OPTIMIZATION PROTOCOL OF THE FREE TRADE AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE REPUBLIC OF PERU

The Government of the People's Republic of China and the Government of the Republic of Peru (hereinafter referred to as the "Parties"),

REAFFIRMING their comprehensive strategic partnership and strong bilateral economic and trade relationship;

RECALLING the *Free Trade Agreement between the Government of the People's Republic of China and the Government of the Republic of Peru* (hereinafter referred to as the "China-Peru FTA" or the "Agreement") done in Beijing on 28 April 2009 which entered into force on 1 March 2010;

RECALLING the *Memorandum of Understanding between the Ministry of Foreign Trade and Tourism of the Republic of Peru and the Ministry of Commerce of the People's Republic of China for the Optimization of China-Peru Free Trade Agreement* signed, during the state visit to Peru of the Chinese President, in Lima, on 21 November 2016;

RECALLING the *Memorandum of Understanding between the Ministry of Foreign Trade and Tourism of the Republic of Peru and the Ministry of Commerce of the People's Republic of China on Launching the Optimization Negotiation for China-Peru Free Trade Agreement* signed during the APEC Economic Leaders' meeting in Port Moresby, Papua New Guinea on 17 November 2018;

NOTING that Article 170 of the Agreement provides for the Free Trade Commission may convene the Parties to future negotiations to examine deepening the liberalization reached in different sectors covered by this Agreement;

DESIRING to maximize the benefits derived from the Agreement to deepen the economic relations between the Parties through fostering the liberalization and improvement of trade in services, temporary entry for business persons, investment, rules of origin, customs procedures and trade facilitation, sanitary and phytosanitary measures and intellectual property, also introducing the new thematic areas such as standards and conformity assessment cooperation, global supply chain, electronic commerce, competition policy and environment;

REAFFIRMING their commitment to a rules-based, transparent, non-discriminatory, open and inclusive multilateral trading system, and recognizing the positive role that bilateral and regional trade agreements can play in supporting the multilateral system;

SEEKING to incorporate into the China-Peru FTA, through this instrument, the agreements reached between the Parties relating to the expansion or amendment of the Agreement;

NOTING that Article 199 of the China-Peru FTA provides that the Parties may agree on any amendment to this Agreement;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Amendment of Chapter 3 (Rules of Origin and Operational Procedures Related to Origin) of the Agreement

Chapter 3 (Rules of Origin and Operational Procedures Related to Origin) of the Agreement shall be replaced by new Chapter 3 (Rules of Origin and Operational Procedures Related to Origin), as set out in **Appendix 1** to this Protocol.

ARTICLE 2

Amendment of Chapter 4 (Customs Procedures and Trade Facilitation) of the Agreement

Chapter 4 (Customs Procedures and Trade Facilitation) of the Agreement shall be replaced by new Chapter 4 (Customs Procedures and Trade Facilitation), as set out in **Appendix 2** to this Protocol.

ARTICLE 3

Amendment of Chapter 6 (Sanitary and Phytosanitary Measures) of the Agreement

Articles 86, 87 and 88 of Chapter 6 (Sanitary and Phytosanitary Measures) of the Agreement shall be replaced as set out in **Appendix 3** to this Protocol.

New Article 89 bis of Chapter 6 (Sanitary and Phytosanitary Measures) of the Agreement shall be added as set out in **Appendix 3** to this Protocol.

ARTICLE 4

Amendment of Chapter 8 (Trade in Services) of the Agreement

The main body of Chapter 8 (Trade in Services) of the Agreement shall be replaced by new Chapter 8 (Trade in Services), as set out in **Appendix 4** to this Protocol.

Annex 6 (Schedules of Specific Commitments) under Chapter 8 (Trade in Services) of China-Peru FTA is incorporated into and made part of the new Chapter 8, *mutatis mutandis*.

ARTICLE 5

Amendment of Chapter 9 (Temporary Entry for Business Persons) of the Agreement

New Article 117 bis of Chapter 9 (Temporary Entry for Business Persons) of the Agreement shall be added as set out in **Appendix 5** to this Protocol.

ARTICLE 6

Amendment of Chapter 10 (Investment) of the Agreement

Chapter 10 (Investment) of the Agreement shall be replaced by new Chapter 10 (Investment), as set out in **Appendix 6** to this Protocol.

ARTICLE 7

Amendment of Chapter 11 (Intellectual Property Rights) of the Agreement

Chapter 11 (Intellectual Property Rights) of the Agreement shall be replaced by new Chapter 11 (Intellectual Property Rights), as set out in **Appendix 7** to this Protocol.

ARTICLE 8

Additional Chapter 18 (Electronic Commerce)

The Agreement shall be amended by inserting a new Chapter 18 (Electronic Commerce), as set out in **Appendix 8** to this Protocol, after Chapter 17 (Final Provisions) of the Agreement.

ARTICLE 9

Additional Chapter 19 (Competition)

The Agreement shall be amended by inserting a new Chapter 19 (Competition), as set out in **Appendix 9** to this Protocol, after Chapter 18 (Electronic Commerce) of the Agreement.

ARTICLE 10

Additional Chapter 20 (Standards and Conformity Assessment Cooperation)

The Agreement shall be amended by inserting a new Chapter 20 (Standards and Conformity Assessment Cooperation), as set out in **Appendix 10** to this Protocol, after Chapter 19 (Competition) of the Agreement.

ARTICLE 11

Additional Chapter 21 (Global Supply Chain)

The Agreement shall be amended by inserting a new Chapter 21 (Global Supply Chain), as set out in **Appendix 11** to this Protocol, after Chapter 20 (Standards and Conformity Assessment Cooperation) of the Agreement.

ARTICLE 12

Additional Chapter 22 (Environment and Trade)

The Agreement shall be amended by inserting a new Chapter 22 (Environment and Trade), as set out in **Appendix 12** to this Protocol, after Chapter 21 (Global Supply Chain) of the Agreement.

ARTICLE 13

Additional Annex 13 (Subsequent Negotiations on Services)

The Agreement shall be amended by inserting a new Annex 13 (Subsequent Negotiations on Services), as set out in **Appendix 13** to this Protocol.

ARTICLE 14

Additional Annex 14 (Peru's Annex on Geographical Indications)

The Agreement shall be amended by inserting a new Annex 14 (Peru's Annex on Geographical Indications), as set out in **Appendix 14** to this Protocol.

ARTICLE 15

General Provisions

1. This Protocol shall enter into force 60 days after the date the Parties exchange written notifications through diplomatic channels certifying that they have completed

their respective legal requirements for its entry into force or after such other period as the Parties may agree in written notification through the same channel.

2. This Protocol and its Appendices shall form an integral part of the China-Peru FTA.

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

Done in Lima, Peru, this 14th day of November of two thousand twenty-four, in Chinese, Spanish and English languages, all texts being equally authentic. In the event of divergence, the English text shall prevail.

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA	**FOR THE GOVERNMENT OF THE REPUBLIC OF PERU**

APPENDIX 1

NEW CHAPTER 3 (RULES OF ORIGIN AND OPERATIONAL PROCEDURES RELATED TO ORIGIN)

CHAPTER 3

RULES OF ORIGIN AND OPERATIONAL PROCEDURES RELATED TO ORIGIN

Section A: Rules of Origin

Article 3.1: Definitions

For purposes of this Chapter:

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

authorized body means any body authorized under the domestic legislation of a Party to issue a Certificate of Origin;

FOB means the value of the good free on board, inclusive of the cost of transportation to the port or site of final shipment abroad, independent of the means of transportation;

CIF means the value of the good imported inclusive of the cost of insurance and freight up to the port or place of entry in the country of importation;

competent authority means:

(a) for Peru, the Ministry of Foreign Trade and Tourism, or its successor; and

(b) for China, the General Administration of Customs;

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

identical goods mean "identical goods", as defined in the Customs Valuation Agreement;

material means a good used in the production of another good, including any components, ingredients, raw materials, parts or pieces;

production means growing, raising, extracting, picking, gathering, mining, harvesting, fishing, trapping, hunting, manufacturing, processing or assembling a good; and

producer means a person who grows, raises, extracts, picks, gathers, mines, harvests, fishes, traps, hunts, manufactures, processes or assembles a good.

Article 3.2: Originating Goods

Unless otherwise indicated in this Chapter, and on the condition that a good meets all the other applicable requirements of this Chapter, the good shall be regarded as originating from a Party when:

(a) the good is wholly obtained or produced entirely in the territory of one or both Parties, within the meaning of Article 3.3, including where required under Annex 3-A;

(b) the good is produced in the territory of one or both Parties, exclusively from materials whose origin conforms to the provisions of this Chapter; or

(c) the good is produced in the territory of one or both Parties, using non-originating materials that conform to a change in tariff classification, a regional value content, a process requirement or other requirements specified in Annex 3-A.

Article 3.3: Wholly Obtained Goods

For the purpose of subparagraph (a) of Article 3.2, the following goods shall be regarded as wholly obtained or produced entirely in the territory of a Party:

(a) live animals, born and raised in Peru or China;

(b) goods obtained from live animals raised in Peru or China;

(c) goods obtained by hunting, trapping, fishing or aquaculture in Peru or China;

(d) fish, shellfish and other marine life taken from the sea beyond the territory of a Party in accordance with international law, by a vessel flying the flag of Peru or China;

(e) goods manufactured on board a factory ship flying the flag of Peru or China, exclusively from goods referred to in subparagraph (d);

(f) plants and plants products harvested, picked or gathered in Peru or China;

(g) mineral goods and other naturally occurring substances extracted from the soil, waters, seabed or beneath the seabed of Peru or China;

(h) goods other than fish, shellfish and other marine life taken or extracted by a Party from the waters, seabed or beneath the seabed outside Peru or China, provided that that Party has rights to exploit them, in accordance with international law;

(i) waste and scrap derived from:

(i) manufacturing operations conducted in Peru or China; or

(ii) used goods collected in Peru or China;

provided that such waste and scrap is fit only for the recovery of raw materials. For greater certainty, in this Chapter "collect" does not cover importation of used goods from a non-Party and subsequently compilation in China or Peru; and

(j) goods produced in Peru or China exclusively from goods specified in subparagraphs (a) to (i).

Article 3.4: Change in Tariff Classification

A change in tariff classification requires that the non-originating materials used in the production of the goods undergo a change in tariff classification as specified in Annex 3-A as a result of production processes performed in the territory of a Party.

Article 3.5: Regional Value Content (RVC)

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

$$\text{RVC} = \frac{\text{FOB} - \text{VNM}}{\text{FOB}} \text{ x } 100$$

where:

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

FOB: is the Free on Board value of the good; and

VNM: is the value of the non-originating materials.

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

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

(b) the earliest ascertained price paid or payable for the non-originating materials in the territory of the Party where the working or processing takes place. When the producer of a good acquires non-originating materials within that Party, the value of such materials shall not include freight, insurance, packing costs and any other costs incurred in transporting the material from the supplier's warehouse to the producer's location.

3. For greater certainty, the value of non-originating materials used to produce subsequent originating materials shall not be included in calculating the RVC of a good, pursuant to paragraph 1.

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

Article 3.6: Minimal Operations or Processes

1. Operations or processes which contribute minimally to the essential characteristics of the goods, either by themselves or in combination, are considered to be minimal operations or processes and do not confer origin, notwithstanding that the good or materials satisfies with the provisions of this Chapter. These include:

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

(b) breaking-up or assembly of consignments;

(c) packing, unpacking or repacking operations for retail sale purposes;

(d) slaughter of animals;

(e) simple assembly of parts of products to constitute a complete good or disassembly of products into parts;

(f) washing, cleaning or removal of dust, oxide, oil, paint or other coverings;

(g) ironing or pressing of textiles;

(h) simple painting and polishing operations;

(i) sharpening, simple grinding or simple cutting;

(j) sifting, screening, sorting, classifying, grading, matching (including the mere making-up of sets of articles);

(k) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;

(l) simple mixing of products, whether or not of different kinds; or

(m) placing in bottles, can, flasks, bags, cases or boxes.

2. Printing of marks, labels, logos and such distinguishing signs shall not be considered as an insufficient working or processing operation where the printed marks, labels, logos and such distinguishing signs are the goods to be exported under preferential tariff treatment.

3. Simple generally describes activities which need neither special skills nor special machines, apparatus or equipment especially produced or installed for carrying out the activity. Simple mixing, generally describes activities which need neither special skills or machines apparatus or equipment especially produced or installed for carrying out the activity. However, simple mixing does not include chemical reaction.

Article 3.7: Accumulation

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

Article 3.8: De Minimis

1. A good that does not meet the change in tariff classification, pursuant to Annex 3-A, shall be considered to be originating if the value of all non-originating materials used in its production not meeting the change in tariff classification does not exceed 10% of the value of the good, determined pursuant to Article 3.5. Additionally, the good shall satisfy all other applicable requirements in this Chapter.

2. Where the good mentioned in paragraph 1 is also subject to a regional value content requirement, the value of all non-originating materials shall be considered for calculating the regional value content of the good. Additionally, the good shall satisfy all other applicable requirements in this Chapter.

Article 3.9: Fungible Goods or Materials

1. In determining whether a good is an originating good, any fungible goods or materials shall be distinguished by:

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

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

2. 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 3.10: Sets

Sets, as defined in General Rule 3 of the HS, shall be regarded as originating when all the components of the sets are originating. Nevertheless, when a set is composed of originating and non-originating goods, the set as a whole shall be regarded as originating, provided that the value of the non-originating goods does not exceed 15% of the total value of the set, determined pursuant to Article 3.5.

Article 3.11: Accessories, Spare Parts and Tools

1. With regard to the change in tariff classification requirements, specified in Annex 3-A, accessories, spare parts, tools, and instructional and information materials presented with the good upon importation shall be disregarded in the determination of the origin of the good, provided that these are classified with and not invoiced separately from the good.

2. Where the good is subject to an RVC requirement, the value of the accessories, spare parts, tools, and instructional and information materials shall be taken into account as originating materials or non-originating materials, as the case may be, for calculating the RVC of the good, provided that these are classified with and not invoiced separately from the good.

3. This Article applies only where the quantities and values of said accessories spare parts, tools, and instructional and information materials are customary for the good.

Article 3.12: Packaging Materials and Containers for Retail Sale

1. Where the packaging materials and containers are classified with the good, the origin of the packaging materials and containers in which a good is packaged for retail sale, shall be disregarded in determining the origin of the good, provided that:

(a) the good is wholly obtained or entirely produced as defined in subparagraph (a) of Article 3.2;

(b) the good is produced exclusively from originating materials, as defined in subparagraph (b) of Article 3.2; or

(c) the good is subject to a change in tariff classification requirement set out in Annex 3-A.

2. Where the good is subject to a regional value content requirement, the value of the packaging materials and containers used for retail sale shall be taken into account when determining the origin of the good.

Article 3.13: Packing Materials and Containers for Shipment

The packing materials and containers used to protect a good during its transportation shall not be taken into account when determining the origin of the good.

Article 3.14: Neutral Elements

1. In order to determine whether a good is originating, the origin of the neutral elements defined in paragraph 2 shall not be taken into account.

2. Neutral elements mean articles used in the production of a good which are not physically incorporated into it, neither form part of it, including:

(a) fuel, energy, catalysts and solvents;

(b) equipment, devices, and supplies used for testing or inspecting the goods;

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

(d) tools, dies and moulds;

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

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

(g) any other 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.

Article 3.15: Direct Transport

1. In order for originating goods to maintain their originating status, the goods shall be transported directly between the territories of the Parties.

2. Notwithstanding paragraph 1, goods transported from the exporting Party to the importing Party through one or more non-Parties in transit, with or without trans-shipment or temporary storage of up to three months in such non-Parties, shall be considered as transported directly from the exporting Party to the importing Party, provided that:

(a) the goods remain under customs control in those non-parties; and

(b) the goods do not undergo any operation there other than unloading, reloading, repacking, or any operation required to keep them in good condition.

3. Compliance with the provisions set out in paragraphs 1 and 2 shall be evidenced by presenting to the customs authority of the importing Party, either with customs documents of the non-parties or with any other documents so provided to the satisfaction of the customs authority of the importing Party.

4. For greater certainty, in cases of transit or transhipment without temporary storage, the importer shall submit, upon request of the customs authority of the importing Party, transport documents covering the whole transporting route from the exporting Party to the importing Party, which demonstrate that the good was shipped from the exporting Party to the importing Party, and in case of storage in a non-party or non-parties, additionally, the importer shall submit customs documents of the non-party or non-parties, or any other documents so provided to the satisfaction of the customs authority of the importing Party. The customs authority of the importing Party may accept on its own discretion other competent agencies in such non-parties to issue such supporting documents, such as those issued by these competent agencies in accordance with the domestic legislation of such non-parties.

Article 3.16: Exhibitions

1. Preferential tariff treatment as provided for under this Agreement shall be granted to originating goods, sent for exhibition in a non-party and sold after the exhibition for importation in Peru or China, when the following conditions are met to the satisfaction of the customs authority of the importing Party:

(a) an exporter has consigned these goods from Peru or China to the non-party where the exhibition has actually taken place;

(b) the goods have been sold or otherwise disposed of by that exporter to a person in Peru or China;

(c) the goods have been consigned during the exhibition or immediately thereafter in the state in which they were sent for exhibition;

(d) the goods have not been used for any purpose other than demonstration at the exhibition since they were consigned for exhibition; and

(e) the goods have remained during the exhibition under customs authority control.

