points

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement.

2. On the request of another Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

Article 19.2. Publication

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and Parties to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any such measure that it proposes to adopt; and

(b) provide interested persons and Parties a reasonable opportunity to comment on such proposed measures.

Article 19.3. Notification and Provision of Information

1. To the maximum extent possible, each Party shall notify any other Party with an interest in the matter of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect that other Party's interests under this Agreement.

2. On request of another Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not that other Party has been previously notified of that measure.

3. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

Article 19.4. Administrative Proceedings

With a view to administering in a consistent, impartial, and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure that in its administrative proceedings applying measures referred to in Article 19.2 to particular persons, goods, or services of another Party in specific cases that:

(a) wherever possible, persons of another Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in controversy;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

(c) its procedures are in accordance with domestic law.

Article 19.5. Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

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

(b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

Article 19.6. Definitions

For purposes of this Section:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good, or service of another Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

Section B. Anti-Corruption

Article 19.7. Statement of Principle

1. The Parties affirm their commitment to prevent and combat corruption, including bribery, in international trade and investment.

2. The Parties are hereby committed to promoting, facilitating, and supporting international cooperation in the prevention and fight against corruption.

Article 19.8. Cooperation In International Fora

1. The Parties recognize the importance of regional and multilateral initiatives to prevent and combat corruption, including bribery, in international trade and investment. The Parties shall work jointly to encourage and support appropriate initiatives in relevant international fora.

2. The Parties reaffirm their existing rights and obligations under the 1996 Inter-American Convention Against Corruption and shall work toward the implementation of measures to prevent and combat corruption consistent with the 2003 United Nations Convention Against Corruption.

Article 19.9. Anti-Corruption Measures

1. Each Party shall adopt or maintain the necessary legislative or other measures to establish that it is a criminal offense under its law, in matters affecting international trade or investment, for:

(a) a public official of that Party or a person who performs public functions for that Party intentionally to solicit or accept, directly or indirectly, any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;

(b) any person subject to the jurisdiction of that Party intentionally to offer or grant, directly or indirectly, to a public official of that Party or a person who performs public functions for that Party any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;

(c) any person subject to the jurisdiction of that Party intentionally to offer, promise, or give any undue pecuniary or other advantage, directly or indirectly, to a foreign official, for that official or for another person, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business; and

(d) any person subject to the jurisdiction of that Party to aid or abet, or to conspire in, the commission of any of the offenses described in subparagraphs (a) through (c) .

2. Each Party shall adopt or maintain appropriate penalties and procedures to enforce the criminal measures that it adopts or maintains in conformity with paragraph 1.

3. In the event that, under the legal system of a Party, criminal responsibility is not applicable to enterprises, that Party shall ensure that enterprises shall be subject to effective, proportionate, and dissuasive non-criminal sanctions, including monetary sanctions, for any of the offenses described in paragraph 1.

4. Each Party shall endeavor to adopt or maintain appropriate measures to protect persons who, in good faith, report acts of corruption, including bribery, described in paragraph 1.

Article 19.10. Definitions

For Purposes of this Section:
act or refrain from acting in relation to the performance of official duties includes any use of the official's position, whether or not within the official's authorized competence;

foreign official means any person holding a legislative, administrative, or judicial office of a foreign country, at any level of government, whether appointed or elected; any person exercising a public function for a foreign country at any level of government, including for a public agency or public enterprise; and any official or agent of a public international organization;

public function means any temporary or permanent, paid or honorary activity, performed by a natural person in the name of a Party or in the service of a Party, such as procurement, at the central level of government; and

public official means any official or employee of a Party at the central level of government, whether appointed or elected.

Chapter Twenty . Administration of the Agreement and Trade Capacity Building

Section A. Administration of the Agreement

Article 20.1 . The Free Trade Commission

1. The Parties hereby establish the Free Trade Commission, comprising cabinet-level representatives of the Parties, as set out in Annex 20.1, or their designees.

2. The Commission shall:

(a) supervise the implementation of this Agreement;
(b) oversee the further elaboration of this Agreement;
(c) seek to resolve disputes that may arise regarding the interpretation or application of this Agreement;
(d) supervise the work of all committees, councils, and working groups established under this Agreement and recommend appropriate actions;
(e) establish the amount of remuneration and expenses that will be paid to panelists;
(f) consider any other matter that may affect the operation of this Agreement; and (g) establish and modify the Commission's rules of procedure.

3. The Commission may:
(a) establish and delegate responsibilities to committees and working groups;
(b) modify:
(i)the Schedules attached to Annex 2.3 (Tariff Elimination), by accelerating tariff elimination,
(ii)the rules of origin established in Annex 3-A (Textiles Rules of Origin) and Annex 4.1 (Specific Rules of Origin), and
(iii) Annex 9.1 (Government Procurement);
(c) issue interpretations of the provisions of this Agreement;

(d) consider any amendments to this Agreement;
(e) seek the advice of non-governmental persons or groups; and
(f) take such other action in the exercise of its functions as the Parties may agree.

4. Each Party shall implement, in accordance with its applicable legal procedures, any modification referred to in subparagraph 3(b) within such period as the Parties may agree.

5. The Commission may review the impacts, including any benefits, of the Agreement on the small and medium-size businesses of the Parties. Toward that end, the Commission may:

(a) designate working groups to evaluate the effects of the Agreement on small and medium-size businesses and make relevant recommendations to the Commission, including working plans focused on the needs of small and medium-size businesses. Any working group recommendations with respect to trade capacity building shall be referred to the Committee for Trade Capacity Building for consideration; and

(b) receive information, input and views from representatives of small and medium-size businesses and their business associations.

6. All decisions of the Commission shall be taken by consensus, except as the Commission may otherwise decide.

7. The Commission shall convene at least once a year in regular session, except as the Commission may otherwise decide. Regular sessions of the Commission shall be chaired successively by each Party.

Article 20.2. Free Trade Agreement Coordinators

1. Each Party shall appoint a free trade agreement coordinator, as set out in Annex 20.1.

2. The coordinators shall work jointly to develop agendas and make other preparations for Commission meetings and shall follow-up on Commission decisions as appropriate.

Article 20.3. Administration of Dispute Settlement Proceedings

1. Each Party Shall:
(a) Designate an Office That Shall Provide Administrative Assistance to the Panels Established Under Chapter Twenty-One (Dispute Settlement) and Perform such other Functions as the Commission May Direct; and

(b) notify the Commission of the location of its designated office.

2. Each Party shall be responsible for the operation and costs of its designated office.

Section B. Trade Capacity Building

Article 20.4. Committee on Trade Capacity Building

1. Recognizing that trade capacity building is a catalyst for the reforms and investments necessary to foster trade-driven economic growth, poverty reduction, and adjustment to liberalized trade, the Parties hereby establish a Committee on Trade Capacity Building, comprising representatives of each Party.

2. In furtherance of the Parties' ongoing trade capacity building efforts, and in order to assist each Party other than the United States in implementing this Agreement and adjust to more liberalized trade, each such Party should periodically update and provide to the Committee its national trade capacity building strategy.

3. The Committee shall:
(a) seek the prioritization of trade capacity building projects;

(b) invite appropriate international donor institutions, private sector entities, and non- governmental organizations to assist in the development and implementation of trade capacity building projects in accordance with the priorities set out in each national trade capacity building strategy;

(c) work with other committees or working groups established under this Agreement and related cooperation mechanisms, including through joint meetings, in support of the development and implementation of trade capacity building projects, particularly regarding commitments pursuant to the Agreement, in accordance with the priorities set out in each national trade capacity building strategy;

(d) monitor and assess progress, including development of mechanisms as appropriate, in implementing trade capacity building projects; and

(e) provide a report annually to the Commission, describing the Committee's activities unless the Committee decides otherwise.

4. During the transition period, the Committee shall meet at least twice a year, unless the Committee decides otherwise.

5. The Committee shall establish rules and procedures for the conduct of its work. All decisions of the Committee shall be taken by consensus, unless the Committee decides otherwise.

6. The Committee may establish ad hoc working groups, which may comprise government or non-government representatives, or both.

7. The Parties hereby establish a working group on customs administration and trade facilitation, which shall work under and report to the Committee. The initial focus of this working group should be related to implementation of Chapter Five (Customs Administration and Trade Facilitation) and any other priority the Committee designates.

Chapter Twenty-One. Dispute Settlement

Section A. Dispute Settlement

Article 21.1. Cooperation

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

Article 21.2. Scope of Application

1. Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement or wherever a Party considers that:

(a) an actual or proposed measure of another Party is or would be inconsistent with the obligations of this Agreement;

(b) another Party has otherwise failed to carry out its obligations under this Agreement; or

(c) a benefit the Party could reasonably have expected to accrue to it under Chapter Two (National Treatment and Market Access for Goods), Three (Textiles and Apparel), Four (Rules of Origin and Origin Procedures), Nine (Government Procurement), Eleven (Cross-Border Trade in Services), or Sixteen (Intellectual Property Rights) is being nullified or impaired as a result of a measure of another Party that is not inconsistent with this Agreement. No Party may invoke this subparagraph with respect to a benefit under Chapter Eleven (Cross-Border Trade in Services) or Sixteen (Intellectual Property Rights) if the measure is subject to an exception under Article 22.1 (General Exceptions).

