FREE TRADE AGREEMENT

BETWEEN

THE REPUBLIC OF PERU

AND

THE EFTA STATES

PREAMBLE

The Republic of Peru (hereinafter referred to as "Peru") on one part, and Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation (hereinafter referred to as "the EFTA States") on the other, each individual State referred to as a "Party" or collectively referred to as the "Parties":

RESOLVED to strengthen the special bonds of friendship and co-operation between them and desirous, by way of the removal of obstacles to trade, to contribute to the harmonious development and expansion of world trade and provide a catalyst for broader international co-operation, in particular between Europe and South America;

CONSIDERING the important links existing between Peru and the EFTA States, in particular the *Joint Declaration on Co-operation* signed in Geneva on 24 April 2006, and wishing to strengthen these links through the creation of a free trade area, thus establishing close and lasting relations;

REAFFIRMING their commitment to democracy, the rule of law, human rights and fundamental freedoms in accordance with their obligations under international law, including the principles set out in the *United Nations Charter* and the *Universal Declaration of Human Rights*;

ACKNOWLEDGING the relationship between good corporate and public sector governance and sound economic development, and affirming their support to the principles of corporate governance in the *United Nations Global Compact*, as well as their intent to promote transparency and prevent and combat corruption;

BUILDING on their respective rights and obligations under the *Marrakesh Agreement Establishing the World Trade Organization* (hereinafter referred to as "the WTO Agreement") and the other agreements negotiated thereunder and other multilateral and bilateral instruments of co-operation;

REAFFIRMING their commitment to economic and social development and the respect for the fundamental rights of workers, including the principles set out in the *International Labour Organisation (ILO)* Conventions to which the Parties are party;

AIMING to create new employment opportunities, improve health and living standards and ensure a large and steadily growing volume of real income in their respective territories through the expansion of trade and investment flows, thereby promoting broad-based economic development in order to reduce poverty and generating opportunities for sustainable economic alternatives to drug-crop production;

WILLING to preserve their ability to safeguard the public welfare;

INTENDING to enhance the competitiveness of their firms in global markets;

DETERMINED to create an expanded and secure market for goods and services in their territories and to ensure a predictable legal framework and environment for trade, business and investment by establishing clear and mutually advantageous rules;

RECOGNISING that the gains from trade liberalisation should not be offset by anti-competitive practices;

RESOLVED to foster creativity and innovation by protecting intellectual property rights while maintaining a balance between the rights of the holders and the interests of the public in general, particularly in education, research, public health and access to information;

DETERMINED to implement this Agreement in a manner consistent with environmental protection and conservation, promote sustainable development, and strengthen their co-operation on environmental matters;

HAVE AGREED, in pursuit of the above, to conclude the following Free Trade Agreement (hereinafter referred to as "this Agreement"):

CHAPTER 1

GENERAL PROVISIONS

ARTICLE 1.1

Establishment of a Free Trade Area

The Parties to this Agreement, consistent with Article XXIV of the *General Agreement on Tariffs and Trade 1994* (hereinafter referred to as "the GATT 1994") and Article V of the *General Agreement on Trade in Services* (hereinafter referred to as "the GATS"), hereby establish a free trade area by means of this Agreement and the complementary Agreements on Agriculture, concurrently concluded between Peru and each individual EFTA State.

ARTICLE 1.2

Objectives

The objectives of this Agreement are:

(a) to achieve the liberalisation of trade in goods, in conformity with Article XXIV of the GATT 1994;

(b) to achieve the liberalisation of trade in services, in conformity with Article V of the GATS;

(c) to substantially increase investment opportunities in the free trade area to contribute to the sustainable development of the Parties;

(d) to achieve further liberalisation on a mutual basis of the government procurement markets of the Parties;

(e) to promote competition in their economies, particularly as it relates to economic relations between the Parties;

(f) to ensure adequate and effective protection of intellectual property rights;

(g) to contribute, by the removal of barriers to trade and investment, to the harmonious development and expansion of world trade; and

(h) to ensure co-operation related to trade capacity building, in order to expand and improve the benefits of this Agreement, and to reduce poverty and foster competitiveness and economic development.

ARTICLE 1.3

Svalbard

This Agreement shall not apply to the territory of Svalbard, with the exception of trade in goods.

ARTICLE 1.4

Relation to Other International Agreements

The provisions of this Agreement shall be applied without prejudice to the rights and obligations of the Parties under the WTO Agreement and the other agreements negotiated thereunder to which they are a party and any other international agreement to which they are a party.

ARTICLE 1.5

Trade and Economic Relations Covered by this Agreement

1. The provisions of this Agreement apply to the trade and economic relations between on the one side Peru and on the other side each individual EFTA State, but not to trade relations between individual EFTA States, unless otherwise provided for in this Agreement.

2. As a result of the customs union established by the Treaty of 29 March 1923 between Switzerland and the Principality of Liechtenstein, Switzerland shall represent the Principality of Liechtenstein in matters covered thereby.

ARTICLE 1.6

Central, Regional and Local Government

Each Party shall ensure within its territory the observance of all obligations and commitments under this Agreement by its respective central, regional and local governments and authorities, and by non-governmental bodies in the exercise of governmental powers delegated to them by central, regional and local governments or authorities.

ARTICLE 1.7

Taxation

1. This Agreement shall not restrict a Party's fiscal sovereignty to adopt taxation measures[1], except for the disciplines referred to hereafter:

(a) Article 2.11 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article to the same extent as does Article III of the GATT 1994;

(b) Article 5.3 (National Treatment), subject to Article 5.8 (Exceptions).