2. For purposes of application of paragraph 1, a Certificate of Origin shall be issued in accordance with the provisions of this Chapter and submitted to the customs authority of the importing Party, with the name and address of the exhibition being attached thereon. Where necessary, additional documentary evidence related to the exhibition may be required.

3. Paragraph 1 shall apply to any trade, industrial, agricultural or crafts exhibition, fair or similar public show or display which is not organized for private purposes in shops or business premises, with a view to the sale of foreign goods.

Section B: Operational Procedures Related to Origin

Article 3.17: Certificate of Origin

1. In order for originating goods to qualify for preferential tariff treatment, the importer shall hold and submit, where required by the customs legislation of the importing Party, a valid Certificate of Origin, issued on the basis of the format as set out in Section A (Certificate of Origin) of Annex 3-B, at the time of importation.

2. The exporter of the good shall apply to the authorized body of the exporting Party for the issuance of a Certificate of Origin, which shall be issued before or at the time of exportation.

3. The Certificate of Origin shall be duly completed in English, covering one or more goods which are shipped at or about the same time.

4. The exporter of the good applying for a Certificate of Origin shall provide one or more commercial invoices, the origin application which contains the information data required under its domestic legislation, and all necessary documents to prove the originating status of the good concerned as required by the authorized body, and undertake to fulfil the other requirements as laid down under this Chapter.

5. The Certificate of Origin, as referred to in paragraph 1, shall be valid for one year from its date of issuance.

6. In the event of theft, loss or destruction of a Certificate of Origin, the exporter may apply in writing to the authorized body which issued it for a duplicate of the original, on the basis of the export documents in his possession. The duplicate issued in this manner shall bear in the Remarks box the word "CERTIFIED TRUE COPY of the original Certificate of Origin number ___ dated ___", for its validation period to count from that date.

Notwithstanding paragraph 2, a Certificate of Origin may, under exceptional circumstances, be issued retrospectively subsequent to the exportation of the good if:

(a) it was not issued at the time of exportation because of errors, involuntary omissions or any other circumstances as may be deemed justified under the legislation of each Party, provided that the exporter provides all the necessary commercial documents and the export declaration endorsed by the customs authority of the exporting Party; or

(b) it is demonstrated to the satisfaction of the authorized body that a Certificate of Origin was issued but was not accepted at importation for technical reasons. The validation period shall remain the same as indicated in the Certificate of Origin originally issued.

When the Certificate of Origin is issued retrospectively it shall be indicated in the first right box at the top of the Certificate of Origin, specifically under "(See overleaf instructions)", the phrase "ISSUED RETROSPECTIVELY".

Article 3.18: Exemption of Certificate of Origin

1. A Declaration of Origin, in the format as set out in Section B (Declaration of Origin) of Annex 3-B, may be completed by the exporter or producer and shall be accepted instead of a Certificate of Origin for any consignment whose customs value does not exceed US$ 600 or its equivalent in the currency of the importing Party, or such higher amount as that Party may establish.

2. A Declaration of Origin shall cover the goods presented under a single import customs declaration and shall remain valid for one year from its date of issuance.

3. Notwithstanding paragraph 1, where an importation forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of circumventing the requirements of this Section, the importing Party may deny preferential tariff treatment.

Article 3.19: Authorized Bodies

1. A Certificate of Origin shall be issued only by an authorized body in the exporting Party.

2. The competent authority of each Party shall inform the competent authority of the other Party of the name of each authorized body as well as their relevant contact details and shall provide impression specimens of the stamps used for the issuance of the Certificate of Origin. Any change in the information provided above shall be communicated in advance to the competent authority of the other Party. A Certificate of Origin issued containing a name of the authorized body or a stamp not communicated in advance will be rejected.

3. The authorized body shall be held accountable to ensure that the information included in the Certificate of Origin corresponds to the goods covered by the Certificate of Origin and that the originating status of the goods, as required under this Chapter, is correct.

Article 3.20: Minor Errors or Discrepancies

Where the origin of an imported good is not in doubt, minor transcription errors in a Certificate of Origin or discrepancies with other documentation related to the importation will not cause the rejection of the Certificate of Origin if it does in fact correspond to the good. However, this does not prevent the importing Party from initiating a verification of origin in accordance with Article 3.25.

Article 3.21: Obligations Regarding Importations

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

(a) make a written statement in the import customs declaration, based on a valid Certificate of Origin, indicating that the good qualifies as an originating good;

(b) hold the Certificate of Origin at the time the statement referred to in subparagraph (a) is made;

(c) hold the documents which certify that the requirements established in Article 3.15 have been met, where applicable; and

(d) submit the valid Certificate of Origin, as well as the documents indicated in subparagraph (c) to the customs authority, when it is required.

2. When an importer has reason to believe that a Certificate of Origin on which a statement was based contains incorrect information, the importer shall make a corrected statement and pay any customs duty owed, before a verification of origin is initiated.

3. When the importer does not comply with any requirements under this Article and any other requirements under this Chapter, the preferential tariff treatment shall be denied for the goods imported from the territory of the exporting Party.

Article 3.22: Refund of Import Customs Duties or Deposit

1. Where an originating good is imported into the territory of a Party without a Certificate of Origin under this Agreement, the importer may apply for a refund of any excess import customs duties paid or deposit imposed, where applicable, within one year after the date on which the good was imported, on presentation of:

(a) the valid Certificate of Origin, which shall comply with Article 3.17; and

(b) other documentation related to the importation of the good as the customs authority of the importing Party may require, provided that the importer before the release of goods provides a written declaration or record in the import customs declaration that the goods presented qualify as eligible for preferential tariff treatment.

2. No customs duties or deposit shall be refunded in the case where the importer failed to declare to the customs authority of the importing Party, before the release of goods, that the goods were eligible for preferential tariff treatment under this Agreement, even though a valid Certificate of Origin was provided to the customs authority subsequently.

Article 3.23: Supporting Documents

The documents used for the purpose of proving that the goods covered by a Certificate of Origin can be considered as originating goods and fulfil the other requirements of this Chapter may include, but are not limited, to the following:

(a) direct evidence of the processes carried out by the exporter or supplier to obtain the goods concerned, contained for example in his accounts or internal book-keeping;

(b) documents proving the originating status of the materials used, where these documents are used in accordance with the domestic legislation;

(c) documents proving the working or processing of materials, where these documents are used in accordance with the domestic legislation; or

(d) Certificates of Origin proving the originating status of the materials used.

Article 3.24: Record Keeping of Certificate of Origin and Supporting Documents

1. The exporter applying for the issuance of a Certificate of Origin shall keep for at least three years the documents referred to in Article 3.23, from its date of issuance.

2. The authorized bodies of the exporting Party issuing a Certificate of Origin shall keep a copy of the Certificate of Origin for at least three years, from its date of issuance.

3. The producer of a good who provides supporting documents to the exporter or to the issuing authority for the purposes of issuance of a Certificate of Origin shall keep the records relating to the origin of the good for at least three years from the date of the delivery of such documents.

4. An importer claiming preferential tariff treatment for a good imported into the territory of a Party shall keep for at least three years the records related to the importation, including a copy of the Certificate of Origin, from the date of importation of the good.

Article 3.25: Verification of Origin

1. For purposes of determining whether a good imported into one Party from the other Party qualifies as an originating good, the competent authority of the importing Party may conduct a verification of origin by means of:

(a) written requests for information from the importer;

(b) written requests for information from the exporter or producer through the competent authority of the exporting Party;

(c) requests that the competent authority of the exporting Party assists in verifying the origin of the good; or

(d) the importing Party may request on-site visits to observe the verification of origin conducted by the competent authority of the exporting Party in the premises of the exporter or producer in the territory of the exporting Party.

2. For purposes of subparagraph 1(b) and subparagraph 1(c), all the information requested by the competent authority of the importing Party and responded by the competent authority of the exporting Party shall be communicated in English.

3. For purposes of subparagraph 1(a) and subparagraph 1(b), where the importer, exporter or producer does not answer the written request for information made by the

importing Party, within a period of 90 days from the date on which it was received, the importing Party may deny the preferential tariff treatment.

4. For purposes of subparagraph 1(c), the competent authority of the importing Party shall provide the competent authority of the exporting Party with:

(a) the reasons why such assistance for verification is requested;

(b) the Certificate of Origin of the good, or a copy thereof; and

(c) any information and documents as may be necessary for the purpose of such request.

The competent authority of the exporting Party shall provide the competent authority of the importing Party a written statement in English, regarding the origin of the good under verification of origin, including the following information:

(a) description of the production process of the good;

(b) description and tariff classification of originating and non-originating materials, indicating the supplier of such materials; and

(c) detailed explanation of how the good obtained the status of an originating good.

In the cases where the competent authority of the exporting Party does not provide the written statement within 150 days from the date of request or where the written statement does not contain sufficient information, the importing Party shall determine the origin of the good based on the best information available at that moment.

5. For purposes of subparagraph 1(d), the importing Party shall notify by writing, 30 days prior to the on-site visit, the competent authority of the exporting Party of such a request. In the case where the competent authority of the exporting Party does not give its written consent to such request within 30 days from the receipt of the notification, the importing Party may deny the preferential tariff treatment to the relevant good.

6. The importing Party shall, within 300 days from the start of the verification of origin, notify the exporting Party, in writing, of the results of the determination on the origin of the good, as well as the legal basis and findings of fact, based on which the determination was made.

7. Where, at the time of importation, the customs authority of the importing Party has a reasonable doubt on the origin of the good, covered under the Certificate of Origin, the good may be released upon a deposit or the payment of duties, pending the outcome of the verification of origin. The above deposit or duties paid shall be refunded once the

outcome of the verification of origin confirms that the good qualifies as an originating good.

8. A Party may suspend preferential tariff treatment to an importer on any subsequent import of a good when the competent authority of the importing Party had already determined that an identical good was not eligible for such treatment, until it is demonstrated that the good complies with the provisions under this Chapter.

Article 3.26: Denial of Preferential Tariff Treatment

Except as otherwise provided in this Chapter, the importing Party may deny a claim for preferential tariff treatment, if:

(a) the Certificate of Origin or the declaration of origin does not meet the requirements of this Chapter;

(b) the compliance with Article 3.15 is not proven;

(c) it is proven based on the results of the verification of origin in the exporting Party that the documentary evidence of origin is not authentic or not accurate;

(d) determined through a verification of origin, the good does not meet the requirements of this Chapter; or

(e) there is material evidence that shows that the good does not qualify as an originating good according to the applicable provisions of this Chapter.

Article 3.27: Electronic Origin Data Exchange

1. The Parties shall exchange the electronic origin data in a manner jointly determined by the Parties.

2. The technical aspects of electronic origin data exchange shall be agreed by the relevant authorities in the Committee on Rules of Origin.

3. Before the implementation of the electronic origin data exchange, each Party will provide the other Party a website access to check information of the Certificates of Origin issued.

Article 3.28: Penalties

Penalties shall be imposed in accordance with the domestic legislation of each Party for infringement on the provisions of this Chapter.

Article 3.29: Confidentiality

1. A Party shall maintain the confidentiality of the information provided by the other Party pursuant to this Chapter, if such other Party so request. Any violation of the confidentiality shall be treated in accordance with the domestic legislation of each Party.

2. This information shall not be disclosed without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Article 3.30: Committee on Rules of Origin

The functions of the Committee on Rules of Origin under this Agreement shall include:

(a) ensuring the effective, uniform and consistent administration of this Chapter, and enhancing the cooperation in this regard;

(b) maintaining the Annex 3-A on the basis of the transposition of the HS;

(c) advising the Free Trade Commission of proposed solutions to address issues related to:

(i) interpretation, application and administration of this Chapter;

(ii) calculation of the Regional Value Content; and

(iii) issues arising from the adoption by either Party of operational practices not in conformity with this Chapter that may affect adversely the flow of trade between the Parties;

(d) proposing to the Free Trade Commission for approval on the modification proposals under Article 3.31, in the event a consensus is reached between the Parties;

(e) working on electronic origin data exchange;

(f) referring the issues on tariff classification and customs valuation related to the determination of origin, to the Committee on Trade Facilitation for settlement; and

(g) studying any other origin-related matters as referred to by the Committee on Trade in Goods.

Article 3.31: Modifications

1. If a Party considers that there is a need to make amendments to Annex 3-A, that Party may submit a modification proposal to the other Party, along with supporting rationale and studies.

2. The other Party shall respond the results of the study on the proposal made by the requesting Party within 180 days from its submission.

Article 3.32: Transitional Provision

A Certificate of Origin issued before the date of entry into force of this Optimization Protocol can be used during their validity period for the purposes of claiming of preferential tariff treatment or of refunding of import customs duties or deposit for originating goods provided that their issuance has been made in accordance with Chapter 3 of the Free Trade Agreement between the Government of the Republic of Peru and the Government of the People's Republic of China, signed at Beijing - on April 28, 2009.

APPENDIX 2

NEW CHAPTER 4 (CUSTOMS PROCEDURES AND TRADE FACILITATION)

CHAPTER 4

CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 4.1: Definitions

For purposes of this Chapter:

customs administration means:

(a) for China, the General Administration of Customs of the People's Republic of China; and

(b) for Peru, the National Superintendence of Customs and Tax Administration (SUNAT).

customs law means any legislation administered, applied, or enforced by the customs administration of a Party;

customs procedures means the treatment applied by each customs administration to goods and means of transport that are subject to customs control; and

means of transport means various types of vessels, vehicles and aircrafts which enter or leave the territory carrying persons and/or goods.

Article 4.2: Scope and Objectives

1. This Chapter shall apply, in accordance with the respective international obligations of the Parties and their domestic laws and regulations, to customs and relevant trade-related procedures applied to goods traded between the Parties and to the movement of means of transport between the Parties.

2. The objectives of this Chapter are:

(a) to simplify and harmonize customs and relevant trade-related procedures of the Parties;

(b) to ensure predictability, consistency and transparency in the application of domestic laws and regulations related with exportation, importation and transit of goods;

(c) to ensure the efficient and expeditious clearance and release of goods and movement of means of transport;

(d) to facilitate trade between the Parties; and

(e) to promote cooperation between the customs administrations, subject to the scope of this Chapter.

Article 4.3: Affirmation of the WTO Trade Facilitation Agreement

The Parties affirm their existing rights and obligations with respect to each other under the WTO Trade Facilitation Agreement.

Article 4.4: Competent Authorities

The competent authorities for the administration of this Chapter are:

(a) for China, the General Administration of Customs of the People's Republic of China; and

(b) for Peru, the Ministry of Foreign Trade and Tourism of the Republic of Peru.

Article 4.5: Facilitation

1. Each Party shall ensure that its customs and trade-related procedures and practices are predictable, consistent, transparent and facilitate trade.

2. Customs procedures of each Party shall, where possible and to the extent permitted by their respective customs law, conform with the trade-related instruments of the World Customs Organization (WCO) to which that Party is a contracting party, including those of the *International Convention on the Simplification and Harmonization of Customs Procedures* (as amended), known as the Revised Kyoto Convention.

3. The customs administrations of the Parties shall facilitate the clearance, including release of goods in administering their procedures.

4. The Parties shall limit controls, formalities and the number of documents required in the context of trade in goods between the Parties to those necessary and appropriate, to ensure compliance with legal requirements, thereby simplifying, to the extent possible, the related procedures.

Article 4.6: Customs Valuation

The Parties shall apply Article VII of GATT 1994 and the Customs Valuation Agreement to goods traded between them.

Article 4.7: Tariff Classification

The Parties shall apply the *International Convention on the Harmonized Commodity Description and Coding System*, to goods traded between them.

Article 4.8: Customs Cooperation and Assistance

1. In order to strengthen the cooperation and assistance between the customs administrations, to the extent permitted by their laws and regulations, the customs administrations of the Parties shall assist each other, as appropriate, in relation to:

(a) the implementation and operation of this Article;

(b) the implementation and operation of the *Agreement Between the Government of the Republic of Peru and the Government of the People's Republic of China Concerning Co-Operation and Mutual Administrative Assistance in Customs Matters*;

(c) the application of the Customs Valuation Agreement;

(d) the application of best practices and risk management techniques;

(e) the simplification and harmonization of customs procedures;

(f) advancing technical skills and the use of technology;

(g) such other issues as the customs administrations mutually determine.

2. The customs administrations of the Parties shall push forward cooperation based on "Smart Customs, Smart Borders, and Smart Connectivity" in order to enhance mutual trust and promote trade facilitation to achieve a high-level connectivity between the Parties.

3. Each customs administration shall endeavour to provide the other customs administration with timely notice of any significant modification of customs laws or regulations, procedures or similar measures that govern the movement of goods and means of transport that is likely to substantially affect the operation of this Chapter.

4. Upon request, each customs administration shall provide the other customs administration with information related with customs declaration that would assist with the enforcement of customs law.

5. The requested customs administration shall respond the request or provide related information in writing, through electronic means within the timeframe agreed by customs administrations of both Parties under article 8.1 of the *Agreement Between the*

Government of the Republic of Peru and the Government of the People's Republic of China Concerning Co-Operation and Mutual Administrative Assistance in Customs Matters.