2. For greater certainty, this Chapter does not apply to disputes between Andean Community members concerning a breach of Andean Community Law.

Article 21.3. Choice of Forum

1. Where a dispute regarding any matter arises under this Agreement and under another free trade agreement to which the disputing Parties are party or the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

2. Once the complaining Party has requested a panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the others.

Article 21.4. Consultations

1. Any Party may request in writing consultations with any other Party with respect to any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement. If a Party requests such consultations, the other Party shall promptly reply to the request for consultations, and shall enter into consultations in good faith.

2. The requesting Party shall deliver the request to the other Parties, and shall set out the reasons for the request, including identification of the actual or proposed measure or other matter at issue and an indication of the legal basis for the complaint.

3. A Party that considers it has a substantial trade interest in the matter may participate in the consultations on delivery of written notice to the other Parties within seven days of the date of delivery of the request for consultations. The Party shall include in its notice an explanation of its substantial trade interest in the matter.

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

5, In the consultations, each Party shall:
(a) provide sufficient information to enable a full examination of how the actual or proposed measure or other matter might affect the operation and application of this Agreement; and

(b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

6. In consultations under this Article, a consulting Party may request another consulting Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.

Article 21.5. Intervention of the Commission

1. If the Consulting Parties Fail to Resolve a Matter Pursuant to Article 21.4 Within:
(a) 60 Days of Delivery of a Request for Consultations;
(b) 15 days of delivery of a request for consultations in matters regarding perishable goods; or
(c) such other period as they may agree,
any such Party may request in writing a meeting of the Commission. (1)

2. A consulting Party may also request in writing a meeting of the Commission where consultations have been held pursuant

to Article 17.7 (Cooperative Labor Consultations), 18.12 (Environmental Consultations and Panel Procedure), or 7.7 (Committee on Technical Barriers to Trade).

3. The requesting Party shall deliver the request to the other Parties, and shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the complaint.

4. Unless it decides otherwise, the Commission shall convene within ten days of delivery of the request and shall endeavor to resolve the dispute promptly. To assist the Parties reach a mutually satisfactory resolution of the dispute, the Commission may:

(a) call on such technical advisers or create such working groups or expert groups as it deems necessary;
(b) have recourse to good offices, conciliation, or mediation; or
(c) make recommendations.

5. Unless it decides otherwise, the Commission shall consolidate two or more proceedings before it pursuant to this Article regarding the same measure or matter. The Commission may consolidate two or more proceedings regarding other matters before it pursuant to this Article that it determines are appropriate to be considered jointly. (2)

6. The Commission may meet in person or through any other technological means available to the Parties that will allow them to carry out this stage of the proceedings.

(1) For purposes of this paragraph and paragraph 4, the Commission shall consist of the cabinet-level representatives of the consulting Parties, as set out in Annex 20.1 (The Free Trade Commission), or their designees.

(2) For purposes of this paragraph, the Commission shall consist of the cabinet-level representatives of the consulting Parties in the relevant proceedings, as set out in Annex 20.1 (The Free Trade Commission), or their designees

Article 21.6. Request for an Arbitral Panel

1. If the Consulting Parties Fail to Resolve a Matter Within:
(a) 30 Days after the Commission Has Convened Pursuant to Article 21.5;
(b) 30 days after the Commission has convened in respect of the matter most recently referred to it, where proceedings have been consolidated pursuant to Article 21.5.5;
(c) 30 days after a Party has delivered a request for consultations under Article 21.4 in a matter regarding perishable goods, if the Commission has not convened pursuant to Article 21.5.4;
(d) 75 days after a Party has delivered a request for consultations under Article 21.4, if the Commission has not convened pursuant to Article 21.5.4; or
(e) such other period as the consulting Parties may agree,

any consulting Party that participated at a meeting of the Commission or requested a meeting of the Commission, if the Commission has not convened, may request in writing the establishment of an arbitral panel to consider the matter. The requesting Party shall deliver the request to the other Parties, and shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the complaint.

2. An arbitral panel shall be established upon delivery of a request.

3. A Party that is eligible under paragraph 1 to request the establishment of a panel and considers it has a substantial interest in the matter may join the arbitral panel proceedings as a complaining Party on delivery of written notice to the other Parties. The notice shall be delivered at the earliest possible time, and in any event no later than seven days after the date of delivery of the request by the Party for the establishment of a panel.

4. If a Party does not join as a complaining Party in accordance with paragraph 3, it normally shall refrain thereafter from initiating or continuing:

(a) a dispute settlement procedure under this Agreement; or

(b) a dispute settlement proceeding under the WTO Agreement or under another free trade agreement to which it and the Party complained against are party, on grounds that are substantially equivalent to those available to it under this Agreement,

regarding the same matter in the absence of a significant change in economic or commercial circumstances.

5. Unless otherwise agreed by the disputing Parties, the panel shall be selected and perform its functions in a manner consistent with the provisions of this Chapter and the Model Rules of Procedure.

6. An arbitral panel may not be established to review a proposed measure.

Article 21.7. Indicative Roster

1. The Parties shall establish within six months of the date of entry into force of this Agreement and maintain an indicative roster of individuals who are willing and able to serve as panelists. Unless the Parties otherwise agree, three members of the roster shall be nationals of each Party, and two members of the roster shall be individuals who are not nationals of any Party. The roster members shall be appointed by consensus, and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster. The Parties may appoint a replacement where a roster member is no longer available to serve.

2. Parties may have recourse to the indicative roster even if the roster is not complete.

Article 21.8. Qualifications of Panelists

1. All panelists shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;

(b) be chosen strictly on the basis of objectivity, impartiality, reliability, and sound judgment;

(c) be independent of, and not be affiliated with or take instructions from any Party; and

(d) comply with a code of conduct established by the Parties.

2. Individuals may not serve as panelists for a dispute in which they have participated pursuant to Article 21.5.4.

Article 21.9. Panel Selection

1. the Parties Shall Apply the Following Procedures In Selecting a Panel:
(a) the Panel Shall Comprise Three Members;
(b) within 15 days of the delivery of the request for the establishment of the panel, the complaining Party or Parties shall appoint one panelist and the Party complained against shall appoint one panelist, in consultation with each other. If the complaining Party or Parties or the Party complained against fail to appoint a panelist within such period, a panelist shall be selected by lot from the indicative roster established under Article 21.7 within 3 days after expiration of this 15-day period;
(c) the Parties shall endeavor to agree on a third panelist who shall serve as chair within 15 days from the date the second panelist has been appointed or selected. If the Parties are unable to agree on the chair, the chair shall be selected by lot from among the indicative roster members who are not nationals of the disputing Parties within 3 days after expiration of this 15-day period;
(d) each disputing Party shall endeavor to select panelists who have expertise or experience relevant to the subject matter of the dispute. In addition, in any dispute arising under Chapter Seventeen (Labor) or Eighteen (Environment), panelists other than those selected by lot shall have expertise or experience relevant to the subject matter under dispute.

2. If a disputing Party believes that a panelist is in violation of the code of conduct, the disputing Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

Article 21.10. Rules of Procedure

1. The Parties shall establish by the date of entry into force of this Agreement Model Rules of Procedure, which shall ensure:

(a) a right to at least one hearing before the panel, which, subject to subparagraph (e), shall be open to the public;

(b) an opportunity for each disputing Party to provide initial and rebuttal written submissions;

(c) that each participating Party's written submissions, written versions of its oral statement, and written responses to a request or questions from the panel shall be public, subject to subparagraph (e);

(d) that the panel will consider requests from non-governmental entities in the disputing Partiesâ territories to provide

written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the disputing Parties;

(e) the protection of confidential information;

(f) that the Parties have the right to make and receive written submissions and make and hear oral arguments in either English or Spanish; and

(g) that unless otherwise agreed by the disputing Parties, hearings shall be held in the capital of the Party complained against.

2. Unless the disputing Parties otherwise agree, the panel shall conduct its proceedings in accordance with the Model Rules of Procedure.

3. The Parties may modify the Model Rules of Procedure.

4. Unless the disputing Parties otherwise agree within 20 days from the date of the delivery of the request for the establishment of the panel, the terms of reference shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referenced in the panel request and to make findings, determinations, and recommendations as provided in Articles 21.10.6 and 21.13.3 and to deliver the written reports referred to in Articles 21.13 and 21.14."

5. If a complaining Party in its panel request has identified that a measure has nullified or impaired benefits, in the sense of Article 21.2, the terms of reference shall so indicate.

6. If a disputing Party wishes the panel to make findings as to the level of adverse trade effects on any Party of a Party's failure to conform with the obligations of this Agreement or of a Partyâs measure found to have caused nullification or impairment in the sense of Article 21.2, the terms of reference shall so indicate.