2. Notwithstanding paragraph 1, this Agreement shall not affect the rights and obligations of a Party under any tax convention. In the event of any inconsistency between this Agreement and such convention, the latter shall prevail to the extent of the inconsistency.

ARTICLE 1.8

Electronic Commerce

The Parties recognise the growing role of electronic commerce for trade between them. With a view to supporting provisions of this Agreement related to trade in goods and services, the Parties undertake to intensify their co-operation on electronic commerce for their mutual benefit. For that purpose the Parties have established the framework contained in Annex I (Electronic Commerce).

ARTICLE 1.9

Definitions of General Application

For the purposes of this Agreement, unless otherwise specified:

(a) "days" means calendar days;

(b) "goods" means any merchandise, product, article or material;

(c) "juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

[1] It is understood that taxation measures do not include: customs duties on imports or measures listed in subparagraphs (b) (ii) and (iii) of Article 2.2 (Definitions).

(d) “measure” means any law, regulation, procedure, requirement, provision or practice;

(e) “national” means a natural person who has the nationality of a Party or is a permanent resident of a Party in accordance with its domestic law;

(f) “person” means a natural person or a juridical person.

CHAPTER 2

TRADE IN GOODS

ARTICLE 2.1

Scope

This Chapter applies to the following goods traded between the Parties:

(a) goods classified under chapters 25 to 97 of the Harmonized Commodity Description and Coding System (hereinafter referred to as "the HS"), excluding the products listed in Annex II (Excluded Products);

(b) processed agricultural products specified in Annex III (Processed Agricultural Products), with due regard to the arrangements provided for in Chapter 3 (Processed Agricultural Products); and

(c) fish and other marine products as provided for in Annex IV (Fish and Other Marine Products).

ARTICLE 2.2

Definitions

For the purposes of this Chapter, unless otherwise specified:

(a) "customs authority" means the authority that according to the legislation of a Party is responsible for the administration of its customs legislation;

(b) "customs duties on imports" means any duty or a charge of any kind imposed on, or in connection with, the importation of goods, including any form of surtax or surcharge, except:

  (i) charges equivalent to an internal tax imposed consistently with paragraph 2 of Article III of the GATT 1994;

  (ii) antidumping or countervailing duties that are applied pursuant to Article VI of the GATT 1994; or

(iii) fees or other charges in connection with importation commensurate with the cost of services rendered.

(c) "customs legislation" means any legal or regulatory provision adopted by a Party, governing the import, export or transit of goods and their placing under any customs procedure, including measures of prohibition, restriction and control.

ARTICLE 2.3

Rules of Origin and Mutual Assistance in Customs Matters

1. The provisions on rules of origin and administrative co-operation are set out in Annex V (Rules of Origin and Administrative Co-operation).

2. The provisions on mutual assistance in customs matters are set out in Annex VI (Mutual Administrative Assistance in Customs Matters).

ARTICLE 2.4

Trade Facilitation

With the aim to facilitate trade between Peru and the EFTA States, the Parties shall:

(a) simplify, to the greatest extent possible, procedures for trade in goods and related services;

(b) promote multilateral co-operation among them in order to enhance their participation in the development and implementation of international conventions and recommendations on trade facilitation; and

(c) co-operate on trade facilitation within the framework of the Joint Committee,

in accordance with the provisions set out in Annex VII (Customs Procedures and Trade Facilitation).

ARTICLE 2.5

Establishment of a Sub-Committee on Trade in Goods, Rules of Origin and Customs Matters

1. The Sub-Committee of the Joint Committee on Trade in Goods, Rules of Origin and Customs Matters is hereby established.

2. Unless otherwise provided for in this Agreement, the functions of the Sub-Committee shall be to exchange information, review developments, endeavour to resolve any technical differences that may arise among the Parties, prepare technical amendments to Annexes II (Excluded Products), III (Processed Agricultural Products), IV (Fish and Other Marine Products), V (Rules of Origin and Administrative Co-operation), VI (Mutual Administrative Assistance in Customs Matters), VII (Customs Procedures and Trade Facilitation) and VIII (Industrial Goods), and to assist the Joint Committee.

3. The Sub-Committee shall be chaired alternately by a representative of Peru or an EFTA State for an agreed period of time. The chairperson shall be elected at the first meeting of the Sub-Committee. The Sub-Committee shall act by consensus.

4. The Sub-Committee shall report to the Joint Committee. The Sub-Committee may make recommendations to the Joint Committee on matters related to its functions.

5. The Sub-Committee shall meet as often as required. It may be convened by the Joint Committee, by the chairperson of the Sub-Committee on his or her own initiative, or upon request of a Party. The venue shall alternate between Peru and an EFTA State.

6. A provisional agenda for each meeting shall be prepared by the chairperson in consultation with the Parties, and forwarded to them, as a general rule, no later than two weeks before the meeting.

ARTICLE 2.6

Dismantling of Import Duties

1. Upon entry into force of this Agreement, Peru shall dismantle its customs duties on imports of goods originating in an EFTA State, as provided for in Annexes III (Processed Agricultural Products), IV (Fish and Other Marine Products) and VIII (Industrial Goods).

2. Upon entry into force of this Agreement, the EFTA States shall eliminate all customs duties on imports of goods covered by Article 2.1 (Scope) originating in Peru, unless otherwise provided for in Annexes III (Processed Agricultural Products) and IV (Fish and Other Marine Products).