6. Any information or document provided by a customs administration shall be held by the other customs administration in confidence.

7. Each customs administration shall designate one or more contact points for the purposes of this Article.

Article 4.9: Review and Appeal

1. Each Party shall, in accordance with its domestic laws and regulations, provide that the importer, exporter or any other person affected by its administrative decisions on a customs matters have access to:

(a) a level of administrative review of administrative decisions by an administrative authority higher than or independent of the official or office that issued the administrative decisions under review; and

(b) judicial review of the administrative decisions.

2. Each Party shall ensure that the person referred to in first paragraph is provided with the reasons for the administrative decision so as to enable such a person to have recourse to procedures for review where necessary.

Article 4.10: Advance Rulings

1. Each customs administration shall issue written advance rulings, prior the importation of goods into its territory, in a reasonable, time bound manner, at the written request of a person described in subparagraph 2 (a) who shall provide in such request all necessary information, concerning:

(a) tariff classifications;

(b) whether a good qualifies as an originating good under the provision established in this Agreement; or

(c) any other matters for which the customs administrations consider it appropriate to issue an advance ruling.

2. Each customs administration shall adopt or maintain procedures for issuing written advance rulings, which shall:

(a) provide that an exporter, importer, or any person with a justifiable cause or a representative thereof, according to their domestic law, may request for an advance ruling, before the date of importation of the goods that are the subject of the application.

Customs administration may require that a requester have legal representation or registration in its territory. To the extent possible, these requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium-sized enterprises. For China, the requester of an advance ruling shall be registered with China Customs;

(b) require the requester to include a detailed description of the information needed to process for an advance ruling. This may include a sample of the good for which the requester is seeking an advance ruling, if requested;

(c) allow the customs administration, at any time during the course of an evaluation of an application for an advance ruling, to require that the requester provide additional information necessary to evaluate the request;

(d) ensure that an advance ruling be based on the facts and circumstances presented by the requester; and

(e) provide that the advance ruling be issued, in the national language used by customs administration, to the requester expeditiously on receipt of all necessary information, within 90 days.

3. The customs administration that declines to issue an advance ruling shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision to decline to issue the advance ruling.

4. Subject to paragraph 5, each customs administration shall apply an advance ruling to importations into its territory, beginning on the date the advance ruling was issued or on any other date specified in the advance ruling. The customs administration shall ensure the same treatment of all importations of goods subject to the advance ruling regardless of the requester involved, where the facts and circumstances are identical in all material respects.

5. The customs administration may modify or revoke an advance ruling, where there is a change in the laws or regulations; where incorrect information was provided or relevant information was withheld; where there is a change in a material fact; or where there is a change in the circumstances on which the ruling was based.

6. Where the customs administration revokes or modifies advanced rulings with retroactive effect, it may only do so where the advanced ruling was based on incomplete, incorrect, false or misleading information.

7. Each customs administration shall ensure that requester have access to administrative review of advance rulings.

8. Subject to any confidentiality requirements in its domestic laws and regulations, and taking into account the protection of the commercially confidential information, each customs administration shall make its advance rulings publicly available, including online.

Article 4.11: Use of Automated Systems

1. The customs administrations shall apply information technology to support customs operations.

2. Each customs administration is encouraged to:

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

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

(c) work toward developing a set of common data elements that are drawn from the WCO Data Model and related WCO recommendations.

3. The Parties shall use information technology to expedite procedures towards the release of goods, and electronic or automated systems for risk management and targeting.

Article 4.12: Single Window

1. To the extent possible and practicable, each Party shall develop or maintain an interconnected and compatible system in order to establish a single window, and shall use information technology to support it.

2. Such single window shall allow traders to make a single electronic submission of all documentation or data requirements established by participating authorities or agencies for exportation, importation or transit of goods. After the examination of the information previously mentioned the results shall be notified to the requester through the single window in a timely manner.

3. The single window shall facilitate the share of information among the participating authorities or agencies of each Party.

Article 4.13: Use of International Standards

The Parties are encouraged to use relevant international standards or parts thereof to expedite procedures related with importation, exportation or transit of goods.

Article 4.14: Authorized Economic Operators

Each customs administration shall provide trade facilitation measures related to import, export, or transit formalities and procedures, to authorized economic operators who meet specified criteria based on the WCO SAFE Framework of Standards. Such criteria shall not, to the extent possible, restrict the participation of small and medium-sized enterprises.

Article 4.15: Risk Management

1. Each Party within available resources shall adopt or maintain a risk management system, which shall be based on an assessment and targeting of risk through appropriate selectivity criteria. Based on this system, each Party shall determine which persons, goods or means of transport are to be examined and the extent of the examination. To the extent possible, risk management system shall be reviewed and updated periodically.

2. Each customs administration shall focus customs controls on high-risk shipments of goods and facilitate the clearance, including release, of low-risk goods.

3. Risk management shall be applied in such a manner that it does not create arbitrary or unjustifiable discrimination under the same conditions or disguised restriction on international trade.

Article 4.16: Publication and Enquiry Points

1. Each Party shall promptly publish, including on the Internet, its laws, regulations, and where applicable, administrative rules or procedures, of general application, relevant to trade in goods between the Parties.

2. Each customs administration shall designate one or more enquiry points to deal with enquiries from interested persons from either Party on customs matters arising from the implementation of this Agreement, and provide details of such enquiry points to the other customs administration. Information concerning the procedures for making such enquiries shall be easily accessed to public, including online.

3. To the extent practicable and in a manner consistent with its laws and regulations, each Party shall publish, in advance, on the Internet, draft laws and regulations of general application relevant to trade between the Parties, with a view to affording the public, especially interested persons, an opportunity to provide comments.

4. Each Party shall ensure, to the extent possible, that a reasonable interval is provided between the publication of new or amended laws and regulations of general application relevant to trade between the Parties and their entry into force.

Article 4.17: Express Consignments

1. Each customs administration shall adopt or maintain separate and expedited customs procedures for express consignments while maintaining appropriate customs control and selection. Said procedures shall, under normal circumstances, provide an express clearance of consignment after the submission of all the necessary customs documents and the arrival of the consignment. These procedures shall not be limited by weight or customs value.

2. The customs administrations shall minimize the documentation required for the release of express consignments and, to the extent possible, provide for release based on a single submission of information on certain consignments.

Article 4.18: 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. For greater certainty, this paragraph shall not require a Party to release goods where its requirements for release have not been met.

2. In accordance with paragraph 1, each Party shall adopt or maintain procedures that:

(a) provide for the release of goods as rapidly as possible after arrival, provided all other legal and regulatory requirements have been met;

(b) as appropriate, provide for advance electronic submission and processing of information before the physical arrival of goods with a view to expediting the release of goods;and

(c) allow the release of goods prior to the final determination by its customs administration of the applicable customs duties, taxes, fees and charges, provided that no further controls are required, a sufficient and effective guarantee is submitted and all other regulatory requirements have been met.

3. Each Party shall adopt and maintain a system under which goods in need of urgent clearance can obtain prompt customs clearance.

4. Each Party shall ensure that goods are released within a time period no longer than that required to ensure compliance with its customs law.

Article 4.19: Border Agency Cooperation

Each Party shall ensure that its border agencies responsible for border controls and procedures dealing with the importation, exportation and transit of goods cooperate and coordinate with one another in order to facilitate trade.

Article 4.20: Perishable Goods

1. With a view to preventing avoidable loss or deterioration of perishable goods, and provided that all regulatory requirements have been met, each Party shall provide for the release of perishable goods:

(a) under normal circumstances within the shortest possible time; and

(b) in exceptional circumstances where it would be appropriate to do so, outside the business hours of customs and other relevant authorities.

2. Each Party shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

3. Each Party shall either arrange or allow an importer to arrange for the proper storage of perishable goods pending their release. The Party may require that any storage facilities arranged by the importer to be approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorizations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. The Party shall, where practicable and consistent with its domestic laws and regulations, upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

Article 4.21: Penalties

1. For the purposes of this Article, the term penalties shall mean those imposed by a customs administration for a breach of its customs law, regulations or procedural requirements.

2. Each Party shall ensure that a penalty is imposed only on the person legally responsible for the breach and is dependent on the facts and circumstances of the case and is commensurate with the degree and severity of the breach.

3. Each Party shall ensure that it maintains measures to avoid conflicts of interest in the assessment and collection of penalties and duties and to prevent creating an incentive for the assessment or collection of a penalty. When the penalty is imposed, each Party shall provide an explanation in writing to the person upon whom the penalty is imposed specifying the nature of the breach and the applicable law, regulation or procedure used

for determining the penalty amount.

Article: 4.22: Review of Formalities and Documentation Requirements

1. Each Party shall periodically review its formalities and documentation requirements with a view to simplifying procedures and to the development of mutually beneficial arrangements to facilitate the flow of trade between the Parties.

2. Based on the results of the review, the Parties shall ensure, as appropriate, that such formalities and documentation requirements are adopted or applied in a manner that aims at reducing the time and cost of compliance for traders.

Article 4.23. Consultation

1. The Party may at any time request consultations with the other Party, on any matter arising from the implementation or operation of this Chapter. Such consultations shall be conducted through the relevant contact points, and shall commence within 30 days of the request, or any other possible time period that the Parties may mutually determine.

2. In the event that such consultations fail to resolve any such matter, the requesting Party may refer the matter to the Committee on Customs Procedures and Trade Facilitation referred to in Article 74 for further consideration.

3. Each Party shall designate one or more contact points for the purposes of this Chapter. Information on the contact points shall be provided to the other Party and any amendment of the said information shall be notified promptly.

Article 4.24: Committee on Customs Procedures and Trade Facilitation

1. With the view to the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Customs Procedures and Trade Facilitation (the Committee on CPTF), under the Free Trade Commission.

2. The functions of the Committee on shall be, among others as follows:

(a) to ensure the proper function of this Chapter and to resolve all issues arising from its application. Concerning tariff classification, if the Committee does not reach a decision, said Committee shall hold the appropriate consultations at the WCO. The decision of the WCO shall, to the extent possible, be applied by the Parties.

(b) to review the interpretation and implementation of this Chapter;

(c) to identify areas related to this Chapter to be improved for facilitating trade between the Parties;

(d) to support customs cooperation and assistance of this Chapter; and

(e) to make recommendations and report to the Free Trade Commission.

3. The Committee on CPTF shall consist of representatives from competent authorities of both Parties. When deemed necessary and appropriate, as well agreed by both Parties, representatives from other relevant government agencies or, relevant international organizations or entities may be invited to the Committee meetings. One or more contact points shall be designated for this purpose and shall meet at such venue and time as agreed by the Parties.

4. The Committee on CPTF shall be convened annually, or at other times as the Parties may mutually agree, in a format or method as agreed by both Parties.

5. All the decisions from the Committee on CPTF will be adopted by mutual agreement.

APPENDIX 3

NEW ARTICLES 86, 87, 88 AND 89 BIS OF CHAPTER 6 (SANITARY AND PHYTOSANITARY MEASURES)

NEW ARTICLES 86, 87, 88 AND 89 BIS OF CHAPTER 6

SANITARY AND PHYTOSANITARY MEASURES[1]

Article 86: Risk Assessment and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection

1. Sanitary and phytosanitary measures shall be based on a risk assessment, in line with the circumstances of the risks existing for human, animal and plant life and health, taking into account the risk assessment techniques developed by the relevant international organizations, so that the measures adopted may reach the appropriate level of protection.

2. The Parties should, when determining the appropriate level of sanitary or phytosanitary protection, take into account the objective of minimizing negative trade effects.

3. When a Party decides to make a re-evaluation of a product for which there is a fluid and regular trade, said Party shall not interrupt bilateral trade of the affected products by reason of such decision to make the re-evaluation, except in the case of a sanitary or phytosanitary emergency.

Article 87: Recognition of Pest- or Disease- Free Areas and Areas of Low Pest or Disease Prevalence

1. The importing Party shall recognize in an expeditious way, upon request by the other Party and after the receipt of the necessary information provided by the exporting Party and an assessment by the importing Party, the pest- or disease-free areas and areas of low pest or disease prevalence recognized by the relevant international organizations.

2. In the absence of recognition of pest- or disease-free areas and areas of low pest or disease prevalence by the relevant international organizations, the importing Party shall decide, in a reasonable time, on the request made by the exporting Party for the recognition of pest- or disease-free areas and areas of low pest or disease prevalence. For this purpose, the exporting Party shall objectively demonstrate that an area or part of its territory is free of a pest or disease or has low pest or disease prevalence, and maintain this status, and the importing Party shall conduct an assessment.

3. In case of an event affecting the sanitary or phytosanitary status of a pest- or disease-free area or an area of low pest or disease prevalence, the Parties shall work in an expeditious way for regaining such status.

[1] For greater certainty, the provisions of Chapter 6 (Sanitary and Phytosanitary Measures) of the China-Peru FTA that are not substituted by this Protocol shall remain in force.

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

5. If the evaluation of the evidence provided by the exporting Party does not result in a determination to recognise pest- or disease-free areas, or areas of low pest and disease prevalence, the importing Party shall provide the exporting Party with the rationale for its determination.

Article 88: Transparency

1. The Parties agree to designate Contact Points and/or Enquiry Points for information exchange and notification on sanitary and phytosanitary issues no later than three months following the entry into force of this Agreement.

2. Each Party shall notify electronically to the other Party's Contact Point or Enquiry Point its proposed sanitary and phytosanitary measures notifications to the WTO, at the same time the Party submits to the WTO Secretariat in accordance with the SPS Agreement, with at least a 60-day-long comment period.

3. In cases of urgency or duly justified emergency, the Parties shall adopt similar action as specified in paragraph 2, without observing the timeframe established.

4. The Parties shall strengthen cooperation between SPS Contact Points or Enquiry Points of the Parties, including sharing available translated versions of SPS notifications and relevant information and exchanging experience and information on SPS notifications. In this context, if a Party requests information on SPS notifications, the other Party shall provide such information within 60 days and, if possible, in English.

Article 89 bis: Certification

1. The Parties agree to work cooperatively to develop model certificates to accompany specific goods traded between the Parties, taking into account relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

2. The Parties shall promote the application of electronic certification and other technologies to facilitate trade.

APPENDIX 4

NEW CHAPTER 8 (TRADE IN SERVICES)

CHAPTER 8

TRADE IN SERVICES

Article 8.1: Definitions

For the purposes of this Chapter:

airport operation services means the operation of centralized airport infrastructure[2] on a fee or contract basis, including the provision of airport management services, excluding security and air navigation services[3];

commercial presence means any type of business or professional establishment, including through:

(a) the constitution, acquisition or maintenance of a juridical person, or

(b) the creation or maintenance of a branch or a representative office,

within the territory of a Party for the purpose of supplying a service;

ground handling services means the following services provided at the airport on a fee or contract basis: airline representation, administration and supervision, passenger handling services, baggage handling services, ramp handling services (marshalling, parking, ramp to flight deck communication), catering (excluding cooking), cargo and mail handling services, fuel distribution services, aircraft services and cleaning services, load control, flight operation and crew administration, line maintenance. Ground Handling Services do not include air navigation services, security and fire-fighting services, and the operation of centralized airport infrastructure;

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

juridical person is:

(a) "owned" by persons of a Party if more than 50% of the equity in it is beneficially owned by persons of that Party; and

[2] For greater certainty, the centralized airport infrastructure includes: 1. runways, taxiways, and aprons; 2. Facilities built to avoid duplicate construction for use by different service providers, such as common use terminals, baggage handling systems, de-icing facilities, power and energy systems, fuel storage and distribution systems and water treatment facilities, etc.

[3] For the purposes of this chapter, Parties consider air traffic control services as part of air navigation services.

(b) "controlled" by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;

measure means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

natural person of a Party means a natural person who resides in the territory of a Party, and who under the law of that Party is a national of that Party;

service supplier of a Party means any person of that Party that supplies a service;[4]

service supplied in the exercise of governmental authority means, for each party, any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;

specialty air services means any non-transportation air services, such as aerial fire-fighting, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services;

supply of a service includes the production, distribution, marketing, sale and delivery of a service;

trade in services means the supply of a service:

(a) from the territory of a Party into the territory of the other Party;

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

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

(d) by a service supplier through presence of natural persons of a Party in the territory of the other Party.

Article 8.2: Scope

[4] Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

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

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

(b) the access to and use of, in connection with the supply of a service, services which are required by the Parties to be offered to the public generally; or

(c) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party.

2. For purposes of this Chapter, "measures adopted or maintained by a Party" means measures adopted or maintained by:

(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. This Chapter does not apply to:

(a) government procurement;

(b) services supplied in the exercise of governmental authority in a Party's territory;

(c) air services[5], including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:

(i) aircraft repair and maintenance services;

(ii) selling and marketing of air transport services;

(iii) computer reservation system (CRS) services;

(iv) specialty air services;

(v) airport operation services; and

(vi) ground handling services.

[5] For greater certainty, the term "air services" includes traffic rights.

(d) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

4. In the event of any inconsistency between this Chapter and a bilateral, plurilateral or multilateral air services agreement to which both Parties are party, the air services agreement shall prevail in determining the rights and obligations of the Parties.

5. If the Parties have the same obligations under this Agreement and a bilateral, plurilateral or multilateral air services agreement, they may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.