Article 21.11. Third Party Participation

A Party that is not a disputing Party, on delivery of a written notice to the disputing Parties, shall be entitled to attend all hearings, to make written and oral submissions to the panel, and to receive written submissions of the disputing Parties in accordance with the Model Rules of Procedure.

Article 21.12. Role of Experts

On request of a disputing Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the disputing Parties so agree and subject to such terms and conditions as such Parties may agree.

Article 21.13. Initial Report

1. Unless the disputing Parties otherwise agree, the panel shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the disputing Parties, and on any information before it pursuant to Article 21.12.

2. If the disputing Parties request, the panel may make recommendations for resolution of the dispute.

3. Unless the disputing Parties otherwise agree, the panel shall, within 120 days after the last panelist is selected, present to the disputing Parties an initial report containing:

(a) findings of fact, including any findings pursuant to a request under Article 21.10.6;

(a) findings of fact, including any findings pursuant to a request under Article 21.10.6;

(b) its determination as to whether a disputing Party has not conformed with its obligations under this Agreement or that a Party's measure is causing nullification or impairment in the sense of Article 21.2, or any other determination requested in the terms of reference; and

(c) its recommendations, if the disputing Parties have requested them, for resolution of the dispute.

4. Panelists may furnish separate opinions on matters not unanimously agreed.

5. A disputing Party may submit written comments or requests for clarifications to the panel on its initial report within 14 days of presentation of the report or within such other period as the disputing Parties may agree.

6. After considering written comments or requests for clarifications on the initial report, the panel shall reply to such requests and to the extent it considers appropriate, make further examinations and reconsider its report.

Article 21.14. Final Report

1. The panel shall present a final report to the disputing Parties, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the disputing Parties otherwise agree. The disputing Parties shall release the final report to the public within 15 days thereafter, subject to the protection of confidential information.

2. No panel may, either in its initial report or its final report, disclose which panelists are associated with majority or minority opinions.

Article 21.15. Implementation of Final Report

1. On receipt of the final report of a panel, the disputing Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations, if any, of the panel.

2. If, in its final report, the panel determines that a disputing Party has not conformed with its obligations under this Agreement or that a disputing Party's measure is causing nullification or impairment in the sense of Article 21.2, the resolution, whenever possible, shall be to eliminate the non-conformity or the nullification or impairment.

Article 21.16. Non-Implementation —Suspension of Benefits

1. If a panel has made a determination of the type described in Article 21.15.2, and the disputing Parties are unable to reach agreement on a resolution pursuant to Article 21.15 within 45 days of receiving the final report, or such other period as the disputing Parties agree, the Party complained against shall enter into negotiations with the complaining Party or Parties with a view to developing mutually acceptable compensation.

2. If the disputing Parties:

(a) are unable to agree on compensation within 30 days after the period for developing such compensation has begun; or

(b) have agreed on compensation or on a resolution pursuant to Article 21.15 and a complaining Party considers that the Party complained against has failed to observe the terms of the agreement,

any such complaining Party may at any time thereafter provide written notice to the Party complained against that it intends to suspend the application to the Party complained against of benefits of equivalent effect. The notice shall specify the level of benefits that the Party proposes to suspend. (3) Subject to paragraph 5, the complaining Party may begin suspending benefits 30 days after the later of the date on which it provides notice under this paragraph or the panel issues its determination under paragraph 3, as the case may be.

3. If the Party complained against considers that:
(a) the level of benefits proposed to be suspended is manifestly excessive; or
(b) it has eliminated the non-conformity or the nullification or impairment that the panel has found, it may, within 30 days after the complaining Party provides notice under paragraph 2, request that the panel be reconvened to consider the matter. The Party complained against shall deliver its request in writing to the complaining Party. The panel shall reconvene as soon as possible after delivery of the request and shall present its determination to the disputing Parties within 90 days after it reconvenes to review a request under subparagraph (a) or (b), or within 120 days for a request under subparagraphs (a) and (b). If the panel determines that the level of benefits proposed to be suspended is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect. In determining the level of benefits that may be suspended, the panel shall take into account any findings by the panel on the level of adverse trade effects if a request for such findings was made under Article 21.10.6.

4. The complaining Party may suspend benefits up to the level the panel has determined under paragraph 3 or, if the panel has not determined the level, the level the complaining Party has proposed to suspend under paragraph 2, unless the panel has determined that the Party complained against has eliminated the non-conformity or the nullification or impairment.

5. In considering what benefits to suspend pursuant to paragraph 2:

(a) the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment in the sense of Article 21.2; and

(b) if the complaining Party considers that it is not practicable or effective to suspend benefits in the same sector or sectors, it may suspend benefits in other sectors.

6. The complaining Party may not suspend benefits if, within 30 days after it provides written notice of intent to suspend benefits or, if the panel is reconvened under paragraph 3, within 20 days after the panel provides its determination, the Party complained against provides written notice to the complaining Party that it will pay an annual monetary assessment. The disputing Parties shall consult, beginning no later than 10 days after the Party complained against provides notice, with a view to reaching agreement on the amount of the assessment. If the disputing Parties are unable to reach an agreement within 30 days after consultations begin, the amount of the assessment shall be set at a level, in U.S. dollars, equal to 50 percent of the level of the benefits the panel has determined under paragraph 3 to be of equivalent effect or, if the panel has not determined the level, 50 percent of the level that the complaining Party has proposed to suspend under paragraph 2.

7. Unless the Commission otherwise decides, a monetary assessment shall be paid to the complaining Party in U.S. dollars, or in an equivalent amount of the currency of the Party complained against, in equal, quarterly installments beginning 60 days after the Party complained against gives notice that it intends to pay an assessment. Where the circumstances warrant, the Commission may decide that an assessment shall be paid into a fund established by the Commission and expended at the direction of the Commission for appropriate initiatives to facilitate trade between the disputing Parties including by further reducing unreasonable trade barriers or by assisting a disputing Party in carrying out its obligations under this Agreement.

8. If the Party complained against fails to pay a monetary assessment, the complaining Party may suspend the application to the Party complained against of benefits in accordance with paragraph 4.

9. Compensation, the payment of monetary assessments, and the suspension of benefits are intended as temporary measures pending the elimination of any non-conformity or nullification or impairment that the panel has found.

(3) For greater certainty, the phrase "the level of benefits that the Party proposes to suspend" refers to the level of concessions under the Agreement the suspension of which a complaining Party considers will have an effect equivalent to that of the disputed measure.

Article 21.17. Compliance Review

1. Without prejudice to the procedures set out in Article 21.16.3, if the Party complained against considers that it has eliminated the non-conformity or the nullification or impairment that the panel has found, it may refer the matter to the panel by providing written notice to the complaining Party or Parties. The panel shall issue its report on the matter within 90 days after the Party complained against provides notice.

2. If the panel decides that the Party complained against has eliminated the non-conformity or the nullification or impairment, the complaining Party or Parties shall promptly reinstate any benefits that Party has or those Parties have suspended under Article 21.16 and the Party complained against shall no longer be required to pay any monetary assessment it has agreed to pay under Article 21.16.6.

Article 21.18. Five-Year Review

The Commission shall review the operation and effectiveness of Article 21.16 not later than five years after the Agreement enters into force, or within six months after benefits have been suspended or monetary assessments have been paid in five proceedings initiated under this Chapter, whichever occurs first.

Section B. Domestic Proceedings and Private Commercial Dispute Settlement

Article 21.19. Referral of Matters from Judicial or Administrative Proceedings

1. If an issue of interpretation or application of this Agreement arises in any domestic judicial or administrative proceeding of a Party that any Party considers would merit its intervention, or if a court or administrative body solicits the views of a

Party, that Party shall notify the other Parties. The Commission shall endeavor to agree on an appropriate response as expeditiously as possible.

2. The Party in whose territory the court or administrative body is located shall submit any agreed information on or interpretation of the Agreement received from the Commission to the court or administrative body in accordance with the rules of that forum.

3. If the Commission is unable to agree on the information or interpretation requested, any Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Article 21.20. Private Rights

No Party may provide for a right of action under its law against any other Party on the ground that the other Party has failed to conform with its obligations under this Agreement.

Article 21.21. Alternative Dispute Resolution

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the 1975 Inter-American Convention on International Commercial Arbitration.

Chapter Twenty-two. Exceptions

Article 22.1. General Exceptions

1. For purposes of Chapters Two through Seven (National Treatment and Market Access for Goods, Textiles and Apparel, Rules of Origin and Origin Procedures, Customs Administration and Trade Facilitation, Sanitary and Phytosanitary Measures, and Technical Barriers to Trade), Article XX of the GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XX(b) of the GATT 1994 include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of the GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For purposes of Chapters Eleven, Fourteen, and Fifteen (1) (Cross-Border Trade in Services, Telecommunications, and Electronic Commerce), Article XIV of the GATS (including its footnotes) is incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XIV(b) of the GATS include environmental measures necessary to protect human, animal, or plant life or health.

Article 22.2. Essential Security

Nothing In this Agreement Shall Be Construed:

(a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or

(b) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests. 2

(1) This Article is without prejudice to whether digital products should be classified as goods or services

(2) For greater certainty, if a Party invokes Article 22.2 in an arbitral proceeding initiated under Chapter Ten (Investment) or Chapter Twenty-One (Dispute Settlement), the tribunal or panel hearing the matter shall find that the exception applies.