3. At the request of a Party, consultations shall be held to consider accelerating the elimination of the customs duties on imports set out in the respective Annexes. An agreement between the Parties to accelerate the elimination of a customs duty on imports shall supersede any duty rate or dismantling category set out in Annexes III (Processed Agricultural Products), IV (Fish and other Marine Products) and VIII (Industrial Goods), if approved by the Parties in accordance with their internal legal requirements.

4. No new customs duties on imports or other charges in relation to the importation of originating goods to a Party shall be introduced nor shall those already applied be increased, except as provided for in this Agreement.

5. The Parties recognise that they may:

(a) following a unilateral tariff reduction, raise a customs duty to the level established in the tariff dismantling schedules of each Party, for the respective year; or

(b) increase a customs duty pursuant to Article 12.17 (Non-Implementation and Suspension of Benefits).

ARTICLE 2.7

Base Rate

1. The base rate of customs duty for goods, to which the successive reductions set out in Annexes III (Processed Agricultural Products), IV (Fish and other Marine Products) and VIII (Industrial Goods) are to be applied, shall be the most-favoured nation rate of duty applied on 1 April 2007.

2. If at any moment after the date of entry into force of this Agreement a Party reduces its applied most favoured nation (hereinafter referred to as "MFN") customs duty on imports that customs duty shall apply only if it is lower than the customs duty calculated in accordance with the relevant Annexes.

ARTICLE 2.8

Duties, Taxes or Other Charges on Exports

No Party may adopt or maintain any duty, tax or other charge on exports of goods to another Party, unless the duty, tax or charge is also adopted for or maintained on these goods when they are destined for domestic consumption.

ARTICLE 2.9

Import and Export Restrictions

1. Prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be eliminated in trade between the Parties in accordance with Article XI of the GATT 1994, which is hereby incorporated into and made part of this Agreement.

2. The Parties understand that paragraph 1 prohibits a Party from adopting or maintaining:

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

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

3. No Party shall adopt or maintain a measure that is inconsistent with the WTO Agreement on Import Licensing Procedures. Any new import licensing procedure and any modification to its existing import licensing procedures or list of products shall be published, whenever practicable, 21 days prior to the date when the requirement becomes effective but in any event no later than that date.

4. Paragraphs 1 and 2 shall not apply to the measures set out in Annex IX (Used Goods).

ARTICLE 2.10

Administrative Fees and Formalities

1. Each Party shall ensure that all fees and charges of whatever character other than import and export duties and other than taxes referred to in Article III of the GATT 1994, are applied in accordance with paragraph 1 of Article VIII of the GATT 1994 and its interpretative notes.

2. No Party shall require consular transactions, including related fees and charges, in connection with the importation of goods of another Party. For the purposes of this Agreement, "consular transaction" means any act by consular authorities of the importing Party in the exporting Party for the purpose of obtaining consular invoices or consular visas for commercial invoices, certificates of origin, manifests, shippers' export declarations, or any other customs documentation required on or in connection with imports.

3. Each Party shall make available and maintain through the Internet updated information about the fees and charges it imposes in connection with importation or exportation.

ARTICLE 2.11

National Treatment

Except as provided for in Annex IX (Used Goods), the Parties shall apply national treatment in accordance with Article III of the GATT 1994, including its interpretative notes, which are hereby incorporated and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.12

State Trading Enterprises

The rights and obligations of the Parties in respect of state trading enterprises shall be governed by Article XVII of the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994, which are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.13

Sanitary and Phytosanitary Measures

1. The Parties confirm their rights and obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (hereinafter referred to as the "SPS Agreement") and by the decisions on the application of the SPS Agreement adopted by the WTO Committee on Sanitary and Phytosanitary Measures. For the purposes of this Chapter and for any communication on sanitary or phytosanitary related matters between the Parties, the definitions in Annex A of the SPS Agreement, as well as the glossary of harmonised terms of the relevant international organisations, shall apply.

2. The Parties shall work together in the effective implementation of the SPS Agreement and of the provisions set forth in this Article for the purpose of facilitating bilateral trade, without prejudice to the right to adopt measures necessary to protect human, animal or plant health and to achieve the appropriate level of sanitary or phytosanitary protection.

3. The Parties shall not use their sanitary or phytosanitary measures related to control, inspection, approval or certification to restrict market access without scientific justification, without prejudice to paragraph 7 of Article 5 of the SPS Agreement.

4. The Parties shall strengthen their co-operation in the field of sanitary and phytosanitary measures, with a view to increasing the mutual understanding of their respective systems and to improving their sanitary and phytosanitary systems.

5. Peru and any of the EFTA States shall, whenever necessary, for facilitating access to their respective markets, develop bilateral agreements including those between their respective regulatory authorities.

6. The Parties agree to designate and notify to each other, upon entry into force of this Agreement, contact points for notification and information exchange on issues related to sanitary and phytosanitary matters.

7. The Parties hereby establish a forum for SPS experts. The forum shall meet when requested by one of the Parties. In order to permit the efficient use of resources, the Parties shall, to the extent possible, endeavour to use technological means of communication, such as electronic communication, video or phone conference, or arrange for meetings to take place in conjunction with Joint Committee meetings or with meetings of the WTO Committee on Sanitary and Phytosanitary Measures. The forum shall *inter alia*:

(a) overview and ensure the implementation of this Article;

(b) consider measures that are likely to affect, or have affected, access to markets of another Party with the aim of finding appropriate and timely solutions in conformity with the SPS Agreement;

(c) assess progress on market access interests of the Parties;

(d) discuss further developments of the SPS Agreement;

(e) consider the Parties' obligations related to sanitary and phytosanitary matters in other international Agreements; and

(f) establish technical expert groups, as needed.