6. If the Annex on Air Transport Services of GATS is amended, the Parties shall jointly review any new definition with a view to aligning the definitions in this Optimization Protocol with that definition, as appropriate.

7. This Chapter does not impose any obligation on a Party with respect to a natural person of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, and does not confer any right on that natural person with respect to that access or employment.

8. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of this Chapter.[6]

9. This Chapter, except for Article 8.3, 8.4, 8.5 and the specific commitments undertaken on financial services in Annex 6(Schedules of Specific Commitments) of the Free Trade Agreement, does not apply to measures affecting the supply of financial services[7] as defined in subparagraph 5(a) of the GATS Annex on Financial Services. The obligations of each Party with respect to measures affecting the supply of financial services shall be in accordance with its obligations under GATS and the GATS Annex on Financial Services, and subject to any reservations thereto. The said obligations are hereby incorporated into this Agreement.

10. In addition to the provisions of this Chapter, the rights and obligations of the Parties in respect of telecommunication services shall also be governed by the provisions of:

(a) the GATS Annex on Telecommunications; and

[6] The sole fact of requiring a visa for natural persons of the other Party shall not be regarded as nullifying or impairing benefits under a specific commitment.
[7] For greater certainty, "the supply of financial services" means the supply of services as defined in GATS Article I.2.

(b) the GATS Reference Paper developed in the Negotiating Group on Basic Telecommunications attached to each Party's GATS schedules of commitments,

which are hereby incorporated into this Chapter, *mutatis mutandis*, as if those provisions were fully set out herein.

Article 8.3: National Treatment

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

Article 8.4: Market Access

1. With respect to market access through the modes of supply identified in the "trade in services" definition of Article 8.1, each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule[8].

2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

(a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[9]

[8] To the extent that a market-access commitment is undertaken by a Party in its Schedule of Commitments, and where the cross-border movement of capital is an essential part of a service supplied through the mode of supply referred to in subparagraph (a) of the "trade in services" definition of Article 8.1, that Party is hereby committed to allow such movement of capital. To the extent that a market-access commitment is undertaken by a Party in its Schedule of Commitments, and where a service is supplied through the mode of supply referred to in subparagraph (c) of the "trade in services" definition of Article 8.1, that Party is hereby committed to allow related transfers of capital into its territory.

[9] Subparagraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

(e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; or

(f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Article 8.5: Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 8.3 or 8.4, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule.

Article 8.6: Schedule of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Article 8.3, 8.4 and 8.5. With respect to sectors where such commitments are undertaken, each Schedule shall specify:

(a) terms, limitations and conditions on market access;

(b) conditions and qualifications on national treatment; and

(c) undertakings relating to additional commitments referred to in Article 8.5.

2. Measures inconsistent with both Articles 8.3 and 8.4 are inscribed in the column relating to Article 8.4. In this case, the inscription is considered to provide a condition or qualification to Article 8.3 as well.

3. The Parties' Schedules of Specific Commitments are set out in Annex 6 (Schedules of Specific Commitments) of the Free Trade Agreement.

Article 8.7: Domestic Regulation

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, upon request of an affected service supplier of the other Party, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

3. Where a Party requires authorization for the supply of a service, the Party's competent authorities shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. Upon request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall aim to ensure that such measures are:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service; and

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

5. If the results of the negotiations related to Article VI:4 of GATS (or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate) enter into effect, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. The Parties agree to coordinate on such negotiations, as appropriate.

6. If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities:

(a) where applicable, if an application is rejected, to the extent practicable, inform the applicant of the reasons for the rejection, either directly or upon request, as appropriate;

(b) to the extent practicable, provide the applicant with the opportunity to correct minor errors and omissions in the application;

(c) if they deem appropriate, accept copies of documents that are authenticated in accordance with the laws of the Party in place of original documents;

(d) reach and administer its decisions in an independent manner[10] and that the procedures are impartial;

(e) where applicable in accordance with the laws and regulations, avoid requiring an applicant to approach more than one competent authority for each application for authorization; and

(f) taking into account their competing priorities and resource constraints, endeavour to accept applications in electronic format.

7. Each Party shall ensure that any authorisation fee charged by any of its competent authorities is in accordance with its laws and regulations, reasonable, transparent and does not, in itself, restrict the supply of the relevant service.[11]

8. The Party shall make publicly available the information necessary for service suppliers to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorisation. Such information shall include, *inter alia*, where it exists in accordance with its laws and regulations:

(a) fees;

(b) contact information of relevant competent authorities;

(c) procedures for appeal or review of decisions concerning applications;

(d) procedures for monitoring or enforcing compliance with the terms and conditions of licenses;

(e) opportunities for public involvement, such as through hearings or comments;

(f) indicative timeframes for processing of an application;

(g) the requirements and procedures; and

(h) technical standards.

9. If licensing or qualification requirements include the completion of an examination, each Party shall ensure that:

[10] For greater certaintly, this paragraph does not mandate a particular administrative structure.
[11] For the purposes of this paragraph, authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

(a) the examination is scheduled at reasonable intervals; and

(b) a reasonable period of time is provided to enable interested persons to submit an application.

Article 8.8: Recognition

1. For the purposes of the 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 3, a Party may recognise the education or experience obtained, requirements met, or licenses or certifications granted in the territory of the other Party or a non-party. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the other Party or a non-party concerned or may be accorded autonomously.

2. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Party, if the other Party is interested, to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licenses or certifications obtained or requirements met in the territory of the other Party should be recognised.

3. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.

4. Each Party should encourage the relevant bodies in its respective territory to conduct future negotiations for developing mutually acceptable standards and criteria for licensing, temporary licensing and certification of professional services suppliers.

Article 8.9: Transfers and Payments

1. Each Party shall permit transfers and payments for current transactions relating to its specific commitments to be made freely and without delay into and out of its territory.

2. Each Party shall permit such transfers and payments relating to the supply of services to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer.

3. Notwithstanding paragraph 1 and paragraph 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory and good faith application of its laws relating to:

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

(b) issuing, trading or dealing in securities, futures, options, or derivatives;

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

(d) criminal or penal offences; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

4. Nothing in this Chapter shall affect the rights and obligations of the members of the International Monetary Fund under the *Articles of the Agreement of the International Monetary Fund*, including the use of exchange actions which are in conformity with the *Articles of the Agreement of the International Monetary Fund*, provided that a Party shall not impose restrictions on any capital transactions inconsistent with its obligations under this Chapter regarding such transactions, except upon request of the International Monetary Fund.

Article 8.10: Denial of Benefits

1. A Party may deny the benefits of this Chapter to:

(a) service suppliers of the other Party where the service is being supplied by a juridical person that is owned or controlled by persons of a non-party and the juridical person has no substantive business activities in the territory of the other Party; or

(b) service suppliers of the other Party where the service is being supplied by a juridical person that is owned or controlled by persons of the denying Party and the juridical person has no substantive business activities in the territory of the other Party.

2. Upon a written request of the other Party, the denying Party shall inform in writing and consult with the other Party on the specific case of denial as referred to in paragraph 1 of this Article.

Article 8.11: Transparency

Further to Chapter 13 (Transparency):

(a) each Party shall maintain or adopt appropriate mechanisms for responding to inquiries from interested persons regarding its laws and regulations relating to the subject matter of this Chapter;[12]

(b) at the time it adopts final laws and regulations relating to the subject matter of this Chapter, each Party shall, to the extent possible, including upon request, take into consideration of substantive comments received from interested persons with respect to the proposed laws and regulations; and

(c) to the extent possible, each Party shall allow a reasonable period of time between publication of final laws and regulations and their effective date.

Article 8.12: Committee on Trade in Services

1. The Parties hereby establish a Committee on Trade in Services (Committee) that shall meet as agreed by the Parties, or on request of the Free Trade Commission, to consider any matter arising under this Chapter.

2. The Committee's functions shall include:

(a) reviewing the implementation and operation of this Chapter;

(b) identifying and recommending measures to promote services trade between the Parties and ensure the observance of and discuss progress towards the objectives mentioned in the Annexes 8-A, 8-B, 8-C, and 8-D; and

(c) considering other trade in services issues of interest to a Party.

3. With the agreement of both Parties, representatives from relevant agencies or institutions may be invited to attend the Committee meetings.

[12] The implementation of the obligation to establish appropriate mechanisms for small administrative agencies may need to take into account resource and budget constraints.

ANNEX 8-A

PROFESSIONAL SERVICES

1. Each Party shall encourage its relevant bodies to establish or maintain dialogues with the relevant bodies of the other Party with the aim of facilitating the supply of professional services between the Parties through greater recognition of education or experience obtained in the territory of the other Party. This includes encouraging relevant professional bodies to engage in cooperation with a view to formalising recognition of licensing, registration and professional standards.

Engineering and Architectural Services

2. Further to paragraph 1, the Parties recognise the work in APEC to promote the mutual recognition of professional competence in engineering and architecture, and the professional mobility of these professions, under the APEC Engineer and APEC Architect frameworks.

3. Each Party shall encourage its relevant bodies to work towards becoming authorised to operate APEC Engineer and APEC Architect Registers.

4. A Party shall encourage its relevant bodies operating APEC Engineer or APEC Architect Registers to enter into mutual recognition arrangements with the relevant bodies of the other Party operating those registers.

Software Engineering Services

5. Further to paragraph 1, paragraph 2, paragraph 3 and paragraph 4, by recognising the importance of software industries for cross-border trade of value-added services, the Parties agree to work together to promote highly qualified knowledge of Software Engineers, including by promoting its experience in best practices for creating software solutions tailored for the needs of the services industry. This includes encouraging relevant bodies to engage in cooperation with a view to negotiating a cooperation agreement.

Professional Services Cooperation

The Parties shall cooperate, via the Committee on Trade in Services to facilitate the cooperation to:

(a) ensure the observance of and discuss progress towards the objectives in paragraph 1 paragraph 2, paragraph 3, paragraph 4 and paragraph5 of this annex; and

(b) support the Parties' relevant professional and regulatory bodies in pursuing the activities listed in paragraph 1, paragraph 2, paragraph 3, paragraph 4 and paragraph 5 of this annex.

ANNEX 8-B

TRANSPORT SERVICES

Section A: International Maritime Transport services

General provisions[13]

1. International maritime transport services means maritime transport of cargo or passengers between a port of a Party and a port of another Party or a non-party;

2. The Parties recognise their respective rights and obligations under international instruments to which they are parties respectively that regulate international maritime transport and related activities.

3. The Parties recognise the commercial significance of the ability of international maritime transport service suppliers to directly contracting with other transport service suppliers for door-to-door or multimodal transport operations.

4. The Parties shall encourage the service suppliers to improve their respective multimodal transport services to facilitate the bilateral maritime and trade cooperation.

Maritime Crew

5. The Parties will jointly work in facilitating the recognition of seafarer's qualifications through the Professional services working group.

6. The Parties shall endeavour to undertake and strengthen cooperation activities between them to:

(a) promote and share information on education and training opportunities for personnel engaged in maritime transport services;

(b) promote the exchange of students between academic merchant marine training centres of the Parties subject to availability and the selection processes determined by each Party; and

(c) explore the possibility of working in the pursuit of mechanisms to facilitate and promote the on-board training for students on the vessels of the Parties.

[13] Nothing in this Annex shall be interpreted to apply to fishing vessels as defined under a Party's domestic law, nor does it apply to vessels or international maritime transport services suppliers that are subject to the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

Port Fees and Charges

7. Each Party shall recognise the International Tonnage Certificate (1969) duly issued to a vessel of an international maritime transport service supplier of another Party in accordance with the *International Convention on Tonnage Measurement of Ships*, 1969 (Convention). Tonnage based port charges and expenses shall be collected on the basis of tonnage as stated in the International Tonnage Certificate (1969) or, in the case of a vessel not subject to the Convention, the certificate of registry.

8. If a Party decides to carry out an inspection related to the tonnage of a vessel, such inspection shall be carried out in compliance with the Convention.

Section B: Rail Transport Services

9. By recognising the commercial significance of rail transport, the Parties shall endeavour to work towards efficient rail freight and passenger transport services with a view to foster multimodal transport and tourism.

ANNEX 8-C

COOPERATION ON CULTURAL AND AUDIOVISUAL SERVICES

1. For the purposes of this Appendix, the Parties understand that Audiovisual Industries comprise motion picture and video production and the related services, including audiovisual production support services.

2. By recognising the importance of their audiovisual industries and their potential technical and creative complementarity, as well as mutual equal benefit, the Parties will explore the possibility of reaching co-production agreement.

3. Each Party shall encourage on-site filming in the territory of the other Party for the development of audiovisual projects by their service providers, in accordance with the relevant laws and regulations of each Party.

4. Each Party shall encourage its relevant bodies to establish or maintain dialogues with the relevant bodies of the other Party with the aim of improving the knowledge and practice of professionals and technicians related to the audiovisual industries.

ANNEX 8-D

TELECOMMUNICATIONS SERVICES

Definitions

1. For the purposes of this Annex:

International Mobile Roaming Service means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications services that enables end-users to use their home mobile handset or other device for voice, data or messaging services while outside the territory in which the end-user's home public telecommunications network is located;

non-discriminatory means treatment no less favourable than that accorded to any other user of like public telecommunications services in like circumstances, including with respect to timeliness;

Telecommunications Regulatory Body means a body or bodies responsible for the regulation of telecommunications; and

user means a service consumer or a service supplier.

International Submarine Cable Systems

2. The Parties will encourage and facilitate the development of international submarine cable systems with a view to enhancing telecommunication services, improving consumer welfare, fostering electronic commerce, promoting technological diffusion and development of digital societies, among others.

3. Each Party shall ensure that any major supplier who controls international submarine cable landing stations in the Party's territory provides access to those landing stations, under non-discriminatory terms, conditions and rates in accordance with its laws and regulations.

International Mobile Roaming Services

4. The Parties shall cooperate on promoting transparent and reasonable rates and increase the efficiency of international mobile roaming services with a view to promoting the growth of trade among the Parties and enhancing consumer welfare.

5. The Parties shall encourage their respective telecommunications service suppliers to take actions to ensure rates for wholesale international roaming services are reasonable, and facilitate the implementation of those actions, including by encouraging their

respective telecommunications service suppliers entering into negotiations for an International Mobile Roaming Agreement**.**

6. Each Party shall adopt or maintain measures to minimise impediments to the use of technological alternatives to roaming, whereby consumers when visiting the territory of a Party from the territory of another Party can access telecommunications services using the device of their choice.

APPENDIX 5

NEW ARTICLE 117 BIS OF CHAPTER 9 (TEMPORARY ENTRY FOR BUSINESS PERSONS)

NEW ARTICLE 117 BIS OF CHAPTER 9

TEMPORARY ENTRY FOR BUSINESS PERSONS

Article 117 bis: Expeditious Application Procedures

1. Each Party shall process as expeditiously as possible complete applications for temporary entry and inform the applicant of the decision, including if approved, the period of stay and other conditions.

2. Upon the request of the applicant, the Party that has received a completed application for an immigration formality, shall endeavour to promptly provide information concerning the status of the application.

APPENDIX 6

NEW CHAPTER 10 (INVESTMENT)

CHAPTER 10

INVESTMENT

Section A

Article 10.1: Definitions

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

Claimant means an investor of a Party that is a party to an investment dispute with the other Party;

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

Disputing parties means the claimant and the respondent;

Disputing party means either the claimant or the respondent;

Enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization; and a branch of an enterprise;

Enterprise of a Party means an enterprise constituted or organised under the law of a Party, or a branch of an enterprise of a Party located in the territory of a Party and carrying out business activities there;[14]

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*

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

between States and Nationals of Other States, done at Washington on 18 March, 1965;

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

(a) an enterprise;

(b) movable, immovable property and other property rights such as mortgages and pledges, and similar rights;

(c) shares, bonds[15], debentures, stock and any other kind of participation in companies;

(d) claims to money or to any other performance having an economic value associated with an investment;

(e) intellectual property rights, in particularly copyrights, patents, trade-marks, trade-names, know-how and technological process, as well as good-will; or

(f) concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

Investor means：

(a) for China:

(i) natural persons who have nationality of the People's Republic of China in accordance with its law;

(ii) economic entities established in accordance with the laws of the People's Republic of China and domiciled in the territory of the People´s Republic of China; or

(iii) legal entities not established under the law of the People's Republic of China but effectively controlled, by natural persons, as defined in subparagraph (a)(i) or by economic entities as defined in subparagraph (a)(ii), that have made an investment in the territory of the other Party; and

(b) for Peru:

[15] 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.

(i) natural persons who, according to the law of the Republic of Peru, have its nationality;

(ii) juridical persons established in accordance with the laws of the Republic of Peru, including civil and commercial companies; or

(iii) associations with legal personality that perform an economic activity included within the sphere of this Chapter and which are directly or indirectly controlled by natural persons, as defined in subparagraph (b)(i), or by juridical persons as defined in subparagraph (b)(ii) that have made an investment in the territory of the other Party;

Returns means the amounts yielded by investments, such as profits, dividends, interests, capital gains, royalties, fees or other legitimate income;

Investor of a non-Party means, with respect to a Party, an investor that attempts to make[16], is making, or has made an investment in the territory of that Party, that is not an investor of either Party;

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

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

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

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

Person means a natural person or an enterprise;

Protected information means confidential business information or information that is privileged or otherwise protected from disclosure under the laws of a Party, including classified government information;

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

Secretary-General means the Secretary-General of ICSID;

TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual

[16] For greater certainty, the Parties understand that, for the purpose of definitions "investor of a non-Party" and "investor of a Party", an investor "attempts to make" an investment when that investor has taken concrete action or actions to make an investment, such as channeling resources or capital in order to set up a business, or applying for a license.