Article 22.3. Taxation

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between two or more Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

3. Notwithstanding paragraph 2:

(a) Article 2.2 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT 1994; and

(b) Article 2.11 (Export Taxes) shall apply to taxation measures.

4. Subject to paragraph 2:

(a) Article 11.2 (National Treatment) and Article 12.2 (National Treatment) shall apply to taxation measures on income, capital gains, or on the taxable capital of corporations that relate to the purchase or consumption of particular services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services on requirements to provide the service in its territory; and

(b) Articles 10.3 (National Treatment) and 10.4 (Most-Favored-Nation Treatment), Articles 11.2 (National Treatment) and 11.3 (Most-Favored-Nation Treatment), and Articles 12.2 (National Treatment) and 12.3 (Most-Favored-Nation Treatment) shall apply to all taxation measures, other than those on income, capital gains, or on the taxable capital of corporations, taxes on estates, inheritances, gifts, and generation-skipping transfers, except that nothing in the articles referred to in subparagraphs (a) and (b) shall apply:

(c) any most-favored-nation obligation with respect to an advantage accorded by a Party pursuant to any tax convention;

(d) to a non-conforming provision of any existing taxation measure;

(e) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;

(f) to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;

(g) to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes (as permitted by Article XIV(d) of the GATS); or

(h) to a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, pension trusts or pension plans on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan.

5. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties under paragraph 3, Article 10.9 (Performance Requirements) shall apply to taxation measures.

6. Article 10.7 (Expropriation and Compensation) and Article 10.16 (Submission of a Claim to Arbitration) shall apply to a taxation measure alleged to be an expropriation or a breach of an investment agreement or investment authorization. However, no investor may invoke Article 10.7 (Expropriation and Compensation) as the basis of a claim where it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 10.7 (Expropriation and Compensation) with respect to a taxation measure must first refer to the competent authorities of the Parties of the claimant and the respondent set out in Annex 22.3 at the time that it gives its notice of intent under Article 10.16 (Submission of a Claim to Arbitration) the issue of whether that taxation measure involves an expropriation. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of such referral, the investor may submit its claim to arbitration under Article 10.16 (Submission of a Claim to Arbitration).

Article 22.4. Disclosure of Information

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

Article 22.5. Definitions

For purposes of this Chapter:

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and taxes and taxation measures do not include:
(a) a customs duty; or
(b) the measures listed in exceptions (b) and
(c) of the definition of customs duty.

Chapter Twenty-Three. Final Provisions

Article 23.1. Annexes, Appendices, and Footnotes

The Annexes, Appendices, and footnotes to this Agreement constitute an integral part of this Agreement.

Article 23.2. Amendments

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

2. When so agreed, and approved in accordance with the legal requirements of Each Party, an amendment shall constitute an integral part of this Agreement and shall enter into force on such date as the Parties may agree.

Article 23.3. Amendment of the WTO Agreement

If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall consult with a view to amending the relevant provision of this Agreement, as appropriate, in accordance with Article 23.2.

Article 23.4. Entry Into Force and Termination

1. This Agreement shall enter into force 60 days after the date on which the Parties exchange written notifications certifying that they have completed their respective legal requirements or on such other date as the Parties may agree.

2. Any Party may terminate this Agreement by written notification to the other Party, and such termination shall take effect six months after the date of the notification.

Article 23.5. Accession

Any country or group of countries including, in particular, Latin American countries, may accede to this Agreement subject to such terms and conditions as may be agreed between such country or countries and the Parties, and following approval in accordance with the legal requirements of each Party and acceding country.

Article 23.6. Authentic Texts

The English and Spanish texts of this Agreement are equally authentic.

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

DONE, at Washington, District of Columbia, in duplicate, this twelfth day of April, 2006.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF PERU:

Annex I. Explanatory Notes

1. The Schedule of a Party to this Annex sets out, pursuant to Articles 10.13 (NonConforming Measures) and 11.6 (Non-Conforming Measures), a Party's existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 10.3 (National Treatment) or 11.2 (National Treatment);

(b) Article 10.4 (Most-Favored-Nation Treatment) or 11.3 (Most-Favored-Nation Treatment);

(c) Article 11.5 (Local Presence);

(d) Article 10.9 (Performance Requirements);

(e) Article 10.10 (Senior Management and Boards of Directors); or

(f) Article 11.4 (Market Access).

2. Each Schedule entry sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Obligations Concerned specifies the article(s) referred to in paragraph 1 that, pursuant to Articles 10.13.1(a) and 11.6.1(a), do not apply to the non-conforming aspects of the law, regulation, or other measure, as set out in paragraph 3;

(c) Level of Government indicates the level of government maintaining the scheduled measure(s);

(d) Measures identifies the laws, regulations, or other measures for which the entry is made. A measure cited in the Measures element:

(i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(e) Description sets out commitments, if any, for liberalization on the date of entry into force of the Agreement, and the remaining non-conforming aspects of the measure for which the entry is made.

3. In the interpretation of a Schedule entry, all elements of the entry shall be considered. An entry shall be interpreted in light of the relevant articles of the Chapters against which the entry is made. To the extent that:

(a) the Measures element is qualified by a liberalization commitment from the Description element, the Measures element as so qualified shall prevail over all other elements; and

(b) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of that discrepancy.

4. In accordance with Article 10.13.1(a) and 11.6.1(a), and subject to Article 10.13.1(c) and 11.6.1(c), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming aspects of the law, regulation, or other measure identified in the Measures element of that entry.

5. Where a Party maintains a measure that requires that a service provider be a citizen, permanent resident, or resident of its territory as a condition to the provision of a service in its territory, a Schedule entry for that measure taken with respect to Article 11.2 (National Treatment), 11.3 (Most-Favored-Nation Treatment), or 11.5 (Local Presence) shall operate as a Schedule entry with respect to Article 10.3 (National Treatment), 10.4 (Most-Favored-Nation Treatment), or 10.9 (Performance Requirements) to the extent of that measure.

6. Peru reserves the right to maintain a prohibition on the offer of a basic telecommunications service consisting of a call originating in the territory of Peru that results in a return call with an invitation to dial, coming from a basic telecommunications network located outside the national territory ("callback") pursuant to Decreto Supremo N° 027-2004-MTC, Diario Oficial "El Peruano" de 15 de julio de 2004, Texto Único Ordenado del Reglamento General de la Ley de Telecomunicaciones, Artículo 269.

7. To the extent that Decreto Legislativo N° 689, Diario Oficial "El Peruano" de 05 de noviembre de 1991, Ley para la

Contratación de Trabajadores Extranjeros, Artículos 1, 3, 4, 5 (modified by Ley N° 26196) establishes a limit on the number of foreign employees that an enterprise may hire, such measure is not inconsistent with Article 10.10 (Senior Management and Boards of Directors).

Annex I. Schedule of the United States

Sector: Atomic Energy

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 et seq.

Description: Investment

A license issued by the United States Nuclear Regulatory Commission is required for any person in the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, use, import, or export any nuclear "utilization or production facilities" for commercial or industrial purposes. Such a license may not be issued to any entity known or believed to be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government (42 U.S.C. § 2133(d)). A license issued by the United States Nuclear Regulatory Commission is also required for nuclear "utilization and production facilities," for use in medical therapy, or for research and development activities. The issuance of such a license to any entity known or believed to be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government is also prohibited (42 U.S.C. § 2134(d)).

Sector: Business Services

Obligations Concerned: National Treatment (Article 11.2) Local Presence (Article 11.5)

Level of Government: Central

Measures: Export Trading Company Act of 1982, 15 U.S.C. §§ 4011-4021 15 C.F.R. Part 325

Description: Cross-Border Services

Title III of the Export Trading Company Act of 1982 authorizes the Secretary of Commerce to issue "certificates of review" with respect to export conduct. The Act provides for the issuance of a certificate of review where the Secretary determines, and the Attorney General concurs, that the export conduct specified in an application will not have the anticompetitive effects proscribed by the Act. A certificate of review limits the liability under federal and state antitrust laws in engaging in the export conduct certified. Only a "person" as defined by the Act can apply for a certificate of review. "Person" means "an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between such persons." A foreign national or enterprise may receive the protection provided by a certificate of review by becoming a "member" of a qualified applicant. The regulations define "member" to mean "an entity (U.S. or foreign) that is seeking protection under the certificate with the applicant. A member may be a partner in a partnership or a joint venture; a shareholder of a corporation; or a participant in an association, cooperative, or other form of profit or nonprofit organization or relationship, by contract or other arrangement."