ARTICLE 2.14

Technical Regulations

1. The rights and obligations of the Parties in respect of technical regulations, standards and conformity assessment shall be governed by the WTO Agreement on Technical Barriers to Trade (hereinafter referred to as "the TBT Agreement") which is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

2. The Parties shall strengthen their co-operation in the field of technical regulations, standards and conformity assessment, with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets. To this end, they shall in particular co-operate in:

(a) reinforcing the role of international standards as a basis for technical regulations, including conformity assessment procedures;

(b) promoting the accreditation of conformity assessment bodies on the basis of relevant Standards and Guides of the International Standards Organisation (ISO) and the International Electrotechnical Commission (IEC);

(c) promoting mutual acceptance of conformity assessment results of conformity assessment bodies, which have been recognised under appropriate multilateral agreements between their respective accreditation systems or bodies; and

(d) reinforcing the transparency in the development of technical regulations and conformity assessment procedures of the Parties, among others, to ensure that all adopted technical regulations are published on official websites with free and public access. Where a Party detains at a port of entry, goods originating in another Party due to a perceived failure to comply with a technical regulation, it shall immediately notify the importer of the reasons for the detention.

3. The Parties shall exchange names and addresses of designated contact points for technical barriers to trade related matters in order to facilitate technical consultations and the exchange of information on all matters that may arise from the application of specific technical regulations, standards and conformity assessment procedures.

4. If a Party requests any information or explanation pursuant to the provisions of this Article, the requested Party shall provide such information or explanation in print or electronically within a reasonable time. The requested Party shall endeavour to respond to such request within 60 days.

5. If a Party considers that another Party has taken measures, not in conformity with the TBT Agreement, which are likely to affect or have affected access to its market that Party may request, through the designated contact point established according to paragraph 3, technical consultations with a view to finding an appropriate solution in conformity with the TBT Agreement. Such consultations, which can take place both within and outside the framework of the Joint Committee, shall be held within 40 days following the date of the receipt of the request. Consultations may also be held by phone-conference or video-conference. Consultations within the Joint Committee shall constitute consultations pursuant to Article 12.5 (Consultations).

ARTICLE 2.15

Subsidies and Countervailing Measures

1. The rights and obligations relating to subsidies and countervailing measures shall be governed by Articles VI and XVI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures, subject to paragraph 2.

2. Before a Party initiates an investigation to determine the existence, degree and effect of any alleged subsidy in Peru or an EFTA State, as provided for in Article 11 of the WTO Agreement on Subsidies and Countervailing Measures, the Party considering initiating an investigation shall notify in writing to the Party whose goods may be subject to investigation and allow a 30 days period for consultations with a view to finding a mutually acceptable solution. The consultations shall take place within 15 days following the date of the receipt of the notification, among the competent authorities of the Parties, if any Party so requests.

3. Chapter 12 (Dispute Settlement) shall not apply to this Article, except to paragraph 2.

ARTICLE 2.16

Anti-Dumping

1. The rights and obligations relating to anti-dumping measures shall be governed by Article VI of the GATT 1994 and the WTO Agreement on the implementation of Article VI of the GATT 1994 (hereinafter referred to as "the WTO Anti-dumping Agreement"), subject to paragraph 2.

2. When a Party receives a properly documented application and before initiating an investigation under the WTO Anti-Dumping Agreement, the Party shall notify in writing to the other Party whose product is allegedly being dumped and allow a 20 days period for consultations with a view to finding a mutually acceptable solution. If a solution cannot be reached, each Party retains its rights and obligations under Article VI of the GATT 1994 and the WTO Anti-Dumping Agreement.

3. The Joint Committee shall review this Article in order to determine whether its content is still necessary to achieve the policy objectives of the Parties.

4. Chapter 12 (Dispute Settlement) shall not apply to this Article, except to paragraph 2.

ARTICLE 2.17

Global Safeguard Measures

1. The Parties confirm their rights and obligations under Article XIX of the GATT 1994 and the WTO Agreement on Safeguards (hereinafter referred to as "the Safeguards Agreement").

2. In taking measures under the WTO provisions referred to in paragraph 1, a Party shall exclude imports of an originating product from one or several Parties if such imports do not in and of themselves cause or threaten to cause serious injury. The Party taking the measure shall make such exclusion in accordance with WTO jurisprudence.

3. No Party may apply, with respect to the same product, at the same time:

(a) a bilateral safeguard measure; and

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

ARTICLE 2.18

Bilateral Safeguard Measures

1. During the transition period, where, as a result of the reduction or elimination of a customs duty under this Agreement, a product originating in a Party is being imported into another Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury or threat thereof to the domestic industry of like or directly competitive products

in the importing Party, the importing Party may take safeguard measures to the minimum extent necessary to remedy or prevent the injury, subject to the provisions of this Article.

2. For the purposes of this Article:

(a) "transition period" means ten years from the date of entry into force of this Agreement. For goods for which Annex VIII (Industrial Goods) provides for tariff elimination of more than ten years, "transition period" means the tariff elimination period for the goods set out in that Annex; and

(b) "substantial cause" means a cause which is more important than any other cause.