Property Rights, set out in the WTO Agreement[17]; and

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

Article 10.2: Scope and Coverage

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

   (a) investors of the other Party; and

   (b) investments of investors of the other Party.

2. This Chapter shall not apply to measures adopted or maintained by a Party affecting trade in services.

3. Notwithstanding paragraph 2, for the purpose of protection of investment with respect to the commercial presence mode of service supply, Articles 10.7, 10.8, 10.9, 10.10, 10.11 and 10.12 shall apply to any measure affecting the supply of a service by a service supplier of a Party through commercial presence in the territory of the other Party. Section B shall apply to Articles 10.7, 10.8, 10.9, 10.10, and 10.11 with respect to the supply of a service through commercial presence.

4. For greater certainty, the provisions of this Chapter do not bind either Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

5. This Chapter shall not apply to laws, regulations, policies or procedures of general application governing the procurement by government agencies of goods and services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or the supply of services for commercial sale.

6. Notwithstanding paragraph 5, Articles 10.7, 10.8, 10.9, 10.10, 10.11, 10.12 and Section B shall apply to the laws, regulations, policies or procedures mentioned hereinbefore.

7. This Chapter shall apply to all investments made by investors of a Party in the territory of the other Party, whether made before or after the entry into force of this Agreement, but Section B shall not apply to any dispute or any claim concerning an investment which was already under judicial or arbitral process before the entry into force of this Agreement.

[17] 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.

Article10.3: Promotion and Protection of Investment

1. Each Party shall encourage investors of the other Party to make investments in its territory and admit such investments in accordance with its laws and regulations.

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

Article 10.4: National Treatment[18]

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

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

3. Notwithstanding paragraph1 and paragraph 2, the Parties reserve the right to adopt or maintain any measure that accords differential treatment to socially or economically disadvantaged minorities and ethnic groups.

Article 10.5: Non-Conforming Measures

1. Article 10.4 does not apply to:

   (a) any existing non-conforming measures maintained within its territory;

   (b) the continuation of any non-conforming measure referred to in subparagraph (a); or

   (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not increase the non-conformity of the measure, as it existed immediately before the amendment, with those obligations.

2. The Parties will endeavour to progressively remove the non-conforming measures.

[18]For greater certainty, whether treatment is accorded in "like circumstances" under Article 10.4 and Article 10.6 depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

Article 10.6: Most-Favoured-Nation Treatment

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

2. Each Party shall accord to investments of investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any third State with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments[19].

3. Notwithstanding paragraph 1 and paragraph 2, the Parties reserve the right to adopt or maintain any measure that accords differential treatment:

(a) to socially or economically disadvantaged minorities and ethnic groups[20]; or

(b) involving cultural industries related to the production of books, magazines, periodical publications, or printed or electronic newspapers and music scores.

4. The treatment and protection as mentioned in paragraph 1 and paragraph 2 of this Article shall not include any preferential treatment accorded by the other Party to investments of investors of any third State based on free trade agreement, free trade zone, custom union, economic union, or agreement relating to avoidance of double taxation or for facilitating frontier trade.

5. For greater certainty, the substantive obligations in other international investment treaties and other free trade agreements do not in themselves constitute "treatment", and thus cannot give rise to a breach of this Article, absent measures adopted by a Party.

Article 10.7: Fair and Equitable Treatment and Full Protection and Security

1. Each Party shall accord fair and equitable treatment and full protection and security in accordance with customary international law in its territory to investment of investors of the other Party.

[19]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 10.6 does not encompass dispute settlement mechanisms, such as those in Article 10.14 and Section B, that are provided for in international investment treaties or trade agreements.
[20]For purposes of this Chapter, minorities include peasant communities; ethnic groups means indigenous and native communities.

2. For greater certainty,

(a) the concepts of "fair and equitable treatment" and "full protection and security" do not require additional treatment to that required under the minimum standard of treatment of aliens in accordance with the standard of customary international law;

(b) "fair and equitable treatment" includes the prohibition against denial of justice in criminal, civil, or administrative proceedings in accordance with the general accepted principles of customary international law;

(c) the "full protection and security" standard does not imply, in any case, a better treatment to that accorded to nationals of the Party where the investment has been made;

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

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

(f) the fact that a measure breaches domestic law does not, in and of itself, establish a breach of this Article; and

(g) 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.

Article 10.8: Expropriation

1. Neither Party shall expropriate or nationalize, either directly or indirectly through measures equivalent to expropriation or nationalization (hereinafter referred to as "expropriation") against investments of investors of the other Party in its territory, unless the following conditions are met:

(a) for the public interest[21];

[21]For China, domestic law may express this concept using different terms, such as "public necessity" and "public purpose"; for Peru, this concept may be expressed in different terms according to its Constitution.

(b) under domestic legal procedure;

(c) without discrimination; and

(d) against compensation.

2. The compensation mentioned in paragraph 1(d) shall be equivalent to the fair market value of the expropriated investments immediately before the expropriation took place (the date of expropriation), convertible and freely transferable. The compensation shall be paid without unreasonable delay.

3. This Article shall 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 the issuance, revocation, limitation or creation is consistent with the TRIPS Agreement.

4. For greater certainty, a Party's decision not to issue, renew or maintain a subsidy or grant, or decision to modify or reduce a subsidy or grant,

(a) in the absence of any specific commitment under law or contract to issue, renew or maintain that subsidy or grant; or

(b) in accordance with any terms or conditions attached to the issuance, renewal, modification, reduction and maintenance of that subsidy or grant,

standing alone, does not constitute an expropriation.

Article 10.9: Compensation for Losses

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

Article 10.10: Transfers

1. Each Party shall guarantee investors of the other Party the transfer of their investments and returns held in the territory of the former Party, including:

(a) profits, dividends, interests and other legitimate income;

(b) amounts from total or partial liquidation of investments;

(c) payments made pursuant to a loan agreement in connection with investment;

(d) royalties referred to in the "returns" definition of Article 10.1;

(e) payments of technical assistance or technical service fee, management fee;

(f) payments in connection with projects on contract associated with investment;

(g) earnings of nationals of a Party who work in connection with an investment in the territory of the other Party; and

(h) the free transfer of compensation and other payments under Articles 10.8 and10.9.

2. The transfers mentioned above shall be made in a freely usable currency at the prevailing market rate of exchange of the Party accepting the investments on the date of transfer.

3. Notwithstanding paragraph 1 and paragraph 2, a Party may prevent a transfer through the equitable, non-discriminatory, and good faith application of its laws relating to:

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

(b) issuing, trading, or dealing in securities, futures, options, or derivatives;

(c) criminal or penal offenses; or

(d) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 10.11: Subrogation

1. If one Party or its designated agency makes a payment to its investors under a guarantee or a contract of insurance against non-commercial risks it has accorded in respect of an investment made in the territory of the other Party, the latter Party shall recognize:

(a) the assignment, whether under the law or pursuant to a legal transaction in the former Party, of any rights or claims by the investors to the former Party or to its designated agency;

(b) that the former Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and

assume the obligations related to the investment to the same extent as the investor.

2. The investor shall be precluded from pursuing the abovementioned rights to the extent of the subrogation.

Article 10.12: Denial of Benefits

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to:

(a) investors of the other Party where the investment is being made by a enterprise that is owned or controlled by persons of a third State and the enterprise has no substantive business activities in the territory of the other Party; or

(b) investors of the other Party where the investment is being made by a enterprise that is owned or controlled by persons of the denying Party.

Article 10.13: Measures against Corruption

1. In accordance with its legal system and internationally agreed standards and commitments that it has adhered to, each Party shall ensure that measures are taken to prevent and fight corruption and other crimes with respect to matters falling within the scope of this Chapter.

2. Each Party recognizes the importance of principles such as accountability, transparency and integrity with regard to the development of its anti-corruption policies, and of taking measures affecting investment in a transparent manner and avoiding conflicts of interest and corrupt practices.

Article 10.14: Settlement of Disputes between the Parties

1. Any dispute between the Parties concerning the interpretation or application of this Chapter shall, as far as possible, be settled with consultation through diplomatic channel.

2. If a dispute cannot thus be settled within six months, it shall, upon the request of either Party, be submitted to an ad hoc arbitrary tribunal.

3. Such tribunal comprises of three arbitrators. Within two months of the receipt of the written notice requesting arbitration, each Party shall appoint one arbitrator. Those two arbitrators shall, within further two months, together select a national of a third State

having diplomatic relations with both Parties who, upon approval by the Parties, shall be appointed as Chairman of the arbitral tribunal.

4. If the arbitral tribunal has not been constituted within four months from the receipt of the written notice requesting arbitration, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Party or is otherwise prevented from discharging the said functions, the Member of the International Court of Justice next in seniority who is not a national of either Party or is not otherwise prevented from discharging the said functions shall be invited to make such necessary appointments.

5. The arbitral tribunal shall determine its own procedure. The arbitral tribunal shall reach its award in accordance with the provisions of this Chapter and the principles of international law recognized by the Parties.

6. The arbitral tribunal shall reach its award by a majority of votes. Such award shall be final and binding upon the Parties. The arbitral tribunal shall, upon the request of either Party, explain the reasons of its award.

7. Each Party shall bear the costs of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and tribunal shall be borne in equal parts by the Parties.

Article 10.15: Future Work Program

1. Unless the Parties otherwise agree, the Parties shall conduct negotiations on National Treatment for pre-establishment and lists of non-conforming measures, no later than two years after the entry into force of this Optimization Protocol.

2. Unless the Parties otherwise agree, the Parties shall conduct negotiations on Transparency of investor-State Arbitral Proceedings, no later than two years after the entry into force of this Optimization Protocol.

3. No later than two years after the entry into force of this Optimization Protocol, the Parties shall initiate consultations regarding the scope of application of this Chapter in relation to public debt. The outcome of the consultations is subject to agreement by the Parties.

Section B

Article 10.16: General Rule

The Parties reaffirm that the recourse to the proceedings under Section B shall be on the basis of international law principles, including good faith and due process of law.

Article 10.17: Consultations

1. In the event of an investment dispute, the disputing Parties should initially seek to resolve the dispute amicably through consultations. If the claimant intends to submit the dispute to arbitration, it shall deliver a written request for consultations to the respondent[22] at least 180 days prior to submission of the dispute to arbitration. The request shall:

(a) specify the name and address of the claimant and, where a claim is submitted on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, the name, address, and place of incorporation of the enterprise;

(b) list evidences that the claimant is an investor under this Chapter;

(c) for each claim, identify the provision of Section A of this Chapter alleged to have been breached and any other relevant provisions of this Chapter;

(d) for each claim, identify the measures or events giving rise to the claim;

(e) for each claim, provide a brief summary of the legal and factual basis; and

(f) specify the relief sought and the approximate amount of damages claimed.

2. After a request for consultations is made pursuant to this Chapter, the claimant and the respondent shall enter into consultations[23] with a view to reaching a mutually satisfactory solution.

3. For greater certainty, the initiation of consultations shall not be construed as recognition of the jurisdiction of the tribunal under this Section.

Article 10.18: Submission of a Claim to Arbitration

1. If an investment dispute has not been settled within 180 days of the receipt by the respondent of a written request for consultations pursuant to Article 10.17:

(a) the claimant, on its own behalf, may submit to arbitration under this Chapter a claim:

[22] For greater certainty, the request for consultations shall be sent to the central government body as listed out in Annex 10-A.
[23] Unless otherwise agreed by the Parties to the dispute, the place for consultation should be the capital of the respondent.

(i) that the respondent has breached:

(A) an obligation under Articles 10.4 and 10.6;

(B) Articles 10.7, 10.8, 10.9 and 10.10; and

(ii) that the claimant has incurred losses or damages 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 Chapter a claim:

(i) that the respondent has breached:

(A) an obligation under Articles 10.4 and 10.6;

(B) Articles 10.7, 10.8, 10.9 and 10.10; and

(ii) that the enterprise has incurred losses or damages by reason of, or arising out of, that breach[24].

2. At least 60 days before submitting any claim to arbitration under this Section, the claimant shall deliver to the respondent a written notice of its intention to submit a claim to arbitration (Notice of Intent). The Notice of Intent shall specify:

(a) the name and address of the claimant and, if the claim is submitted on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, the name, address and place of incorporation of the enterprise;

(b) list evidences that the claimant is an investor under this Chapter;

(c) for each claim, the provisions of Section A of this Chapter alleged to have been breached and any other relevant provisions of this Chapter;

(d) for each claim, identify the measures or events giving rise to the claim;

(e) the factual and legal basis for each claim; and

(f) the relief sought and the approximate amount of damages claimed.

[24]For greater certainty, a minority non-controlling shareholder of an enterprise may not submit a claim on behalf of that enterprise.

For greater certainty, where a Notice of Intention is submitted by more than one claimant or on behalf of more than one enterprise, the information in paragraph 2 shall be submitted for each claimant or each enterprise, as the case may be.

3. An investor of a Party may not initiate or continue a claim under this Chapter if a claim involving the same measure or measures alleged to constitute a breach under this Article and arising from the same events or circumstances is initiated or continued pursuant to an agreement between the respondent and a non-party by:

(a) an enterprise of a non-party that owns or controls, directly or indirectly, the investor of a Party, or

(b) an enterprise of a non-party that is owned or controlled, directly or indirectly, by the investor of a Party.

Notwithstanding the previous paragraph, the claim may proceed if the respondent agrees that the claim may proceed, or if the investor of a Party and the enterprise of a non-Party agree to consolidate the claims under the respective agreements before a tribunal constituted under this Chapter.

4. A claimant may submit a claim referred to in paragraph 1 under one of the following alternatives:

(a) under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the respondent and the non-disputing Party are parties to the ICSID Convention;

(b) under the ICSID Additional Facility Rules, provided that either the respondent or the non-disputing Party is a party to the ICSID Convention;

(c) under the UNCITRAL Arbitration Rules[25]; or

(d) if the claimant and respondent agree, to any other arbitration institution or under any other arbitration rules.

5. A claim shall be deemed submitted to arbitration under this Chapter when the claimant's 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;

[25] In the case of arbitration under this Chapter pursuant to the UNCITRAL Arbitration Rules, the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration shall not be applicable unless the disputing parties otherwise agree.

(b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Arbitration 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 20 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.

6. In addition to any other information required by the applicable arbitral rules, the notice of arbitration shall also include information addressing each of the categories in Article 10.17.

7. The arbitration rules applicable under paragraph 3, and in effect on the date the claim or claims were submitted to arbitration under this Chapter, shall govern the arbitration except to the extent modified by this Chapter.

8. A claim asserted by the claimant for the first time after such Notice of Arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitration rules.

Article 10.19: 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 Chapter.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall be deemed to satisfy the requirements of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and

(b) Article II of the New York Convention for an "agreement in writing."

Article10.20: 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 10.18 and knowledge that the claimant (for claims brought under 10.18(1)(a)) or the enterprise (for claims brought under Article 10.18(1)(b)) has incurred loss or damage.

2. No claim may be submitted to arbitration under this Section by national who had the nationality of the Party to the dispute on the date on which the parties consented to submit such dispute to arbitration pursuant to Article 10.18.

3. 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 Chapter;

(b) the claim arises from measures included in the request for consultations submitted by the claimant in accordance with Article 10.17; and

(c) the notice of arbitration is accompanied,

(i) for claims submitted to arbitration under Article 10.18(1)(a), by the claimant's written waiver, and

(ii) for claims submitted to arbitration under Article 10.18(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 a Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 10.18.

4. Notwithstanding paragraph 3(c), the claimant (for claims brought under 10.18(1)(a)) and the claimant or the enterprise (for claims brought under Article 10.18.(1)(b)) may initiate or continue an action that seeks interim injunctive relief under the law of the respondent and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.

Article 10.21: Constitution of the Tribunal

1. Unless the disputing parties otherwise agree, the tribunal shall be comprised of 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. In selecting arbitrators, disputing Parties shall take into account, amongst other things, whether potential candidates have experience in public international law or international economic law.

3. If a tribunal has not been constituted within 90 days from the date that a claim is submitted to arbitration under this Section, the appointing authority, on the request of a

disputing party, shall appoint, in his or her discretion and after consulting with the disputing parties, the arbitrator or arbitrators not yet appointed.

4. The appointing authority shall not appoint a national of either the respondent or the Party of the claimant as the presiding arbitrator, unless the disputing parties otherwise agree.

5. In the event that the appointing authority appoints a presiding arbitrator in accordance with relevant arbitration rules, the presiding arbitrator being appointed should be a recognized expert in public international law, and should be experienced in investor-state dispute settlement.

6. In addition to any applicable arbitral rules regarding independence and impartiality of arbitrators, arbitrators shall comply with a code of conduct for arbitrators that the Parties may agree in the future pursuant to Article 170 (Free Trade Commission) of Chapter 14 (Administration of the Agreement) of the Free Trade Agreement.