Sector: Business Services

Obligations Concerned: National Treatment (Article 11.2) Local Presence (Article 11.5)

Level of Government: Central

Measures: Export Administration Act of 1979, as amended, 50 U.S.C. App. §§ 2401-2420 International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1706 Export Administration Regulations, 15 C.F.R. Parts 730-774

Description: Cross-Border Services

With some limited exceptions, exports and re-exports of commodities, software, and technology subject to the Export Administration Regulations require a license from the Bureau of Industry and Security, U.S. Department of Commerce (BIS). Certain activities of U.S. persons, wherever located, also require a license from BIS. An application for a license must be made by a person in the United States. In addition, release of controlled technology to a foreign national in the United

States is deemed to be an export to the home country of the foreign national and requires the same written authorization from BIS as an export from the territory of the United States.

Sector: Mining

Obligations Concerned: National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4)

Level of Government: Central

Measures: Mineral Lands Leasing Act of 1920, 30 U.S.C. Chapter 3A 10 U.S.C. § 7435

Description: Investment

Under the Mineral Lands Leasing Act of 1920, aliens and foreign corporations may not acquire rights-of-way for oil or gas pipelines, or pipelines carrying products refined from oil and gas, across onshore federal lands or acquire leases or interests in certain minerals on on-shore federal lands, such as coal or oil. Non-U.S. citizens may own a 100 percent interest in a domestic corporation that acquires a right-of-way for oil or gas pipelines across on-shore federal lands, or that acquires a lease to develop mineral resources on on-shore federal lands, unless the foreign investor's home country denies similar or like privileges for the mineral or access in question to U.S. citizens or corporations, as compared with the privileges it accords to its own citizens or corporations or to the citizens or corporations of other countries (30 U.S.C. §§ 181, 185(a)). Nationalization is not considered to be denial of similar or like privileges. Foreign citizens, or corporations controlled by them, are restricted from obtaining access to federal leases on Naval Petroleum Reserves if the laws, customs, or regulations of their country deny the privilege of leasing public lands to citizens or corporations of the United States (10 U.S.C. § 7435).

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4)

Level of Government: Central

Measures: 22 U.S.C. §§ 2194 and 2198(c)

Description: Investment

The Overseas Private Investment Corporation insurance and loan guarantees are not available to certain aliens, foreign enterprises, or foreign-controlled domestic enterprises.

Sector: Air Transportation

Obligations Concerned: National Treatment (Article10.3) Most-Favored-Nation Treatment (Article 10.4) Senior Management and Boards of Directors (Article 10.10)

Level of Government: Central

Measures: 49 U.S.C. Subtitle VII, Aviation Programs 14 C.F.R. Part 297 (foreign freight forwarders); 14 C.F.R. Part 380, Subpart E (registration of foreign (passenger) charter operators)

Description: Investment

Only air carriers that are "citizens of the United States" may operate aircraft in domestic air service (cabotage) and may provide international scheduled and non-scheduled air service as U.S. air carriers. U.S. citizens also have blanket authority to engage in indirect air transportation activities (air freight forwarding and passenger charter activities other than as actual operators of the aircraft). In order to conduct such activities, non-U.S. citizens must obtain authority from the Department of Transportation. Applications for such authority may be rejected for reasons relating to the failure of effective reciprocity, or if the Department of Transportation finds that it is in the public interest to do so. Under 49 U.S.C. § 40102(a)(15), a citizen of the United States means an individual who is a U.S. citizen; a partnership in which each member is a U.S. citizen; or a U.S. corporation of which the president and at least two-thirds of the board of directors and other managing officers are U.S. citizens, which is under the actual control of U.S. citizens, and in which at least seventy-five percent of the voting interest in the corporation is owned or controlled by U.S. citizens.

Sector: Air Transportation

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5) Senior Management and Boards of Directors (Article 10.10)

Level of Government: Central

Measures: 49 U.S.C. Subtitle VII, Aviation Programs 49 U.S.C. § 41703 14 C.F.R. Part 375

Description: Cross-Border Services

1. Authorization from the Department of Transportation is required for the provision of specialty air services in the territory of the United States.*

Investment

2. "Foreign civil aircraft" require authority from the Department of Transportation to conduct specialty air services in the territory of the United States. In determining whether to grant a particular application, the Department will consider, among other factors, the extent to which the country of the applicant's nationality accords U.S. civil aircraft operators effective reciprocity. "Foreign civil aircraft" are aircraft of foreign registry or aircraft of U.S. registry that are owned, controlled, or operated by persons who are not citizens or permanent residents of the United States (14 C.F.R. § 375.1). Under 49 U.S.C. § 40102(a)(15), a citizen of the United States means an individual who is a U.S. citizen; a partnership in which each member is a U.S. citizen; or a U.S. corporation of which the president and at least two-thirds of the board of directors and other managing officers are U.S. citizens, which is under the actual control of U.S. citizens, and in which at least seventy-five percent of the voting interest in the corporation is owned or controlled by U.S. citizens.

*A person of Peru will be able to obtain such an authorization given Peru's acceptance of the U.S. definition of specialty air services in Chapter Eleven (Cross-Border Trade in Services).

Sector: Transportation Services – Customs Brokers

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Local Presence (Article 11.5) Level of Government: Central Measures: 19 U.S.C. § 1641(b)

Description: Cross-Border Services and Investment

A customs broker's license is required to conduct customs business on behalf of another person. Only U.S. citizens may obtain such a license. A corporation, association, or partnership established under the law of any state may receive a customs broker's license if at least one officer of the corporation or association, or one member of the partnership, holds a valid customs broker's license.

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4) Level of Government: Central Measures: Securities Act of 1933, 15 U.S.C. §§ 77C(b), 77f, 77g, 77h, 77j, and 77s(a) 17 C.F.R. §§ 230.251 and 230.405 Securities Exchange Act of 1934, 15 U.S.C. §§ 78l, 78m, 78o(d), and 78w(a) 17 C.F.R. § 240.12b-2

Description: Investment

Foreign firms, except for certain Canadian issuers, may not use the small business registration forms under the Securities Act of 1933 to register public offerings of securities or the small business registration forms under the Securities Exchange Act of 1934 to register a class of securities or file annual reports.

Sector: Communications – Radiocommunications

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: 47 U.S.C. § 310 Foreign Participation Order 12 FCC Rcd 23891 (1997) Description: Investment The United States reserves the right to restrict ownership of radio licenses in accordance with the above statutory and regulatory provisions. Radiocommunications consists of all communications by radio, including broadcasting.

Sector: Professional Services – Patent Attorneys, Patent Agents, and Other Practice before the Patent and Trademark Office

Obligations Concerned: National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Local Presence (Article 11.5)

Level of Government: Central

Measures: 35 U.S.C. Chapter 3 (practice before the U.S. Patent and Trademark Office) 37 C.F.R. Part 10 (representation of others before the U.S. Patent and Trademark Office)

Description: Cross-Border Services

As a condition to be registered to practice for others before the U.S. Patent and Trademark Office (USPTO): (a) a patent attorney must be a U.S. citizen or an alien lawfully residing in the United States (37 C.F.R. § 10.6(a)); (b) a patent agent must be a U.S. citizen, an alien lawfully residing in the United States, or a non-resident who is registered to practice in a country that permits patent agents registered to practice before the USPTO to practice in that country; the latter is permitted to practice for the limited purpose of presenting and prosecuting patent applications of applicants located in the country in which he or she resides (37 C.F.R. § 10.6(c)); and (c) a practitioner in trademark and non-patent cases must be an attorney licensed in the United States, a "grandfathered" agent, an attorney licensed to practice in a country that accords equivalent treatment to attorneys licensed in the United States, or an agent registered to practice in such a country; the latter two are permitted to practice for the limited purpose of representing parties located in the country in which he or she resides (37 C.F.R. § 10.14(a)- (c)).

Sector: All Sectors

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)

Level of Government: Regional

Measures: All existing non-conforming measures of all states of the United States, the District of Columbia, and Puerto Rico

Description: Cross-Border Services and Investment

Annex I. Schedule of Peru

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Constitución Política del Perú (1993), Artículo 71. Decreto Legislativo N° 757, Diario Oficial "El Peruano" del 13 de noviembre de 1991, Ley Marco para el Crecimiento de la Inversión Privada, Artículo 13.

Description: Investment

No foreign national, enterprise organized under foreign law or enterprise organized under Peruvian law and owned in whole or part, directly or indirectly, by foreign nationals may acquire or own by any title, directly or indirectly, land or water (including a mine, forest land, or energy sources) located within 50 kilometers of the Peruvian border. Exceptions may be authorized by Supreme Decree approved by the Council of Ministers in cases of expressly declared public necessity. (1)

(1) For example, authorizations have been granted in the mining sector.

Sector: Free-to-Air Radio Communications Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Most Favored Nation Treatment (Article 10.4) Local Presence (Article 11.5)

Level of Government: Central

Measures: Ley Nº 28278, Diario Oficial "El Peruano" del 16 de julio de 2004, Ley de Radio y Televisión, Artículo 24. Decreto Supremo N° 005-2005-MTC, Diario Oficial "El Peruano" del 15 de febrero de 2005, Reglamento de la Ley de Radio y Televisión, Artículo 20.