3. Safeguard measures shall only be taken upon clear evidence that increased imports have caused or are threatening to cause serious injury pursuant to an investigation in accordance with the procedures and definitions laid down in Articles 3 and 4 of the Safeguards Agreement.

4. The Party intending to take or extend a safeguard measure under this Article shall, immediately and in any case no later than 30 days before taking a measure, make notification to the other Parties. The notification shall contain all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, a precise description of the product involved, and the proposed measure, as well as the date of completion of the investigation procedure referred to in paragraph 3, expected duration and timetable for the progressive removal of the measure.

5. A Party applying a bilateral safeguard measure shall, after consultations with the other Party, provide mutually agreed trade liberalisation compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. The Party applying the measure shall provide an opportunity for such consultations no later than 15 days following the date of the application of the bilateral safeguard measure.

6. If the conditions in paragraphs 1 and 3 are met, the importing Party may to the extent necessary to prevent or remedy serious injury or threat thereof:

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

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

(i) the MFN applied rate of duty in effect at the time the measure is imposed; or

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

7. No Party may maintain a bilateral safeguard measure:

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

(b) for a period exceeding two years. The period may be extended by up to one year if the competent authority determines, in conformity with the procedures set out in paragraphs 3 and 4, that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the domestic industry is adjusting; or

(c) beyond the expiration of the transition period.

8. No bilateral safeguard measure shall be applied to the import of a product, which has previously been subject to such a measure.

9. Within 30 days following the date of notification specified in paragraph 4, the Party conducting a safeguard proceeding under this Chapter, shall enter into consultations with a Party whose product is subject to that proceeding, in order to facilitate a mutually acceptable solution of the matter and shall notify to the Parties the results of the consultations. In the absence of such solution, the importing Party may adopt a measure pursuant to paragraph 6.

10. In the absence of mutually agreed compensation referred to in paragraph 5, the Party against whose product the measure is taken may take compensatory action. The safeguard measure and the compensatory action shall be immediately notified to the other Parties. In the selection of the safeguard measure and the compensatory action, priority must be given to the action which least disturbs the functioning of this Agreement. The compensatory action shall normally consist of suspension of concessions having substantially equivalent trade effects or concessions substantially equivalent to the value of the additional duties expected to result from the safeguard measure. The Party taking compensatory action shall apply the action only for the minimum period necessary to achieve the substantially equivalent trade effects and in any event only while the measure under paragraph 6 is being applied.

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

12. Upon the termination of the measure, the rate of customs duty shall be the rate which would have been in effect but for the measure.

13. In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry. The Party intending to take such a measure shall immediately notify all the Parties. During the time of the application of the provisional safeguard measure, the pertinent requirements and procedures set out in paragraphs 3 to 10 shall be met.

14. Any provisional safeguard measures shall be terminated within 180 days at the latest. The following modalities shall apply:

(a) the period of application of any such provisional measure shall be counted as part of the duration of the measure set out in paragraph 7 and any extension thereof;

(b) a provisional safeguard measure may only be imposed as a tariff increase pursuant to paragraph 6. Any additional duty actually paid shall be promptly refunded, and any guarantee shall be liberated, if the investigation described in paragraph 3 does not result in a finding that the conditions of paragraph 1 are met; and

(c) any mutually agreed compensation, or compensatory action, shall be based on the total period of application of the provisional safeguard measure and of the safeguard measure.

ARTICLE 2.19

General Exceptions

For the purposes of this Chapter, the rights and obligations of the Parties in respect of General Exceptions shall be governed by Article XX of the GATT 1994, which is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.20

Security Exceptions

For the purposes of this Chapter, the rights and obligations of the Parties in respect of Security Exceptions shall be governed by Article XXI of the GATT 1994, which is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

CHAPTER 3

PROCESSED AGRICULTURAL PRODUCTS

ARTICLE 3.1

Scope

1. Processed agricultural products shall be governed by Chapter 2 (Trade in Goods).

2. The Parties reaffirm their rights and obligations under the WTO Agreement on Agriculture.

ARTICLE 3.2

Price Compensation Measures

1. In order to take account of differences in the cost of the agricultural raw materials incorporated into the products referred to in Article 3.3 (Tariff Concessions), this Agreement does not preclude the levying, upon import, of a duty.

2. The duty levied upon import shall be based on, but not exceed, the difference between the domestic price and the world market price of the agricultural raw materials incorporated into the products concerned.

ARTICLE 3.3

Tariff Concessions

1. Taking into account the provisions laid down in Article 3.2 (Price Compensation Measures) the EFTA States shall accord for products listed in Appendix 1 to Annex III (Processed Agricultural Products), originating in Peru, treatment no less favourable than that accorded to the European Union.

2. Based on any reduction of customs duties on imports according to paragraph 1 granted by the EFTA States to Peru, Peru shall reciprocally reduce its customs duties on imports. The reduction shall be proportional to the lowest reduction granted by an EFTA State to Peru.

3. For products listed in Appendix 2 to Annex III (Processed Agricultural Products), and originating in an EFTA State, Peru shall reduce its customs duties on imports as specified therein.

ARTICLE 3.4

Agricultural Export Subsidies

1. Notwithstanding paragraph 2 of Article 3.1, the Parties shall not adopt, maintain, introduce or re-introduce export subsidies, as defined in the WTO Agreement on Agriculture, in their trade in products subject to tariff concessions in accordance with this Agreement.