Article 10.22: Conduct of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 10.18. 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. The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.

3. After consulting the disputing parties, the tribunal may allow a person or entity that is not a disputing party to file a written *amicus curiae* submission with the tribunal regarding a matter within the scope of the dispute. Such a submission shall provide the identity of such person or entity (including any controlling entity and any source of substantial financial assistance in either of the two years preceding the submission, e.g. funding around 20% of an entity's overall operations annually), disclose any connection, direct or indirect, with any disputing party, and identify any person, government or other entity that has provided or will provide any financial or other assistance in preparing the submission. In determining whether to allow such a filing, the tribunal shall consider, among other things, the extent to which:

(a) the *amicus curiae* submission would assist the tribunal in the determination of a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge, or insight that is different from that of the disputing parties;

(b) the *amicus curiae* submission would address a matter within the scope of the dispute; and

(c) the *amicus curiae* has a significant interest in the proceeding.

4. The tribunal shall ensure that the *amicus curiae* submission does not disrupt the proceeding or unduly burden or unfairly prejudice either disputing party, and that the disputing parties are given an opportunity to present their observations on the *amicus curiae* submission.

5. Each submission shall be in a language of the arbitration and comply with any page limits and deadlines set by the tribunal.

6. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that the dispute is not within the competence of the tribunal, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favour of the claimant may be made under this Section.

(a) An objection under this paragraph shall be submitted to the tribunal as soon as possible after it has been constituted, and under 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 thereof.

(c) In deciding an objection under paragraph 6, the tribunal shall assume to be true claimant's factual allegations. 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 7.

7. 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 6 or any other 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, 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.

8. When the tribunal decides a respondent's objection under paragraphs 6 or 7, it may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

For greater certainty, consistent with general principles of law applicable to international arbitration, when a claimant submits a claim to arbitration under Section B, it has the burden of proving all elements of its claim.

9. Subject to Article 10.11 a respondent shall not assert as a defence, counterclaim, right of set-off, or for any other reason, that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages, pursuant to an insurance or guarantee contract.

10. A tribunal may order an interim measure of protection[26] 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 10.18. For the purposes of this paragraph, an order includes a recommendation.

11. In any arbitration conducted under this Section, at the request of a disputing part y, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any such comments and issue its decision or award not later than 45 days after the expiration of the 60-day comment period.

12. In the event that an appellate mechanism for reviewing awards rendered by investor-State dispute settlement tribunals is developed in the future under other institutional arrangements, the Parties shall consider whether awards rendered under Article 10.25 should be subject to that appellate mechanism.

[26]For greater certainty, a domestic court's consideration of an order for interim measures issued pursuant to this Article is subject to domestic law.

13. Subject to paragraph 2, when a claim is submitted under Article 10.18(1)(a)(i)(A), (1)(a)(i)(B), (1)(b)(i)(A) or (1)(b)(i)(B), the tribunal shall decide the issues in dispute in accordance with this Chapter and applicable rules of international law.[27]

14. A decision of the Free Trade Commission on the interpretation of a provision of this Chapter shall be binding on a tribunal of any ongoing or subsequent dispute, and any decision or award issued by a tribunal must be consistent with that decision.

Article 10.23: Discontinuance

If, following the submission of a claim under this Section, the claimant fails to take any steps in the proceeding during 180 consecutive days or such periods as the disputing parties may agree, the claimant shall be deemed to have withdrawn its claim and to have discontinued the proceedings. In case that a Tribunal has been established according to this Section, it shall, at the request of the respondent, and after notice to the disputing parties, take note of the discontinuance in an order and issue an award on costs. After such an order has been rendered, the authority of the Tribunal shall lapse. The claimant may not subsequently submit a claim arising from the same measure or measures. This Article is without prejudice to the Tribunal's authority to discontinue the proceedings in according with the applicable arbitration rules.

Article 10.24: Consolidation

1. If two or more claims have been submitted separately to arbitration under Article 10.18.1, 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 consolidation order or the terms of paragraph 2, paragraph 3, paragraph 4, paragraph 5, paragraph 6, paragraph 7, paragraph 8, paragraph 9 and paragraph 10.

2. A disputing party that seeks a consolidation order under this Article shall deliver a written request to the Administrating authority 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 consolidation order;

(b) the nature of the consolidation order sought; and

(c) the grounds on which the order is sought.

[27]For greater certainty, this provision is without prejudice to any consideration of the domestic law of the respondent where it is relevant to the claim as a matter of fact.

3. Unless the Administrating authority 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 consolidation order agree otherwise, the 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 Appointing authority provided that the presiding arbitrator is not a national of the respondent or of a Party of any claimant.

5. If, within a period of 60 days after the Administrating authority receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Appointing authority, on request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed.

6. If a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 10.18.1 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 established under Article 10.18 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that:

(i) that tribunal, on request of any claimant that was not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to subparagraph 4 (a) and paragraph 5, and

(ii) that tribunal shall decide whether any prior hearing should be repeated.

7. If a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 10.18.1 and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6. The request shall specify:

(a) the name and address of the claimant;

(b) the nature of the order sought, and

(c) the grounds on which the order is sought.

The claimant shall deliver a copy of its request to the Administrating authority.

8. A tribunal established under this Article shall conduct its proceedings in accordance with the applicable arbitration rules, except as modified by this Section.

9. A tribunal established under Article 10.21 shall not have jurisdiction to decide a claim, or part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On the application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 10.21 be stayed, unless the latter tribunal has already adjourned its proceedings.

Article 10.25: 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.

2. For greater certainty, if an investor of a Party submits a claim to arbitration under Article 10.18.1(a), it may recover only for loss or damage that it has incurred in its capacity as an investor of a Party.

3. A tribunal may also award costs and attorney's fees incurred by the disputing parties in connection with the arbitral proceeding, and shall determine how and by whom those costs and attorney ś fees shall be paid, in accordance with this Section and the applicable arbitration rules. For greater certainty, for claims alleging the breach of an obligation under Section A with respect to an attempt to make an investment, when an

award is made in favour of the claimant, the only damages that may be awarded are those that the claimant has proven were sustained in the attempt to make the investment, provided that the claimant also proves that the breach was the cause of those damages. If the tribunal determines such claims to be frivolous, the tribunal may award the respondent reasonable costs and fees incurred during the arbitration.

4. Subject to paragraph 1, where a claim is submitted to arbitration under Article 10.18(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 under applicable domestic laws with respect to the relief provided in the award.

5. A tribunal may not award punitive damages.

6. Subject to paragraph 8 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without undue delay.

7. The decision or award shall be made available to the public promptly.[28]

8. A disputing party shall not seek enforcement of a final award until:

(a) in the case of a final award made under the ICSID Convention:

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 10.18:

(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

[28]For greater certainty, nothing in this Chapter requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 10.29.

(ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

9. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

10. If the respondent fails to abide by or comply with a final award, on delivery of a request by the Party of the claimant, Panel shall be established under Article 10.21. The requesting Party may seek in those proceedings:

(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Chapter, and

(b) a recommendation that the respondent abide by or comply with the final award.

11. A disputing party may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention regardless of whether proceedings have been taken under paragraph 10.

Article 10.26: 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.

Section C

Article 10.27: Service of Documents

Delivery of notice and other documents to a Party shall be made to the place designated in Annex 10-A. A Party shall promptly notify the other Parties of any change to the place referred to in that Annex.

Article 10.28: Meetings

1. The representatives of the Parties shall hold meetings from time to time for the purpose of:

(a) reviewing the implementation of this Chapter;

(b) exchanging legal information and investment opportunities;

(c) forwarding proposals on promotion of investment; and

(d) studying other issues in connection with investments.

2. Where either Party requests consultation on any matters referred to in paragraph 1 of this Article, the other Party shall give prompt response and the consultation shall be held alternately in Beijing and Lima.

Article 10.29: Essential Security

Nothing in this Chapter shall be construed to:

(a) require a Party to furnish or allow access to any information, the disclosure of which determines to be contrary to its essential security interests; or

(b) preclude a Party from applying measures necessary for the fulfilment of its obligations under the *United Nations Charter*, done at San Francisco on June 26, 1945 (UN Charter), for the maintenance or restoration of international peace or security, or measures that it considers necessary for the protection of its own essential security interests[29].

Article 10.30: Taxation Measures

1. Except as provided in this Article nothing in this Chapter shall apply to taxation measures.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties under any tax convention. In the event of any inconsistency between the provision of this Chapter and any such convention, the provisions of that convention shall apply to the extent of the inconsistency.

3. Without prejudice to the application of paragraph 2, the disciplines referred to hereinafter shall apply to taxation measures:

(a) Article 7 (National Treatment) of Chapter 2 (National Treatment and Market Access for Goods) of the Free Trade Agreement and such other provisions of

[29]For greater certainty, if a Party invokes Article 10.29 in an arbitral proceeding initiated under this Chapter, the corresponding tribunal hearing the matter shall find whether the exception applies.

this Agreement as are necessary to give effect to that Article to the same extent as does Article III of the GATT 1994; and

(b) Article 8.3 (National Treatment) of Chapter 8 (Trade in Services) of the Optimization Protocol, subject to the exceptions provided for in Article XIV letters (d) and (e) of the GATS, which are hereby incorporated.

4. The provisions of Article 10.8 and Annex 10-B of this Chapter shall apply to taxation measures alleged to be expropriatory.

5. The provisions of Section B apply with respect to paragraph 4 of this Article.

6. If an investor invokes Article 10.8 and Annex10-B of this Chapter as the basis of a claim to arbitration according to Section B, the following procedure shall apply:

The investor must first refer to the competent tax authorities described in subparagraph 7(c), at the time that it gives written notice of intent under Section B, the issue of whether the tax measure concerned involves an expropriation. In case of such referral, the competent tax authorities shall consult. Only if, within 6 months of the referral, they do not reach an agreement that the measure does not involve an expropriation, or in case the competent tax authorities of the Parties fail to consult with each other, the investor may submit its claim to arbitration under Section B.

7. For purposes of this Article:

(a) taxation measures do not include:

(i) a customs duty; or

(ii) the measures listed in exceptions (b) and (c) of the definition of customs duty;

(b) tax convention means a convention, or other international arrangement on taxation, to avoid double taxation; and

(c) competent tax authorities means:

(i) for China, the State Taxation Administration; and

(ii) for Peru, the Ministry of Economy and Finance (Ministerio de Econom á y Finanzas - MEF), or its successor.

Article 10.31: Other Obligations

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

ANNEX 10-A

Service of Documents on a Party

China

Notices and other documents shall be served on the People's Republic of China by delivery to:

Department of Treaty and Law
Ministry of Commerce of the People's Republic of China
2 Dong Chang'an Avenue
Beijing, 100731
People's Republic of China

Peru

Notices and other documents shall be served on the Government of the Republic of Peru by delivery to:

Dirección General de Asuntos de Economía Internacional, Competencia y Productividad
Ministerio de Economía y Finanzas
Jirón Lampa 277, piso 5
Lima, Peru

ANNEX 10-B

Expropriation

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. Expropriation may be either direct or indirect:

(a) direct expropriation occurs when a state takes an investor's property outright, including by nationalisation, compulsion of law or seizure; and

(b) indirect expropriation occurs when a state takes an action or series of action that have an effect equivalent to direct expropriation, in that it deprives the investor in substance of the use of the investor's property, although the means used fall short of those specified in subparagraph (a) above.

3. In order to constitute indirect expropriation, the action or series of actions must be:

(a) either severe or for an indefinite period; and

(b) disproportionate to the public interest.

4. In addition to paragraph 3, 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 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.

5. A deprivation of property shall be particularly likely to constitute indirect expropriation where it is either:

(a) discriminatory in its effect, either as against the particular investor or against a class of which the investor forms part; or

(b) in breach of the state's prior binding written commitment to the investor, whether by contract, license, or other legal document.

6. Except in rare circumstances to which paragraph 5 applies, such measures taken in the exercise of a state's regulatory powers as may be reasonably justified in the protection of the public welfare, including public health, safety and the environment, shall not constitute an indirect expropriation.

APPENDIX 7

NEW CHAPTER 11 (INTELLECTUAL PROPERTY RIGHTS)

CHAPTER 11

INTELLECTUAL PROPERTY RIGHTS

Article 11.1: General Provisions

1. The Parties recognise the importance of intellectual property rights in promoting economic and social development, particularly in the globalization of technological innovation and trade, as well as the transfer and dissemination of technology to the mutual advantage of technology producers and users, and agree to encourage the development of social economic well-being, and trade.

2. The Parties recognise the need to achieve a balance between the rights of right holders and the legitimate interests of users and the community with regard to protected subject matter.

3. Each Party reaffirms its commitment established in existing international agreements in the field of intellectual property rights, to which both Parties are parties, including the TRIPS Agreement.

4. The Parties promote and encourage the technical innovation and transfer of technology, and shall prevent practices which constitute abuse of intellectual property rights by right holders or unreasonably restrain competence or adversely affect or limit technology transfer.

5. Each Party shall establish and maintain transparent intellectual property rights regimes and systems that provide certainty over the protection and enforcement of intellectual property rights.

6. The Parties recognise the principles established in the *Declaration on the TRIPS Agreement and Public Health*, adopted by the WTO at the Fourth WTO Ministerial Meeting held in Doha, Qatar, on November 14, 2001 (Doha Declaration), and the *Decision on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health*, adopted by the WTO at Geneva, on August 30, 2003.

Article 11.2: Genetic Resources, Traditional Knowledge and Folklore

1. The Parties recognise the contribution made by the genetic resources, traditional knowledge and folklore to the scientific, cultural and economic development. The Parties

recognise the past, present and future contribution of traditional knowledge holders[30] and genetic resources to the conservation and sustainable use of biodiversity.

2. The Parties acknowledge and reaffirm the principles and provisions established in the *Convention on Biological Diversity*, done at Rio de Janeiro on June 5, 1992 (CBD), and *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity*, done at Nagoya on October 29, 2010 (Nagoya Protocol), and encourage the effort to establish a mutually supportive relationship between the TRIPS Agreement and the CBD, regarding the protection of genetic resources and traditional knowledge associated with genetic resources and folklore.

3. Subject to international obligations and national legislation of each Party, the Parties may establish appropriate measures to protect genetic resources, traditional knowledge associated with genetic resources and folklore.

4. Any Intellectual Property right that is generated from the utilization of biological and genetic resources or traditional knowledge associated with genetic resources of which a Party is the country of origin, shall be subject to compliance of the national laws where the intellectual property application is filed and applicable international agreements to which the Parties are parties.

5. Each Party shall require that in patent applications relying on genetic resources or traditional knowledge associated with genetic resources, the direct and original source of genetic resources or traditional knowledge, shall be indicated as provided by its national laws.

6. If a patent application does not meet the requirements regarding the genetic resources and traditional knowledge associated with genetic resources in accordance with the national laws, each Party shall provide for appropriate legal consequences.

7. If it is discovered after the granting of a patent that the application failed to disclose the source or that intentionally false information was submitted or other relevant laws and regulations were violated, each Party may provide for appropriate legal consequences.

Article 11.3: Protection of Genetic Resources and Traditional Knowledge Associated with Genetic Resources

1. The Parties recognise the importance and value of their biological diversity and components. Each Party reaffirms sovereignty over its biological and genetic resources; and, consequently, determine the conditions of their access and utilization, in accordance

[30] To Peru, traditional knowledge holders means indigenous and local communities in accordance with article 8(j) of the *Convention on Biological Diversity*, done at Rio de Janeiro on June 5, 1992 (CBD) and to China, it includes but not limit to State and Nationality.

with the principles and provisions contained in relevant national laws and regulations and international agreements to which the Parties are parties.

2. The Parties recognise the importance of the following:

(a) accessing to genetic resources, including measures to facilitate access for special considerations, subject to their national legislation and international agreements to which the Parties are parties;

(b) obtaining prior informed consent from the Party providing such resources that is the country of origin of such resources or the Party that has acquired the genetic resources;

(c) ensuring that traditional knowledge associated with genetic resources is accessed with the prior and informed consent or approval and involvement of traditional knowledge holders; and

(d) fair and equitably sharing of the benefits arising from the utilization of genetic resources and traditional knowledge associated with genetic resources, and the mutually agreed terms that have been established.

3. Each Party shall create conditions to promote and encourage research, according to paragraph (a) of Article 8 of Nagoya Protocol; pay due regard to cases of present or imminent emergencies that threaten or damage human, animal or plant health, according to paragraph (b) of Article 8 of Nagoya Protocol; and consider the importance of genetic resources for food and agriculture and their special role for food security, according to paragraph (c) of Article 8 of Nagoya Protocol.

Article 11.4: Geographical Indications

1. For the purposes of this Agreement, "geographical indications" are indications which 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.

2. The Parties recognise that geographical indications may be protected through trademark or *sui generis* system or other legal means.

3. The Parties shall take all necessary measures to ensure mutual protection of their geographical indications in accordance with the TRIPS Agreement and in the manner set out in its laws and regulations. Each Party shall provide interested parties with the legal means to prevent the use of such geographical indications for identical or similar goods not originating in the place indicated by the geographical indications in question.

4. The terms listed in the Chinese List of Annex 11-A (Geographical Indications) are geographical indications in China, within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement. Subject to the national laws and regulations of Peru, in a manner that is consistent with the TRIPS Agreement, such terms will be protected as geographical indications in the territory of Peru.