Description: Investment and Cross-Border Trade in Services

Only Peruvian nationals or juridical persons organized under Peruvian law and domiciled in Peru may be authorized or licensed to offer free-to-air radio communications. Foreign nationals may not own more than 40 percent of the total shares or equity interest in such a juridical person and must be owners or share-holders or hold an equity interest in a radio or television broadcast enterprise in their country of origin. No foreign national may receive or hold an authorization or a

license directly or through a sole proprietorship. If a foreign national is, directly or indirectly, a shareholder, partner, or associate in a juridical person, that juridical person may not hold a broadcasting authorization in a zone bordering that foreign national's country of origin, except in a case of public necessity authorized by the Council of Ministers. This restriction does not apply to juridical persons with foreign equity which have two or more current authorizations, as long as they are of the same frequency band.

Sector: Audio-Visual Services

Obligations Concerned: National Treatment (Article 11.2) Performance Requirements (Article 10.9)

Level of Government: Central

Measures: Ley Nº 28278, Diario Oficial "El Peruano" del 16 de julio de 2004, Ley de Radio y Televisión, Octava Disposición Complementaria y Final.

Description: Investment and Cross-Border Trade in Services

At least 30 percent, on average, of the total weekly programs by free-to-air television broadcasters between the hours of 5:00 and 24:00 must be produced in Peru. Annex I-Peru-3 Sector: Notary Services Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Market Access (Article 11.4) Level of Government: Central Measures: Decreto Ley N° 26002, Diario Oficial El Peruano del 27 de Diciembre de 1992, Ley del Notariado, Artículos 5 (modificado por Ley N° 26741) y Artículo 10 (modificado por Ley N° 27094).

Description: Investment and Cross-Border Trade in Services

Only a Peruvian national by birth may supply notary services. The number of notary positions is limited as follows: (a) 200 for the capital; (b) 40 for each department capital; and (c) 20 for each provincial capital (including the Constitutional Province of Callao).

Sector: Architecture Services

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Market Access (Article 11.4)

Level of Government: Central

Measures: Ley Nº 14085, Diario Oficial "El Peruano" del 30 de junio de 1962, Ley de Creación del Colegio de Arquitectos del Perú. Ley Nº 16053, Diario Oficial "El Peruano" del 14 de febrero de 1966, Ley del Ejercicio Profesional, Autoriza a los Colegios de Arquitectos e Ingenieros del Perú para supervisar a los profesionales de Ingeniería y Arquitectura de la República, Artículo 1. Acuerdo del Consejo de Arquitectos, del 06 de octubre de 1987.

Description: Investment and Cross-Border Trade in Services

To practice as an architect in Peru, an individual must join the appropriate Colegio de Arquitectos and pay a fee in accordance with the following schedule: (a) US$250 for a Peruvian national with a degree from a Peruvian university; (b) US$400 for a Peruvian national with a degree from a foreign university; or (c) US$3,000 for a foreign national with a degree from a foreign university. Also, to obtain temporary registration, nonresident foreign architects must have a contract of association with a Peruvian architect residing in Peru.

Sector: Security Services Obligations Concerned: National Treatment (Article 11.2) Senior Management and Boards of Directors (Article 10.10)

Level of Government: Central

Measures: Decreto Supremo N° 005-94-IN, Diario Oficial "El Peruano" del 12 de mayo de 1994, Reglamento de Servicios de Seguridad Privada, Artículos 81 y 83.

Description: Investment and Cross-Border Trade in Services

A security watchman must be a Peruvian national by birth. A senior manager of an enterprise that supplies security services must be a Peruvian national by birth and be a resident of Peru.

Sector: Bullfighting

Obligations Concerned: National Treatment (Article 11.2) Level of Government: Central Measures: Ley N° 28131, Diario Oficial "El Peruano" del 18 de diciembre de 2003, Ley del Artista, Intérprete y Ejecutante, Artículo 28.

Description: Cross-Border Trade in Services

At least one bullfighter of Peruvian nationality must participate in any bullfighting event. At least one apprentice bullfighter of Peruvian nationality must participate in fights involving young bulls.

Sector: Audio-Visual Services

Obligations Concerned: National Treatment (Article 11.2) Performance Requirements (Article 10.9) Level of Government: Central Measures: Ley Nº 28131, Diario Oficial “El Peruano” del 18 de diciembre de 2003, Ley del Artista, Intérprete y Ejecutante, Artículos 25 y 45.

Description: Investment and Cross-Border Trade in Services

A free-to-air radio communications enterprise must dedicate at least ten percent of daily programming to folklore, national music, and series or programs produced in Peru on the history, literature, culture, or current issues in Peru. For greater certainty, nothing in Chapter 11 (Cross-Border Trade in Services) other than Article 11.2 (National Treatment) prohibits Peru from maintaining this requirement.

Sector: Customs Warehouses Services

Obligations Concerned: Local Presence (Article 11.5)

Level of Government: Central

Measures: Decreto Supremo Nº 08-95-EF, Diario Oficial “El Peruano” del 5 de febrero de 1995, Aprueban el Reglamento de Almacenes Aduaneros, Artículo 7.

Description: Cross-Border Trade in Services

Only natural or juridical persons domiciled in Peru may apply for an authorization to operate a customs warehouse.

Sector: Air Transport Specialty Air Services

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Local Presence (Article 11.5) Senior Management and Boards of Directors (Article 10.10)

Level of Government: Central

Measures: Ley N° 27261, Diario Oficial “El Peruano” del 10 de mayo del 2000, Ley de Aeronáutica Civil, Artículo 79. Decreto Supremo N° 050-2001-MTC, Diario Oficial “El Peruano” del 26 de diciembre de 2001, Reglamento de la Ley de Aeronáutica Civil, Artículos 159, 160 y VI Disposición Complementaria.

Description: Investment and Cross-Border Trade in Services

National Commercial Aviation Service is reserved to a Peruvian natural or juridical person. National Commercial Aviation Service includes specialty air services. For purposes of this entry, a Peruvian juridical person is an enterprise that fulfils the following requirements: (a) is constituted under Peruvian law, specifies commercial aviation as its corporate purpose, is domiciled in Peru, and has its principal activities and administration located in Peru; (b) at least half plus one of the directors, managers ,and persons who control or manage the enterprise are Peruvian nationals or have permanent domicile or are normally resident in Peru; and (c) at least 51 percent of the capital must be owned by Peruvian nationals and be under the real and effective control of Peruvian shareholders or partners permanently domiciled in Peru. (This limitation shall not apply to the enterprises constituted under law Nº 24882, which may maintain the ownership percentages set in such law). Six months after the date of authorization of the enterprise to provide commercial air transportation services, foreign nationals or foreign citizens may own up to 70 percent of the capital of the enterprise.

Sector: Specialty Air Services

Obligations Concerned: National Treatment (Article 11.2)

Level of Government: Central Measures: Ley N° 27261, Diario Oficial “El Peruano” del 10 de mayo de 2000, Ley de Aeronáutica Civil, Artículo 75.

Description: Cross-Border Trade in Services

Only Peruvian nationals may perform aeronautical functions on board of national commercial aviation suppliers’ aircraft (“explotadores nacionales”), which are suppliers that hold an Operating Permit or Flight Permit. For greater certainty, an

individual is not a senior manager for purposes of Article 10.10 (Senior Management and Boards of Directors) if the individual's sole duties are as an aircraft pilot or captain.

Sector: Merchant Marine

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Market Access (Article 11.4) Local Presence (Article 11.5) Senior Management and Boards of Directors (Article 10.10)

Level of Government Central

Measures: Ley Nº 28583, Ley de Reactivación y Promoción de la Marina Mercante Nacional, Diario Oficial "EL Peruano" del 22 de julio de 2005, Artículos 4.1, 6.1, 7.1, 7.2., 7.4 y 13.6. Decreto Supremo Nº 028 DE/MGP, Diario Oficial "El Peruano" de 25 de mayo de 2001, Reglamento de la Ley Nº 26620, Artículo I-010106, literal a).

Description: Investment and Cross-Border Trade in Services

1. Only a "National shipowner" or "National Ship Enterprise" may supply maritime cabotage services. (2) A "National shipowner" or "National Ship Enterprise" means a Peruvian national or juridical person organized under Peruvian law, with its principal domicile and real and effective headquarters in Peru, whose business is to provide water transportation services for cabotage or international traffic and which is the owner or lessee under a financial lease or a bareboat charter, with an obligatory purchase option, of at least one Peruvian flag merchant ship and that has obtained the relevant Operation Permit from the General Aquatic Transport Directorate.

2. At least 51 percent of the subscribed and paid-in capital must be owned by Peruvian citizens.

3. The chairman of the board of directors, a majority of the directors, and the General Manager of a National Ship Enterprise must be nationals and resident in Peru.

4. The captain of the Peruvian-flagged vessels must be a Peruvian national. In cases where there is no duly qualified Peruvian captain, a foreign national may be authorized to serve as captain.

5. Only a Peruvian national may be a licensed harbor pilot.

6. Cabotage is exclusively reserved to Peruvian flagged vessels owned by a National Shipowner or National Ship Enterprise or leased under a financial lease or a bareboat charter, with an obligatory purchase option, except that:

(i) Twenty-five per cent of the transport of hydrocarbons in national waters is reserved for the boats of the Peruvian Navy; and

(ii) Foreign-flagged vessels may be used by a National Shipowner or National Ship Enterprise for a period of no more than six months for water transportation exclusively between Peruvian ports or cabotage when such an entity does not own its own vessels or lease vessels.