2. Should a Party adopt, maintain, introduce or re-introduce export subsidies on a product subject to a tariff concession in accordance with Article 3.3 (Tariff Concessions), the other Party may increase the rate of duty on such imports up to the applied MFN customs duty on imports in effect at that date. If a Party increases the rate of duty, it shall notify the other Party within 30 days following the date the duty was increased.

ARTICLE 3.5

Price Band System

Peru may maintain its Price Band System for agricultural products as set out in Appendix 3 to Annex III (Processed Agricultural Products).

ARTICLE 3.6

Notification

1. The EFTA States shall notify Peru, of all measures applied under Article 3.2 (Price Compensation Measures), at an early stage, at the latest 30 days after the entry into force of this Agreement.

2. The EFTA States shall inform Peru of all changes in the treatment accorded to the European Union.

ARTICLE 3.7

Consultations

Peru and the EFTA States shall periodically review the development of their trade in processed agricultural products covered by this Chapter. In light of these reviews and taking into account the arrangements between the Parties and the European Union or in the WTO, the Parties shall decide on possible changes to this Chapter.

CHAPTER 4

TRADE IN SERVICES

ARTICLE 4.1

Trade in Services

1. The Parties reaffirm the rights and obligations between them as provided for in the GATS.

2. The Parties recognise the increasing importance of trade in services in their economies. In their efforts to gradually develop and broaden their co-operation, they shall work together with the aim of creating the most favourable conditions for achieving further liberalisation and additional mutual opening of markets for trade in services.

3. The Parties may jointly review any issues related to measures affecting trade in services in the Joint Committee.

4. The Parties shall negotiate a Chapter on Trade in Services, including international maritime transport services, on a mutually advantageous basis, securing an overall balance of rights and obligations, and having due regard to Article V of the GATS. Such negotiation shall take place no later than one year after the entry into force of this Agreement.

ARTICLE 4.2

Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of service suppliers[1], and subject to the requirements of paragraph 3, each Party shall give due consideration to any requests by another Party to recognise the education or experience obtained, requirements met, or licences or certifications granted in that other Party. Such recognition may be based upon an agreement or arrangement with that other Party, or otherwise be accorded autonomously.

[1] For the purpose of this Article and Annex X (Recognition of Qualifications of Service Suppliers), "service supplier" means any person that supplies, or seeks to supply, a service.

2. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in the territory of a non-party, that Party shall afford another Party adequate opportunity to negotiate its accession to such an agreement or arrangement, whether existing or future, or to negotiate a comparable agreement or arrangement with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that the education or experience obtained, requirements met, or licences or certifications granted, in the territory of that other Party should also 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 authorisation, licensing, or certification of service suppliers, or a disguised restriction on trade in services.

4. Annex X (Recognition of Qualifications of Service Suppliers) sets out further rights and obligations regarding recognition of qualifications of service suppliers of the Parties.

CHAPTER 5

INVESTMENT

ARTICLE 5.1

Coverage

This Chapter shall apply to commercial presence in all sectors, with the exception of all services sectors.

ARTICLE 5.2

Definitions

1. For the purposes of this Chapter:

   (a) "juridical person of a Party" means a juridical person constituted or otherwise organised under the law of Peru or an EFTA State and engaged in substantive business operations in Peru or in the EFTA State concerned;

   (b) "natural person" means a national of Peru or an EFTA State according to its respective legislation;

   (c) "commercial presence" means any type of business establishment, including through:

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

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

      within the territory of another Party for the purpose of performing an economic activity.

2. As regards natural persons, this Chapter shall not extend to seeking or taking employment in the labour market or confer a right of access to the labour market of another Party.

ARTICLE 5.3

National Treatment

With respect to commercial presence, and subject to the reservations set out in Annex XI (Reservations), each Party shall grant to juridical and natural persons of another Party, and to the commercial presence of such persons, treatment no less favourable than that it accords, in like situations to its own juridical and natural persons.

ARTICLE 5.4

Reservations

1. National treatment as provided for under Article 5.3 (National Treatment) shall not apply to:

(a) any reservation that is listed by a Party in Annex XI (Reservations);

(b) an amendment to a reservation covered by subparagraph 1 (a) to the extent that the amendment does not increase the non-conformity of the reservation with Article 5.3 (National Treatment); and

(c) any new reservation adopted by a Party in accordance with paragraph 4, and incorporated into Annex XI (Reservations), provided that such reservation does not affect the overall level of commitments of that Party under this Agreement;

to the extent that such reservation is inconsistent with that Article.

2. As part of the review provided for in Article 5.9 (Review), the Parties undertake to review at least every three years the status of the reservations set out in Annex XI (Reservations) with a view to reducing or removing such reservations.

3. A Party may, at any time, either upon the request of another Party or unilaterally, remove in whole or in part reservations set out in Annex XI (Reservations) by written notification to the other Parties.

4. In case of the adoption of a new reservation, as referred to in subparagraph 1 (c), the Party concerned shall promptly notify the other Parties of the reservation. On receiving such notification, any other Party may request consultations regarding the reservation and related issues. Such consultations shall be entered into without delay.

ARTICLE 5.5

Key Personnel

1. Each Party shall, subject to its laws and regulations, grant natural persons of another Party, and key personnel employed by natural or juridical persons of another Party, temporary entry and stay in its territory in order to engage in activities connected with commercial presence, including the provision of advice or technical services.

2. Each Party shall, subject to its laws and regulations, permit natural or juridical persons of another Party, and their commercial presence, to employ, in connection with the commercial presence, any key personnel provided that such personnel has been permitted to enter, stay and work in its territory and that the employment concerned conforms to the terms, conditions and time limits of the permission granted to such key personnel.