5. The terms listed in the Peruvian List of Annex 11-A (Geographical Indications) are geographical indications in Peru, within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement. Subject to the national laws and regulations of China, in a manner that is consistent with the TRIPS Agreement, such terms will be protected as geographical indications in the territory of China.

6. A Party may request the protection of additional geographical indications in accordance with the national laws and regulations of the other Party.

Article 11.5: Country Brands

The Parties acknowledge the importance of country brands and reaffirm the commitment to prohibit unfair competition practices applicable as provided in article 10 bis of the *Paris Convention for the Protection of Industrial Property*, done at Paris on March 20, 1883 (Paris Convention) and their national laws in relation with country brands.

Article 11.6: Special Requirements Related to Border Measures

1. Each Party shall provide that any right holder initiating procedures for suspension by the customs authorities of the release of suspected counterfeit trademark or pirated copyright goods into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the relevant laws of the Party, there is *prima facie* an infringement of the intellectual property right of the right holder and to supply sufficient information to make the suspected goods reasonably recognizable to the customs authorities. The sufficient information required shall not unreasonably deter recourse to these procedures.

2. Each Party shall provide the competent authorities with the powers to require an applicant to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

3. Where the competent authorities have made a determination that goods are counterfeit or pirated, a Party shall grant the competent authorities the right to inform the right holder, upon the request of the right holder, of the names and addresses of the consignor, the importer, and the consignee, as well as the quantity of the goods in question.

4. Each Party shall provide that the competent authorities are permitted to initiate border measures *ex officio*, without the need for a formal complaint from a person or right holder. Such measures shall be used when there is reason to believe or suspect that goods being imported, exported or in transit are counterfeit or pirated.

Article 11.7: Cooperation and Capacity Building

1. The Parties shall continue cooperation under the framework established in the previous *Agreement of Cooperation of Intellectual Property between the Government of the People's Republic of China and the Government of the Republic of Peru*, signed on June 2, 2005, with a common view to increasing capacity building and to fostering the development of intellectual property policies and eliminating trade in goods infringing intellectual property rights, subject to their respective laws, regulations, rules, directives and policies.

2. Without prejudice to the obligations of the Agreement mentioned in paragraph 1, the Parties will cooperate, on mutually agreed terms and subject to the availability of appropriated funds, on educational and dissemination projects on the use of intellectual property rights as an innovation tool.

3. The Parties will cooperate, on mutually agreed terms, to exchange information regarding:

(a) conservation and sustainable use of biodiversity, as well as benefit sharing of genetic resources;

(b) actions to prevent the illegal access to genetic resources, traditional knowledge, innovation and practices, including the monitoring in their territories through cooperation between the designated checkpoints of the Parties;

(c) internal procedures regarding access to genetic resources and traditional knowledge, innovations and practices, as well as, regarding fair and equitable benefits sharing arising from their utilization;

(d) experiences on international affairs of intellectual property which both Parties have participated;

(e) improving the public’s awareness on intellectual property;

(f) experiences on protection and enforcement of intellectual property; and

(g) other intellectual property rights issues.

4. In accordance with national laws, the Parties will cooperate on patent examinations related to genetic resources or traditional knowledge associated with genetic resources, in order to facilitate submitting related documented information if necessary, by the competent national authority of the other Party to ensure the patentability examinations.

5. Each Party shall encourage and facilitate the development of contacts and cooperation in the field of intellectual property rights between their respective government agencies, educational institutions and other organizations including the training of patent examiners particularly in the field of genetic resources and traditional knowledge associated with genetic resources for the proper examination of patent applications, determination of prior art and the granting of patent rights.

Article 11.8: Intellectual Property and Public Health

1. The Parties recognise the principles established in the Doha Declaration and confirm that the provisions of this Chapter are without prejudice to the Doha Declaration.

2. The Parties reaffirm their commitments to contribute to the implementation and respect the Decision of the WTO General Council of 30th August 2003 and Decision of the 6th December 2005 amending the WTO TRIPS Agreement on the implementation of paragraph 6 of the Doha Declaration.

3. The Parties reaffirm the importance of contributing to the international efforts to implement Article 31 bis of the TRIPS Agreement and the Annex and Appendix to the TRIPS Agreement.

Article 11.9: Patents

1. The Parties shall, in their national laws, at least ensure adequate and effective patent protection for inventions in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. For the Parties, this means protection at least on a level corresponding to the one in paragraph 1 of Article 27 of the TRIPS Agreement.

2. The Parties shall enhance cooperation in sharing experience on search and examination to improve the quality and efficiency.

3. The Parties 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 non-parties.

Article 11.10: Industrial Designs

1. The Parties shall, in their national laws, at least ensure adequate and effective protection for independently created industrial designs that are new or original. The duration of protection available shall amount to at least 10 years.

2. The owner of a protected industrial design shall have the right to prevent non-parties not having the consent of the owner, at least from making, selling or importing the protected design, when such acts are undertaken for commercial purposes.

3. The Parties may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of non-parties.

Article 11.11: Trademarks

The Parties shall grant adequate and effective protection to trademark right holders of goods and services. For the Parties, this means protection at least on a level corresponding to Article 15 of the TRIPS Agreement.

Article 11.12: Transparency

1. Each Party, subject to its law, shall make available on the Internet information concerning registered or granted patents, utility models, industrial designs, geographical indications, trademarks and new plant varieties sufficient to enable the public to become acquainted with those registered or granted rights.[31]

2. Each Party shall, subject to its law, make available on the Internet information concerning applications for patents, utility models, industrial designs, geographical indications, trademarks and new plant varieties[32].

Article 11.13: Enforcement and Protection

1. The Parties reaffirm their commitments under Part III of the TRIPS Agreement and shall provide in their respective legislation for enforcement provisions of at least the same level as provided in the TRIPS Agreement.

[31] For greater certainty, paragraph 1 does not require a Party to make available on the Internet the entire dossier for the relevant registered or granted intellectual property right.
[32] For greater certainty, paragraph 2 does not require a Party to make available on the Internet the entire dossier for the relevant application.

2. Each Party shall ensure that enforcement procedures, such as judicial or administrative procedures, are available to all users of the intellectual property system including small and medium-sized enterprises (SMEs), so as to permit effective action against any act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies that constitute a deterrent to future infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

3. Each Party shall ensure that its procedures concerning the enforcement of intellectual property rights are fair and equitable to all users of the intellectual property system including SMEs. These procedures shall not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays.

APPENDIX 8

NEW CHAPTER 18 (ELECTRONIC COMMERCE)

CHAPTER 18

ELECTRONIC COMMERCE

Article 18.1: Definitions

For the purposes of this Chapter:

electronic authentication means the process or act of providing authenticity and reliability verification for the Parties involved in electronic signature to ensure integrity and security of electronic communication or transaction;

electronic signature means data in electronic form in, affixed to or logically associated with, a data message, which may be used to identify the signatory in relation to the data message and to indicate the approval of the signatory of the information contained in the data message;

personal information means any information, including data, about an identified or identifiable individual;

unsolicited commercial electronic message means an electronic message which is sent for commercial or marketing purposes to an electronic address, without the consent of the recipient or despite the explicit rejection of the recipient, through an internet access service supplier or by other telecommunications services;

trade administration documents means forms issued or controlled by a Party which must be completed by or for an importer or exporter in connection with the import or export of goods; and

covered person means:

(a) a "covered investment" as defined in subparagraph (a) of Article 10.1 (Definitions)of Chapter 10 (Investment) of the Optimization Protocol;

(b) an "investor of a Party" as defined in subparagraph (e) of Article 10.1 (Definitions) of Chapter 10 (Investment) of the Optimization Protocol, but does not include an investor in a financial institution or an investor in a financial service supplier; or

(c) a service supplier of a Party as defined in Article 8.1 (Definitions) of Chapter 8 (Trade in Services) of the Optimization Protocol, but does not include a "financial institution", a "public entity", or a "financial service supplier".

Article 18.2: Scope and General Provisions

1. The Parties recognise the economic growth and trade opportunities provided by electronic commerce, and the importance of frameworks that promote consumer confidence in electronic commerce and of avoiding unnecessary barriers to its use and development.

2. This Chapter shall apply to measures adopted or maintained by a Party that affect electronic commerce.

3. This Chapter shall not apply to:

(a) government procurement;

(b) information held or processed by or on behalf of a Party, or measures related to such information, including measures related to its collection; or

(c) financial services.

4. For greater certainty, measures affecting the supply of a service delivered or performed electronically are subject to the obligations contained in the relevant provisions of Chapter 8 (Trade in Services), including any exception or limitation set out in this Agreement that is applicable to those obligations.

5. In case of any inconsistency with the rights and obligations in any other chapter of this Agreement, the other Chapter shall prevail.

Article 18.3: Domestic Regulatory Framework

1. Each Party shall maintain a domestic legal framework governing electronic transactions consistent with the principles of the *UNCITRAL Model Law on Electronic Commerce*, adopted by the General Assembly at New York on December 16, 1996 and take into account, as appropriate, other relevant international standards, such as the *United Nations Convention on the Use of Electronic Communications in International Contracts*, done at New York on November 23, 2005 (Electronic Communications Convention).

2. Each Party shall endeavour to:

(a) avoid any unnecessary regulatory burden on electronic transactions;

(b) facilitate input by interested persons in the development of its legal framework for electronic commerce; and

(c) ensure that regulatory frameworks support industry-led development of electronic commerce.

Article 18.4: Customs Duties

1. Each Party shall maintain its current practice of not imposing customs duties on electronic transmissions between the Parties.

2. The practice referred to in paragraph 1 is in accordance with the WTO Ministerial Decision of 2 March 2024 in relation to the Work Programme on Electronic Commerce (WT/MIN(24)/38).

3. Each Party may adjust its practice referred to in paragraph 1 for any further outcomes in the WTO Ministerial Decisions on customs duties to electronic transmissions within the framework of the Work Programme on Electronic Commerce.

4. The Parties shall review this Article in light of any further WTO Ministerial Decisions in relation to the Work Programme on Electronic Commerce.

5. For greater certainty, paragraph 1 shall not preclude a Party from imposing internal taxes, fees, or other charges on electronic transmissions, provided that such internal taxes, fees, or charges are imposed in a manner consistent with this Agreement.

6. Notwithstanding paragraphs 1 and 2, if the Parties commit permanently to a non-imposition of customs duties to electronic transmissions in a trade agreement to which China and Peru are a Party, this commitment will be automatically incorporated herein.

Article 18.5: Electronic Authentication and Electronic Signature

1. Except in circumstances otherwise provided for under its laws and regulations, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.

2. Each Party shall maintain domestic legislation for electronic signature that permits:

   (a) parties to electronic transaction to mutually determine the appropriate electronic signature and authentication method; and

   (b) agencies of electronic authentication or the Parties to an electronic transaction to have the opportunity to prove before judicial or administrative authorities a claim that their electronic authentication to electronic transaction complies with legal requirements with respect to electronic authentication.

3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of authentication meets certain performance standards or is certified by an authority accredited in accordance with its laws and regulations.

4. The Parties shall encourage the use of interoperable electronic authentication.

Article 18.6: Online Consumer Protection

1. The Parties recognise the importance of maintaining and adopting transparent and effective measures to protect online consumers and develop consumer confidence.

2. Each Party shall, to the extent possible, adopt or maintain measures which provide protection for consumers that are at least equivalent to measures provided to protect consumers of other forms of commerce, including protection laws to proscribe misleading, fraudulent and deceptive commercial activities that cause harm or potential harm to online consumers.

3. The Parties recognise the importance of cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to cross-border electronic commerce in order to enhance consumer welfare.

Article 18.7: Personal Information Protection

1. The Parties recognise the economic and social benefits of protecting the personal information of users of electronic commerce and the contribution that this makes to enhancing consumer confidence in electronic commerce.

2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of electronic commerce.

3. Each Party should publish information on the personal information protections it provides to users of electronic commerce, including how:

(a) rights individuals can pursue remedies; and

(b) business can comply with any legal requirement.

4. The Parties shall encourage enterprises to publish, including on the internet, their policies and procedures related to protection of personal information.

Article 18.8: Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:

(a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages;

(b) require the consent, as specified according to the laws and regulations of each Party, of recipients to receive commercial electronic messages; or

(c) otherwise provide for the minimization of unsolicited commercial electronic messages.

2. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures implemented by that Party pursuant to its obligation under paragraph 1.

3. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

Article 18.9: Paperless Trading

1. Each Party shall endeavor to make trade administration documents available to the public in electronic form.

2. Each Party shall endeavor to accept the electronic version of trade administration documents as the legal equivalent of the paper version of documents except where:

(a) there is a domestic or international legal requirement to the contrary; or

(b) the competent authorities require the paper version to protect the integrity of the administrative process.

Article 18.10: Cross-border Transfer of Information by Electronic Means

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.

2. A Party shall not prevent cross-border transfer of information by electronic means where such activity is for the conduct of the business of a covered person.

3. Nothing in this Article shall prevent a Party from adopting or maintaining:

(a) any measure inconsistent with paragraph 2 that it considers necessary to achieve a legitimate public policy objective,[33] provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; or

(b) any measure that it considers necessary for the protection of its essential security interests. Such measures shall not be disputed by the other Party.

[33] For the purposes of this subparagraph, the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.

Article 18.11: Location of Computing Facilities

1. The Parties recognise that each Party may have its own measures regarding the use or location of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.

2. No Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that Party's territory.

3. Nothing in this Article shall prevent a Party from adopting or maintaining:

(a) any measure inconsistent with paragraph 2 that it considers necessary to achieve a legitimate public policy objective,[34] provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; or

(b) any measure that it considers necessary for the protection of its essential security interests. Such measures shall not be disputed by the other Party.

Article 18.12: Cooperation

Recognising the global nature of electronic commerce, the Parties shall endeavor to:

(a) promote capacity building and work together to encourage MSMEs to overcome obstacles to its use;

(b) exchange information and share experiences on regulations, policies, enforcement and compliance regarding electronic commerce, including:

(i) personal information protection;

(ii) online consumer protection, including means for consumer redress and building consumer confidence;

(iii) unsolicited commercial electronic messages; and

(iv) electronic authentication.

(c) participate actively in regional and multilateral fora to promote the development of electronic commerce;

[34] For the purposes of this subparagraph, the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.

(d) encourage development by the private sector of methods of self-regulation that foster electronic commerce, including codes of conduct; and

(e) encouraging their national entities responsible for cybersecurity incident response to work together throughout the improvement of their capabilities.

Article 18.13: Settlement of Disputes

1. In the event of any differences between Parties regarding the interpretation and application of this Chapter, the Party concerned shall first engage in consultations in good faith and make every effort to reach a mutually satisfactory solution.

2. In the event that the consultations referred to in paragraph 1 fail to resolve the differences, any Party may refer the matter to the Free Trade Commission in accordance with Article 170 (Free Trade Commission).

3. No Party shall have recourse to dispute settlement under Chapter 15 (Disputes Settlement) for any matter arising under this Chapter.

Article 18.14: Future Negotiating Clause

The Parties undertake to initiate discussions to further deepen the electronic commerce commitments including source code and non-discriminatory treatment to digital products, if both parties agree to these disciplines in any trade agreement that is subscribed or enters into force after the entry into force of this agreement.

APPENDIX 9

NEW CHAPTER 19 (COMPETITION)

CHAPTER 19

COMPETITION

Article 19.1: Definitions

For the purposes of this Chapter:

conducts against competition means business conducts or transactions that adversely affect competition in the territory of a Party, such as:

(a) agreements between enterprises, decisions by associations of enterprises and concerted practices, which have as their object or effect the prevention, restriction or distortion of competition in the territory of either Party as a whole or in a substantial part thereof, as specified in the Parties' respective competition laws;

(b) any abuse by one or more enterprises of a dominant position in the territory of either Party as a whole or in a substantial part thereof, as specified in the Parties' respective competition laws;

(c) concentrations between enterprises, which significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position in the territory of either Party as a whole or in a substantial part thereof in accordance with the Parties' respective competition laws; or

(d) unfair competition acts, including that in its production or distribution activities, a business disrupts the order of market competition and cause damage to the lawful rights and interests of the other businesses or consumers, which is objectively contrary to the requirements of corporate good faith that should guide competition, in any form in which such actions are adopted or the means in which they are carried out, in accordance with the Parties' respective unfair competition laws.

competition laws means:

(a) for China, the *Antimonopoly Law* and *Anti-unfair Competition Law* their implementing regulations and amendments; and

(b) for Peru, the *Repression of Anticompetitive Conducts Law, the Antimonopoly and Antioligopoly Law of the Electricity Sector, the Merger and Acquisition Control Law, and Law on Suppression of Unfair Competition*; and their implementing regulations and amendments.

consumer protection laws means:

(a) for China, *Law on the Protection of Consumer Rights and Interests* and its implementing regulations and amendments; and

(b) for Peru, the *Consumer Protection Code* and its implementing regulations and amendments.

Article 19.2: Objectives

Each Party understands that proscribing conducts against competition, implementing competition policies and cooperating on competition issues contribute to preventing the cross-border trade and investments from being deterred through artificial barriers to entry and prohibiting economic efficiency and consumer welfare.