(2) For greater certainty, maritime cabotage services includes transport by lakes and rivers.

Sector: Maritime Transport and Related Services

Obligations Concerned: National Treatment (Article 11.2) Local Presence (Article 11.5)

Level of Government: Central

Measures: Decreto Supremo Nº 056-2000-MTC, Diario Oficial "El Peruano" del 31 de diciembre de 2000, Disponen que servicios de transporte marítimo y conexos realizados en bahías y áreas portuarias deberán ser prestados por personas naturales y jurídicas autorizadas, con embarcaciones y artefactos de bandera nacional, Artículo 1. Resolución Ministerial Nº 259-2003-MTC/02, Diario Oficial "El Peruano" del 4 de abril de 2003, Aprueban Reglamento de los servicios de Transporte Acuático y Conexos Prestados en Tráfico de Bahía y Areas Portuarias, Artículos 5 y 7.

Description: Cross-Border Trade in Services

The following water transport and related services supplied in bay and port areas must be supplied by natural persons domiciled in Peru, and juridical persons constituted and domiciled in Peru, properly authorized with Peruvian flag vessels and equipment: Fuel replenishment services; Mooring and unmooring services; Diving services; Victualing services; Dredging services; Harbor pilotage services; Waste collection services; Tug boat services; and Transport of persons.

Sector: Maritime Tourist Transport

Obligations Concerned: Local Presence (Article 11.5)

Level of Government: Central

Measures: Resolución Suprema Nº 011-78-TC-DS, 6 de febrero de 1978, Reglamento de Empresas de Transporte Turístico, Artículo 13.

Description: Cross-Border Trade in Services

Only natural persons domiciled in Peru or juridical persons constituted and domiciled in Peru may provide tourist water transportation services.

Sector: Port Services

Obligations Concerned: National Treatment (Article 11.2)

Level of Government: Central

Measures: Ley Nº 27866, Diario Oficial “El Peruano” del 16 de noviembre de 2002, Ley del Trabajo Portuario, Artículo 3.

Description: Cross-Border Trade in Services

Only a Peruvian national may register in the Registry of Port Workers. For greater certainty, measures relating to landside aspects of port activities are subject to the application of Article 22.2 (Essential Security).

Sector: Land Transport of Passengers

Obligations Concerned: Market Access (Article 11.4)

Level of Government: Central

Measures: Decreto Supremo N° 032-2002-MTC, Diario Oficial “El Peruano” del 12 de julio de 2002, Modifican artículos del Reglamento Nacional de Administración de Transporte y suspenden incremento de flota vehicular para el Servicio Público de Transporte Nacional de Pasajeros, Artículo 2. Decreto Supremo N° 035-2002-MTC, Diario Oficial “El Peruano” del 01 de julio de 2003, Amplían suspensión de otorgamiento de nuevas concesiones a que se refiere el Decreto Supremo N° 032-2002-MTC y modifican artículo del Reglamento Nacional de Administración de Transportes, Artículo 1. Decreto Supremo N° 009-2004-MTC, Diario Oficial "El Peruano" del 3 de marzo de 2004, Reglamento Nacional de administración de transporte terrestre, Décimo Cuarta Disposición Transitoria. Decreto Supremo N° 038-2004-MTC, Diario Oficial “El Peruano” del 13 de noviembre de 2004, Modifican artículos y anexos I y II del Reglamento Nacional de Administración de Transportes, Artículo 5.

Description: Cross-Border Trade in Services

The granting of new concessions for inter-provincial passenger transport along specific routes is suspended.

Sector: Land Transport

Obligations Concerned: Local Presence (Article 11.5)

Level of Government: Central

Measures: Decreto Supremo N° 009-2004-MTC, Diario Oficial “El Peruano” del 27 de febrero de 2004, Reglamento Nacional de Administración de Transportes, Artículos 47 y 48.

Description: Cross-Border Trade in Services

A supplier of land transport services in Peru must certify in writing that it maintains ground terminals, offices, route stations, stops, and administrative offices in the territory of Peru, according to the corresponding transport services. The transport enterprise must have its own installations, or those of third parties, properly maintained for the management of the enterprise, which will constitute its legal domicile, where the competent authority can conduct the inspections and verifications it deems necessary.

Sector: Archaeological Services

Obligations Concerned: National Treatment (Article 11.2)

Level of Government: Central

Measures: Resolución Suprema Nº 004-2000-ED, Diario Oficial "El Peruano" del 25 de Enero de 2000, Reglamento de Investigaciones Arqueológicas, Artículo 30.

Description Cross-Border Trade in Services

Archaeological research projects headed by foreign archaeologists must employ a Peruvian archaeologist registered with the National Registry of Archaeologists as scientific co-director or sub-director of the project. The co-director and sub-director shall participate in all aspects of the project in the field and in the office.

Sector: Services Related to Energy Services

Obligations Concerned: National Treatment (Article 11.2) Local Presence (Article 11.5)

Level of Government: Central

Measures: Ley Nº 26221, Diario Oficial "El Peruano" del 19 de agosto de 1993, Ley General de Hidrocarburos, Artículo 15.

Description: Cross-Border Trade in Services

In order to enter into an exploration contract in Peru, foreign enterprises must establish a branch or organize under the “Ley General de Sociedades”, be domiciled in Lima, and appoint a Peruvian national as an executive agent. Foreign nationals must register in the Public Registry and provide a power of attorney to a Peruvian national resident in Lima, Peru.

Annex II. Explanatory Notes

1. The Schedule of a Party to this Annex sets out, pursuant to Articles 10.13 (Non-Conforming Measures) and 11.6 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which that Party may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 10.3 or 11.2 (National Treatment);

(b) Article 10.4 or 11.3 (Most-Favored-Nation Treatment);

(c) Article 11.5 (Local Presence);

(d) Article 10.9 (Performance Requirements);

(e) Article 10.10 (Senior Management and Boards of Directors); or

(f) Article 11.4 (Market Access).

2. Each Schedule entry sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Obligations Concerned specifies the article(s) referred to in paragraph 1 that, pursuant to Articles 10.13.2 (Non-Conforming Measures) and 11.6.2 (NonConforming Measures), do not apply to the sectors, subsectors, or activities scheduled in the entry;

(c) Description sets out the scope of the sectors, subsectors, or activities covered by the entry; and

(d) Existing Measures identifies, for transparency purposes, existing measures that apply to the sectors, subsectors, or activities covered by the entry.

3. In accordance with Article 10.13.2 (Non-Conforming Measures) and 11.6.2 (Non-Conforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors, and activities identified in the Description element of that entry.

Annex II. Schedule of the United States

Sector: Communications

Obligations Concerned: Most-Favored-Nation Treatment (Articles 10.3 and 11.2)

Description: Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure that accords differential treatment to persons of other countries due to application of reciprocity measures or through international agreements involving sharing of the radio spectrum, guaranteeing market access, or national treatment with respect to the one-way satellite transmission of direct-to-home (DTH) and direct broadcasting satellite (DBS) television services and digital audio services.

Sector: Social Services

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)

Description: Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

Sector: Minority Affairs

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)

Description: Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities, including corporations organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act.

Existing Measures: Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601 et seq.

Sector: Transportation

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Boards of Directors (Article 10.10)

Description: Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure relating to the provision of maritime transportation services and the operation of U.S.-flagged vessels, including the following: (a) requirements for investment in, ownership and control of, and operation of vessels and other marine structures, including drill rigs, in maritime cabotage services, including maritime cabotage services performed in the domestic offshore trades, the coastwise trades, U.S. territorial waters, waters above the continental shelf, and in the inland waterways; (b) requirements for investment in, ownership and control of, and operation of U.S.-flagged vessels in foreign trades; (c) requirements for investment in, ownership or control of, and operation of vessels engaged in fishing and related activities in U.S. territorial waters and the Exclusive Economic Zone; (d) requirements related to documenting a vessel under the U.S. flag; (e) promotional programs, including tax benefits, available for shipowners, operators, and vessels meeting certain requirements; (f) certification, licensing, and citizenship requirements for crew members on U.S.-flagged vessels; (g) manning requirements for U.S.-flagged vessels; (h) all matters under the jurisdiction of the Federal Maritime Commission; (i) negotiation and implementation of bilateral and other international maritime agreements and understandings; (j) limitations on longshore work performed by crew members; (k) tonnage duties and light money assessments for entering U.S. waters; and (l) certification, licensing, and citizenship requirements for pilots performing pilotage services in U.S. territorial waters. The following activities are not included in this reservation. However, the treatment in (b) is conditional upon obtaining comparable market access in these sectors from Peru: (a) vessel construction and repair; and (b) landside aspects of port activities, including operation and maintenance of docks; loading and unloading of vessels directly to or from land; marine cargo handling; operation and maintenance of piers; ship cleaning; stevedoring; transfer of cargo between vessels and trucks, trains, pipelines, and wharves; waterfront terminal operations; boat cleaning; canal operation; dismantling of vessels; operation of marine railways for drydocking; marine surveyors, except cargo; marine wrecking of vessels for scrap; and ship classification societies. For greater certainty, measures relating to the landside aspects of port activities are subject to the application of Article 22.2 (Essential Security).