3. The Parties shall, subject to their laws and regulations, grant temporary entry and stay and provide any necessary confirming documentation to the spouse and minor children of key personnel who has been granted temporary entry, stay and authorisation to work in accordance with paragraphs 1 and 2. The spouse and minor children shall be admitted for the period of the stay of that person.

ARTICLE 5.6

Right to Regulate

Subject to the provisions of this Chapter and Annex XI (Reservations), a Party is not prevented from regulating the commercial presence as set out in subparagraph 1 (c) of Article 5.2 (Definitions).

ARTICLE 5.7

Relation to Other International Agreements

The provisions of this Chapter shall be applied without prejudice to the rights and obligations of the Parties under other international investment agreements, to which Peru and an EFTA State are parties. It is understood that any dispute settlement mechanism in investment protection agreements, to which Peru and an EFTA State are parties, is not applicable to alleged breaches of this Chapter.

ARTICLE 5.8

Exception

The exception in subparagraph (d) of Article XIV of the GATS is hereby incorporated into and made part of this Chapter, *mutatis mutandis*.

ARTICLE 5.9

Review

1. This Chapter shall be subject to periodic reviews in the framework of the Joint Committee regarding the possibility to further develop the Parties' commitments.

2. In view of paragraph 4 of Article 4.1 (Trade in Services), the Parties shall aim at consistency, as far as appropriate, with the results of future negotiations on Chapter 4 (Trade in Services), in particular regarding commitments on payments and transfers.

CHAPTER 6

PROTECTION OF INTELLECTUAL PROPERTY

ARTICLE 6.1

General Provisions

1. The Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property rights, and provide for measures for the enforcement of such rights against infringement thereof, counterfeiting and piracy, in accordance with the provisions of this Chapter and the international agreements referred to therein.

2. Each Party shall give effect to the provisions of this Chapter and may, but shall not be obliged to, implement in the national legislation more extensive protection than is required by this Chapter, provided that such protection does not contravene the provisions of this Chapter.

3. The Parties shall accord to the nationals of the other Parties treatment no less favourable than that they accord to their own nationals with regard to the protection[1] of intellectual property, subject to the exceptions provided in Articles 3 and 5 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as "the TRIPS Agreement").

4. With regard to the protection[1] of intellectual property, any advantage, favour, privilege or immunity granted by a Party to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of the other Parties, subject to the exceptions provided in Articles 4 and 5 of the TRIPS Agreement.

5. In accordance with paragraph 2 of Article 8 of the TRIPS Agreement, Parties may take appropriate measures, provided that they are consistent with the provisions of this Agreement, if needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

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[1] For the purposes of paragraphs 3 and 4, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Chapter.

ARTICLE 6.2

Basic Principles

1. In accordance with Article 7 of the TRIPS Agreement, the Parties recognise that the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

2. The Parties recognise that technology transfer contributes to strengthen national capabilities with the aim to establish a sound and viable technological base.

3. The Parties recognise the impact of information and communication technologies on the creation and usage of literary and artistic works.

4. In accordance with paragraph 1 of Article 8 of the TRIPS Agreement, the Parties may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Chapter.

5. The Parties recognise the principles established in the Declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 by the WTO at its Fourth Ministerial Meeting, held in Doha, Qatar, and the Decision of WTO's General Council on the Implementation of Paragraph 6 of the Doha Declaration, adopted on 30 August 2003 and the Amendment of the TRIPS Agreement adopted by the General Council of the WTO on 6 December 2005.

ARTICLE 6.3

Definition of Intellectual Property

For the purposes of this Agreement, "intellectual property" refers to all categories of intellectual property that are the subject of Articles 6.6 (Trademarks) to 6.11 (Undisclosed Information and Measures Related to Certain Regulated Products).

ARTICLE 6.4

International Conventions

1. Without prejudice of the rights and obligations contained in this Chapter, the Parties reaffirm their existing rights and obligations, including the right to apply the exceptions and to make use of the flexibilities, under the TRIPS Agreement and under any other multilateral agreement related to intellectual property and agreements administered under the auspices of the World Intellectual Property Organization (hereinafter referred to as "the WIPO") to which they are parties, in particular the following:

(a) Paris Convention of 20 March 1883 for the Protection of Industrial Property (Stockholm Act, 1967, hereinafter referred to as the "Paris Convention");

(b) Berne Convention of 9 September 1886 for the Protection of Literary and Artistic Works (Paris Act, 1971); and

(c) International Convention of 26 October 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention).

2. The Parties to this Agreement which are not a party to one or more of the agreements listed below shall ratify or accede to the following multilateral agreements upon entry into force of this Agreement:

(a) Budapest Treaty of 28 April 1977 on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure;

(b) International Convention for the Protection of New Varieties of Plants 1978 (1978 UPOV Convention), or the International Convention for the Protection of New Varieties of Plants 1991 (1991 UPOV Convention); and

(c) Patent Cooperation Treaty of 19 June 1970 (Washington Act, amended in 1979 and modified in 1984).

3. The Parties to this Agreement which are not a party to one or more of the agreements listed below shall ratify or accede to the following multilateral agreements within one year from the date of entry into force of this Agreement:

(a) WIPO Performances and Phonograms Treaty of 20 December 1996 (WPPT); and

(b) WIPO Copyright Treaty of 20 December 1996 (WCT).