Article 19.3: Competition Laws, Authorities and Policies

1. Each Party shall maintain or adopt competition laws that promote and protect the competitive process in its market by proscribing business conducts against competition.

2. Each Party shall maintain an authority or authorities responsible for the enforcement of its national competition laws.

3. Each Party shall maintain its autonomy to establish, develop and implement their respective competition policies.

Article 19.4: Principles in Law Enforcement

1. Each Party shall be consistent with the principles of transparency, non-discrimination, and procedural fairness in the competition law enforcement field.

2. Each Party shall treat persons who are not persons of the Party no less favourably than persons of the Party in like circumstances in the competition law enforcement field.

3. Each Party shall ensure that before it imposes administrative punishment or restrictive conditions against a person for violation its national competition laws, it affords that person the reasonable opportunity to present opinion or evidence in its defence.

4. Each Party shall provide a person that is subject to the imposition of administrative punishment or restrictive conditions for violation of its national competition laws with the opportunity to apply for administrative reconsideration or initiate a litigation following an administrative decision under the laws of that Party.

Article 19.5: Transparency

1. Each Party shall make public its competition laws and regulations, including procedural rules for the investigation.

2. Each Party shall ensure that a final administrative decision finding a violation of its national competition laws are in writing and sets out the relevant findings of fact and the legal basis on which the decision is based.

3. Each Party shall make public a final decision and any order implementing the decision in accordance with its national competition laws and regulations. Each Party shall ensure that the version of the decision or order that is made available to the public does not include confidential information that is protected from public disclosure by its national law.

Article 19.6: Cooperation in Law Enforcement

1. The Parties recognise the importance of cooperation and coordination in the competition field, to promote effective competition law enforcement in the free trade area. Accordingly, each Party shall cooperate through notification, consultation, exchange of information and experience, and technical cooperation.

2. The Parties agree to cooperate in a manner compatible with their respective laws, regulations and important interests, and subject to their reasonably available resource.

Article 19.7: Technical Cooperation

The Parties may promote technical cooperation, including exchange of experiences, capacity building through training programs, workshops and research collaborations for the purpose of enhancing the capacity of each Party related to competition policy and law enforcement.

Article 19.8: Consumer Protection

1. The Parties recognise the importance of consumer protection policy and enforcement to creating efficient and competitive markets and enhancing consumer welfare in the free trade area.

2. For the purposes of this Article, fraudulent and deceptive commercial activities refer to those fraudulent and deceptive commercial practices that cause actual harm to consumers, or that pose an imminent threat of such harm if not prevented, for example:

(a) a practice of making misrepresentations of material fact, including implied

factual misrepresentations, that cause significant detriment to the economic interests or personal and property safety of misled consumers;

(b) a practice of failing to deliver products or provide services to consumers after the consumers are charged; or

(c) a practice of charging or debiting consumers' financial, telephone or other accounts without authorisation.

3. Each Party shall adopt or maintain consumer protection laws or other laws or regulations that proscribe fraudulent and deceptive commercial activities. The laws or regulations a Party adopts or maintains to proscribe these activities can be civil, criminal or administrative in nature.

4. The Parties recognise that fraudulent and deceptive commercial activities increasingly transcend national borders. Accordingly, the Parties shall promote, as appropriate, cooperation and coordination on matters of mutual interest related to fraudulent and deceptive commercial activities, including in the enforcement of their consumer protection laws.

5. The Parties shall cooperate and coordinate on the matters set out in this Article through the relevant national public bodies or officials responsible for consumer protection policy, laws or enforcement, as determined by each Party and compatible with their respective laws, regulations and important interests and within their reasonably available resources.

Article 19.9: Consultations

1. In order to foster understanding between the Parties, or to address specific matters that arise under this Chapter, on request of the other Party, a Party shall enter into consultations. In its request, the requesting Party shall indicate, if relevant, how the matter affects trade or investment between the Parties. The Party addressed shall accord full and sympathetic consideration to the concerns of the requesting Party.

2. The Parties shall report the outcome of the consultations to the Free Trade Commission.

Article 19.10: Independence of Competition Law Enforcement

This Chapter should not intervene with the independence of each Party in enforcing its respective competition laws.

Article 19.11: Dispute Settlement

Neither Party shall have recourse to dispute settlement under this Agreement for any matters arising under this Chapter.

Article 19.12: Future Negotiations

1. The Parties recognise the importance of competition policy for trade liberalization and market integration.

2. The Parties shall review this Chapter every two years in order to evaluate the possibility to incorporate additional commitments with the aim of foster competition and ensure consumer protection.

APPENDIX 10

NEW CHAPTER 20 (STANDARDS AND CONFORMITY ASSESSMENT COOPERATION)

CHAPTER 20

STANDARDS AND CONFORMITY ASSESSMENT COOPERATION

Article 20.1: Objective and Scope

The objective of this Chapter is to strengthen cooperation between the Parties on standards, technical regulations, and conformity assessment procedures for trade in goods to reduce unnecessary costs of compliance and facilitate trade between the Parties.

Article 20.2: Relation to Chapter 7 (Technical Barriers to Trade) of the Free Trade Agreement

1. The rights and obligations related to goods under this Chapter shall not contravene the provisions established by the Chapter 7 (Technical Barriers to Trade) of the Free Trade Agreement.

2. Provisions of this Chapter related to equivalence, mutual recognition agreements and recognition of conformity assessments results for goods are subject to the Chapter 7 (Technical Barriers to Trade) of the Free Trade Agreement.

Article 20.3: Cooperation

1. The Parties agree to enhance cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures.

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

3. To complement Article 98 (Conformity Assessment) of Chapter 7 (Technical Barriers to Trade) of the Free Trade Agreement, Parties can use mutual recognition agreements to accredit, approve, license or otherwise recognize conformity assessment bodies located outside its territory.

4. Nothing in this Chapter precludes a Party from verifying the results of conformity assessment procedures undertaken by conformity assessment bodies located outside its territory.

5. In case of non-international standards, the Parties may apply each other's national standards according to the actual needs, in compliance with rules and regulations established by its legislation.

6. To complement Article 98.1 (Conformity Assessment) of Chapter 7 (Technical Barriers to Trade) of the Free Trade Agreement, and with a view to increasing efficiency, avoiding duplication, and ensuring cost effectiveness of the conformity assessments, the Parties should endeavour to recognize the results of conformity assessment procedures conducted in the territory of another Party according to their respective laws and regulations.

7. The Parties shall establish China-Peru Standards and Conformity Assessment Cooperation Mechanism, which is committed to promoting the mutual cooperation on affairs of common interest, with regard to standards, technical regulations, and conformity assessment procedures.

8. To address the matters referred to in this Chapter, the Parties shall convene meetings or hold expert dialogue and consultation on standard cooperation in specific areas, in accordance with the cooperation needs of both Parties.

9. China-Peru Standards and Conformity Assessment Cooperation Mechanism should meet as agreed by the Parties. The Cooperation Mechanism may meet in person, via videoconference, teleconference, or any other means as agreed by the Parties.

Article 20.4 Contact Points

1. Each Party shall establish a contact point taking responsibility for coordinating the implementation of this Chapter. The contact points are as follows:

(a) for China, the State Administration for Market Regulation; and

(b) for Peru, the Vice Ministry of Foreign Trade of the Ministry of Foreign Trade and Tourism (Ministerio de Comercio Exterior y Turismo-MINCETUR), or their successors.

2. Both Parties shall provide with each other the details of the relevant officials in their respective contact point, including telephone, email, and any other relevant information. A Party shall notify the other Party promptly of any change in its contact point or any amendment to the details of the relevant officials acting as or on behalf of its contact point**.**

Article 20.5: Areas of Cooperation

1. Each Party should encourage and facilitate cooperation on standards, technical regulations, and conformity assessment procedures between their respective government agencies, industry associations and other organizations, through such mechanisms as mutual recognition agreements, equivalence, promotion of greater regulatory convergence and use of good regulatory practices, among others.

2. The indicative areas of cooperation of each Party's interest are listed in Section A and B of the Annex to this Chapter.

3. Cooperation in these areas shall be examined by each Party and will be subject to assessment of relevant domestic administrative authorities of each Party according to domestic laws and regulations.

4. Areas of cooperation that are of each Party's but are not listed in Section A and B of the Annex to this Chapter shall be assessed in the framework of Standards and Conformity Assessment Cooperation Mechanism established in Article 20.3.

ANNEX 20-A

INDICATIVE LISTS OF AREAS OF COOPERATION

Section A

Indicative areas that Peru is interested in:

(1) Wood Industry;

(2) Leather Industry;

(3) Metal Mechanical Industry;

(4) Mining Products (copper, silver, lead, zinc, tin);

(5) Chemical Products;

(6) Iron and Steel Industry;

(7) Fruits;

(8) Fishery Products;

(9) Gas and Petroleum;

(10) Plastics;

(11) Organic Products;

(12) Automobiles and its components.

Section B

Indicative areas that China is interested in:

(1) Automobiles (including Electric Vehicles) and its components;

(2) Lithium Batteries;

(3) Photovoltaic Products;

(4) Telecommunications;

(5) Mechanical and Electrical Equipment;

(6) Hydro Engineering and Equipment;

(7) Household Appliances;

(8) Non-ferrous Metals;

(9) Furniture and Building Materials;

(10) Civil Aviation;

(11) Construction and Engineering;

(12) Toys.

APPENDIX 11

NEW CHAPTER 21 (GLOBAL SUPPLY CHAIN)

CHAPTER 21

GLOBAL SUPPLY CHAIN

Article 21.1: Objectives

1. The objectives of this Chapter are to build safe and reliable supply chains with greater certainty and consistency, in order to expand bilateral trade, promote trade and investment facilitation, and foster the integration and connectivity of global supply chains.

2. To this end, the Parties recognise the importance of creating an enabling environment for global supply chain development and shall endeavour to enhance cooperation and deepen the synergies between different efforts, taking account of their respective national priorities and circumstances.

Article 21.2: Connectivity

The Parties shall encourage to enhance seamless connectivity of different modes of transport to create more transport alternatives for commercial exchange.

Article 21.3: Logistics Corridors

1. The Parties shall promote the development of logistics corridors for foreign trade, identifying main infrastructure and promoting multimodal transport, with the purpose of improving competitiveness and integration between the Parties.

2. The Parties recognise the importance of infrastructure to ensure the flow of the supply chain and trade facilitation.

Article 21.4: Use of Information Technology

1. The Parties shall encourage the use of information technology in supply chains and promote its digitalization, in order to ensure the security, traceability and visibility of the cargo along the supply chain in foreign trade operations.

2. The Parties are encouraged to cooperate in promoting the interoperability of electronic documents used in trade operations, including, electronic bill of lading.

3. The Parties recognise the importance of promoting the green and sustainable development of logistics industry by applying high technologies, including Artificial Intelligence and Internet of Things.

Article 21.5: Electronic Information Exchange

1. The Parties shall encourage the cooperation between the national logistics platforms that contain information about logistics services, with the purpose of improving transparency and predictability of the supply chain.

2. The Parties recognised that each Party may adopt or maintain measures to evaluate the information that may be exchanged through these electronic platforms, subject to applicable policies, laws and regulations.

Article 21.6: Cooperation and Assistance

Considering the impact of the development of the global supply chain competitiveness on foreign trade, the Parties shall endeavour to assist and cooperate with each other in:

(a) implementing and operating this Chapter;

(b) exchanging knowledge and best practices on: management and development of logistics platforms, supply chain security, traceability and visibility of the cargo, transport and services, strategic planning for the development of international supply chains, initiatives for the associativity of logistics service providers, mechanisms of collaborative supply chain, mechanisms for the development of sustainable supply chains and the establishment of electronic platforms that analyze and provide information of international logistics;

(c) exchanging information of methodology to measure time, logistics costs, and of other elements that permit to identify critical points in the supply chain;

(d) promoting investments in port, air, rail, road and other infrastructures;

(e) promoting supply chain connectivity and the development of logistics industry;

(f) encouraging the participation of the Parties in initiatives related with logistics corridors and safe and reliable supply chains;

(g) enhancing capacity building cooperation in the field of logistics between the Parties;

(h) strengthening cooperation under bilateral and multilateral fora to promote the development of logistics industry and the sharing of resources and information; and

(i) other issues agreed by the Parties.

Article 21.7: Contact Points

The Parties establish the following points of contact:

(a) for Peru, the Ministry of Foreign Trade and Tourism (Ministerio de Comercio Exterior y Turismo - MINCETUR), or its successor;

(b) for China, the Ministry of Transport, or its successor.

Article 21.8: Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 15 (Dispute Settlement) of the Free Trade Agreement for any matter arising under this Chapter.

APPENDIX 12

NEW CHAPTER 22 (ENVIRONMENT AND TRADE)

CHAPTER 22

ENVIRONMENT AND TRADE

Article 22.1: Objective

1. The objectives of this Chapter are to promote mutually supportive trade and environmental policies, through the sustainable use of their natural resources, and enhance the capacities of the Parties to address trade-related environmental issues, including through cooperation.

2. The Parties recognise that the economic development, social development and the protection of the environment are inter-dependent and mutually supportive components of sustainable development. The Parties highlight the benefits of the cooperation in environmental matters as part of a global approach to sustainable development.

Article 22.2: Level of Protection

1. The Parties affirm the sovereign right of each Party to establish its own levels of domestic environmental protection and its own environmental priorities, and to establish, adopt or modify its environmental laws and policies accordingly.

2. Each Party shall strive to ensure that its environmental laws and policies provide for, and encourage, high levels of environmental protection, and to continue to improve its respective levels of environmental protection.

Article 22.3: General Commitments

1. The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protection afforded in their respective environmental laws and regulations. Accordingly, no Party shall waive or derogate such laws and regulations in a manner that weakens or reduces the protection afforded in those laws to that end.

2. The Parties commit not to use their environmental laws or other measures in a manner that would constitute a disguised restriction on trade or investment between the Parties.

3. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of the other Party.

Article 22.4: Multilateral Environmental Agreements

1. The Parties recognise that multilateral environmental agreements play an important role in protecting the environment. Accordingly, the Parties affirm their commitment to implement the multilateral environmental agreements to which both Parties are party.

2. The Parties agree to dialogue and cooperate, as appropriate, with respect to trade-related environmental matters of mutual interest related to multilateral environmental agreements to which they are party.

Article 22.5: Cooperation

Recognising the importance of the cooperation in the environmental aspects related to trade to achieve the sustainable development objectives, the Parties commit to conducting cooperative activities in areas of common interest related to trade, in manners that the Parties deem appropriate.

Article 22.6: Environmental Consultations

1. Each Party shall designate a contact point for Environment to facilitate the communication between the Parties on any matter covered in this Chapter.

2. A Party may request consultations to the other Party with respect to any matter that arise under this Chapter through the delivery of a written request to the contact point of the other Party. The Parties shall make their best efforts to achieve a mutually satisfactory solution to the matter.

Article 22.7: Non-Application of Dispute Settlement

Neither Party shall have recourse to Chapter 15 (Dispute Settlement) of the Free Trade Agreement for any matter arising under this Chapter.

APPENDIX 13

NEW ANNEX 13 (SUBSEQUENT NEGOTIATIONS ON SERVICES)

ANNEX 13

SUBSEQUENT NEGOTIATIONS ON SERVICES

1. The Parties aim to achieve high-level liberalization for trade in services in the subsequent negotiations.

2. The subsequent negotiations shall be conducted based on a negative list approach.

3. The subsequent negotiations shall cover Chapter 8 including the newly-generated reservation lists such as Annex I (List of Existing Non-Conforming Measures) and Annex II (List of the Specific Sectors, Sub-sectors, or Activities for Which a Party May Maintain Existing, or Adopt New or More Restrictive Measures that Do not Conform with Obligations under the Relevant Chapters).

4. In the subsequent negotiations, the Parties may revisit any Article in Chapter 8 and the subsequent negotiations shall be conducted based on the Parties' respective textual proposals, not on the Articles in this Agreement.

5. Nothing in this Agreement shall be construed as preventing a Party from making new textual proposals in the subsequent negotiations.

6. The Parties shall commence the subsequent negotiations as soon as possible, but no later than two years following entry into force of the Optimization Protocol.

7. The Parties shall endeavour to conclude the subsequent negotiations within two years from the date upon which the subsequent negotiations commence.

APPENDIX 14

NEW ANNEX 14 (PERU'S ANNEX ON GEOGRAPHICAL INDICATIONS)

ANNEX 14

PERU's ANNEX ON GEOGRAPHICAL INDICATIONS

Peru is interested in the inclusion of the following geographical indications:

1. Café Villa Rica

2. Loche de Lambayeque

3. Café Machu Picchu-Huadquiña

4. Maca Junín-Pasco

5. Aceituna de Tacna

6. Cacao Amazonas Perú

7. Orégano de Tacna

The protection of these geographical indications in China will be subject to the submission of the applications by the right holder and the correspondent examination by relevant domestic geographical indications administrative authorities in China and in accordance with its national laws and regulations.[35]

[35] For greater certainty, Chinese national laws and regulations as referred to in this paragraph are Chinese national laws, regulations, rules and Measures for the Protection of Foreign Geographical Indication Products, including amendments or modifications thereof, applicable by the time of the submission of the application and correspondent examination.