Existing Measures: Merchant Marine Act of 1920, §§ 19 and 27, 46 U.S.C. App. § 876 and §§ 883 et seq. Jones Act Waiver Statute, 64 Stat 1120, 46 U.S.C. App., note preceding Section 1 Shipping Act of 1916, 46 U.S.C. App. §§ 802 and 808 Merchant Marine Act of 1936, 46 U.S.C. App. §§ 1151 et seq., 1160-61, 1171 et seq., 1241(b), 1241-1, 1244, and 1271 et seq. Merchant Ship Sales Act of 1946, 50 U.S.C. App. § 1738 46 U.S.C. App. §§ 121, 292, and 316 46 U.S.C. §§ 12101 et seq. and 31301 et seq. 46 U.S.C. §§ 8904 and 31328(2) Passenger Vessel Act, 46 U.S.C. App. § 289 42 U.S.C. §§ 9601 et seq.; 33 U.S.C. §§ 2701 et seq.; 33 U.S.C. §§ 1251 et seq. 46 U.S.C. §§ 3301 et seq., 3701 et seq., 8103, and 12107(b) Shipping Act of 1984, 46 U.S.C. App. §§ 1708 and 1712 The Foreign Shipping Practices Act of 1988, 46 U.S.C. App. § 1710a Merchant Marine Act, 1920, 46 U.S.C. App. §§ 861 et seq. Shipping Act of 1984, 46 U.S.C. App. §§ 1701 et seq. Alaska North Slope, 104 Pub. L. 58; 109 Stat. 557 Longshore restrictions and reciprocity, 8 U.S.C. §§ 1101 et seq. Vessel escort provisions, Section 1119 of Pub. L. 106-554, as amended Nicholson Act, 46 U.S.C. App. § 251 Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987, 46 U.S.C. § 2101 and 46 U.S.C. § 12108 43 U.S.C. § 1841 22 U.S.C. § 1980 Intercoastal Shipping Act, 46 U.S.C. App. § 843 46 U.S.C. § 9302, 46 U.S.C. § 8502; Agreement Governing the Operation of Pilotage on the Great Lakes, Exchange of Notes at Ottawa, August 23, 1978, and March 29, 1979, TIAS 9445 Magnuson Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 et seq. 19 U.S.C. § 1466 North Pacific Anadramous Stocks Convention Act of 1972, P.L. 102-587; Oceans Act of 1992, Title VII Tuna Convention Act, 16 U.S.C. §§ 951 et seq. South Pacific Tuna Act of 1988, 16 U.S.C. §§ 973 et seq. Northern Pacific Halibut Act of 1982, 16 U.S.C. §§ 773 et seq. Atlantic Tunas Convention Act, 16 U.S.C. §§ 971 et seq. Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. §§ 2431 et seq. Pacific Salmon Treaty Act of 1985, 16 U.S.C. §§ 3631 et seq. American Fisheries Act, 46 U.S.C. § 12102(c) and 46 U.S.C. § 31322(a)

Sector: All

Obligations Concerned: Market Access (Article 11.4)

Description: Cross-Border Services

The United States reserves the right to adopt or maintain any measure that is not inconsistent with the United States' obligations under Article XVI of the General Agreement on Trade in Services.

Sector: All Obligations

Concerned: Most-Favored-Nation Treatment (Articles 10.4 and 11.3)

Description: Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement. The United States reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving: (a) aviation; (b) fisheries; or (c) maritime matters, including salvage.

Annex II. Schedule of Peru

Sector: All Sectors

Obligations Concerned: Most-Favored-Nation Treatment (Articles 10.4 and 11.3)

Description Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement. Peru reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving: (a) aviation; (b) fisheries; or (c) maritime matters,(1) including salvage.

(1) For greater certainty, maritime matters include transport by lakes and rivers.

Sector: Indigenous Communities, Peasant, Native, and Minority Affairs

Obligations Concerned National Treatment (Articles 10.3, 11.2) Most Favored Nation Treatment (Articles 10.4 and 11.3) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Board of Directors (Article 10.10)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities and ethnic groups. For purposes of this entry: ethnic groups means indigenous and native communities; minorities includes peasant (campesinos) communities.

Sector: Fishing

Obligations Concerned National Treatment (Article 10.3) Most Favored Nation Treatment (Article 10.4) Performance Requirements (Article 10.9) Description Investment Peru reserves the right to adopt or maintain any measure relating to artisanal fishing.

Sector: Cultural Industries

Obligations Concerned: Most-Favored-Nation Treatment (Articles 10.4 and 11.3)

Description: Investment and Cross-Border Trade in Services

For purposes of this entry, the term "cultural industries" means: (a) Publication, distribution, or sale of books, magazines, periodical publications, or printed or electronic newspapers, excluding the printing and typesetting of any of the foregoing; (b) Production, distribution, sale, or display of recordings of movies or videos; (c) Production, distribution, sale, or display of music recordings in audio or video format; (d) Production and presentation of theater arts; (2) (e) Production and exhibition of visual arts; (f) Production, distribution, or sale of printed music scores or scores readable by machines; (g) Design, production, distribution and sale of handicrafts; or (h) Radiobroadcasts aimed at the public in general, as well as all radio, television, and cable television-related activities, satellite programming services, and broadcasting networks. Peru reserves the right to adopt or maintain any measure giving preferential treatment to persons of other countries pursuant to any existing or future bilateral or multilateral international agreement between Peru and any such country containing specific commitments regarding cultural cooperation or co-production by cultural industries, including audio-visual cooperation agreements.

(2) Theater arts means live performances or presentations such as drama, dance, or music.

For greater certainty, Articles 10.3 and 10.4 and Chapter Eleven do not apply to government support (3) for the promotion of cultural industries.

(3) For purposes of this entry, "government support" means tax incentives, incentives on mandatory contributions, government grants, government supported loans, guarantees, or trusts, or insurance provided by a government, irrespective of whether a private entity is wholly or partially responsible for its management. However, a measure is not covered by this entry to the extent that it is inconsistent with Article 22.3 (Taxation).

Sector: Handicraft Industries

Obligations Concerned: National Treatment (Article 11.2) Performance Requirements (Article 10.9)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure relating to the design, distribution, retailing, or exhibition of handicrafts that are identified as Peruvian handicrafts. Performance requirements shall in all cases be consistent with the WTO Agreement on Trade-Related Investment Measures.

Sector: Audio-Visual Industry

Obligations Concerned: National Treatment (Article 11.2) Performance Requirements (Article 10.9)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure whereby a specified percentage (up to 20 percent) of the total cinematographic works shown on an annual basis in cinemas or exhibition rooms in Peru consist of Peruvian cinematographic works. In establishing such percentage, Peru shall take into account factors including the national cinematographic production, the existing exhibition infrastructure in the country and attendance. For greater certainty, this entry does not apply to advertising.

Sectors: Jewelry Design Theater arts Visual arts Music Publishing

Obligations Concerned: National Treatment (Article 11.2) Performance Requirements (Article 10.9)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure conditioning the receipt or continued receipt of government support (4) for the development and production of jewelry design, theater arts, visual arts, music, and publishing on the recipient achieving a given level or percentage of domestic creative content. For greater certainty, this entry does not apply to advertising.

(4) For purposes of this entry, "government support" means tax incentives, incentives on mandatory contributions, government grants, government supported loans, guarantees, or trusts, or insurance provided by a government, irrespective of whether a private entity is wholly or partially responsible for its management. However, a measure is not covered by this entry to the extent that it is inconsistent with Article 22.3 (Taxation).

Sector: Audio-visual industry

Publishing Music

Obligations Concerned: National Treatment (Articles 10.3 and 11.2) Most-Favored-Nation Treatment (Articles 10.4 and 11.3)

Description: Investment and Cross-Border Trade in Services

Peru may adopt or maintain any measure that affords a person of another Party the treatment that is afforded by that other Party to Peruvian persons in the audiovisual, publishing, and music sectors.

Sector: Social Services

Obligations Concerned National Treatment (Articles 10.3, 11.2) Most-Favored-Nation Treatment (Articles 10.4, 11.3) Local Presence (Article 11.5) Performance Requirements (Article 10.9) Senior Management and Board of Directors (Article 10.10)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent that they are social services established or maintained for a public purpose: income security and insurance, social security, social welfare, public education, public training, health, and childcare.

Sector: Public Supply of Potable Water

Obligations Concerned: Market Access (11.4) Local Presence (11.5)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure in relation to the public supply of potable water. For greater certainty, nothing in this reservation shall affect the ability of a foreign enterprise to supply bottled water.

Sector: Public Sewage Services

Obligations Concerned: Market Access (11.4) Local Presence (11.5)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure in relation to public sewage services.