4. The Parties will carry out as soon as possible the necessary actions to submit to the Parties' competent national authorities the adherence to the Geneva Act (1999) of the Hague Agreement concerning the International Registration of Industrial Designs, and to Protocol of 27 June 1989 Relating to the Madrid Agreement concerning the International Registration of Marks for their consideration.

5. The Parties to this Agreement may agree, upon mutual consent, to have an exchange of views of experts on activities relating to existing or future international conventions on intellectual property rights and on any other matter related to intellectual property rights as the Parties may agree upon.

ARTICLE 6.5

Measures Related to Biodiversity

1. The Parties reaffirm their sovereign rights over their natural resources and recognise their rights and obligations under the Convention on Biological Diversity with respect to access to genetic resources and to the fair and equitable sharing of benefits arising out of the utilisation of these genetic resources.

2. The Parties recognise the importance and the value of their biological diversity and of the associated traditional knowledge, innovations and practices of indigenous and local communities. Each Party shall determine the access conditions to its genetic resources in accordance with the principles and provisions contained in applicable national and international law.

3. The Parties recognise past, present and future contributions of indigenous and local communities and their knowledge, innovations and practices to the conservation and sustainable use of biological and genetic resources and in general the contribution of the traditional knowledge of their indigenous and local communities to the culture and economic and social development of nations.

4. The Parties shall consider collaborating in cases regarding non compliance with the applicable legal provisions on access to genetic resources and traditional knowledge, innovations and practices.

5. According to their national law, the Parties shall require that patent applications contain a declaration of the origin or source of a genetic resource, to which the inventor or the patent applicant has had access. As far as provided in their national legislation, the Parties will also require the fulfilment of prior informed consent and they will apply the provisions set out in this Article to traditional knowledge as applicable.

6. The Parties, in accordance with their national laws, shall provide for administrative, civil or criminal sanctions if the inventor or the patent applicant wilfully make a wrongful or misleading declaration of the origin or source. The judge may order the publication of the ruling.

7. If the law of the Party so provides:

(a) access to genetic resources shall be subject to the prior informed consent of the Party providing the genetic resources; and

(b) access to traditional knowledge of indigenous and local communities associated to these resources shall be subject to the approval and involvement of these communities.

8. Each Party shall take policy, legal and administrative measures, with the aim of facilitating the fulfilment of terms and conditions for access established by the Parties for such genetic resources.

9. The Parties affirm and recognise their existing rights and obligations with respect to each other under the International Treaty of Plant Genetic Resources for Food and Agriculture of the Food and Agriculture Organization.

10. The Parties shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring the fair and equitable sharing of the benefits arising from the use of genetic resources or associated traditional knowledge. Such sharing shall be based on mutually agreed terms.

ARTICLE 6.6

Trademarks

1. The Parties shall grant adequate and effective protection to trademark right holders of goods or services. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including combinations of words, personal names, letters, numerals, figurative elements, sounds and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, the Parties may make registrability depend on distinctiveness acquired through use. Parties may require, as a condition of registration, that signs be visually perceptible.

2. Parties shall use the International Classification of Goods and Services for the Purposes of the Registration of trademarks (hereinafter referred to as "International Classification") established by the Nice Agreement of 15 June 1957 and its effective amendments to classify the goods and services to which the trademarks shall be applied.

3. The classes of goods and services of the International Classification shall not be used to determine whether the goods or services listed for a specific trademark are similar or different to those of another trademark.

4. The Parties recognise the importance of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks (1999), and the Joint Recommendation Concerning Provisions on the Protection of Marks, and other Industrial Property Rights in Signs, on the Internet (2001), adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO, and shall be guided by the principles contained in these Recommendations.

ARTICLE 6.7

Geographical Indications, including Appellations of Origin, and Indications of Source

1. The Parties to this Agreement shall ensure in their national laws adequate and effective means to protect geographical indications, including appellations of origin[2], and indications of source.

2. For the purposes of this Chapter:

(a) "geographical indications" means indications which identify goods as originating in the territory of a Party, or in a region or locality of that territory, where a given quality, reputation or other characteristic of those goods is essentially attributable to their geographical origin; and

(b) "indications of source" means names, expressions, images, flags or signs that constitute direct or indirect references to a particular country, region, locality or place as the geographical origin of goods or services. Nothing in this Agreement shall require a Party to this Agreement to amend its legislation if, at the date of entry into force of this Agreement, in its national law, it limited the protection of indications of source to cases where a given quality, reputation or other characteristic of those goods or services is essentially attributable to their geographical origin.

3. An indication of source may not be used in the course of trade for goods or services where that indication is false or misleading with respect to its geographical origin or where its use is likely to cause confusion in the public as to the geographical origin of those goods or services, or which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

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[2] For greater certainty, if any Party foresees the protection of appellations of origin in its national legislation, nothing in this Agreement shall require to amend this.

4. Without prejudice to Article 23 TRIPS Agreement, the Parties shall provide the legal means to interested parties to prevent the use of a geographical indication for identical or comparable goods not originating in the place indicated by the designation in question in a manner which misleads or confuses the public as to the geographical origin of those goods, or which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

5. In order to further strengthen the protection of geographical indications among each other, Peru and Switzerland agree to negotiate a bilateral agreement on the mutual recognition and protection of geographical indications aiming to conclude it within three years after the entry into force of this Agreement. Any other Party to this Agreement may join the negotiations or accede to the agreement after its entry into force.

ARTICLE 6.8

Copyright and Related Rights

1. The Parties shall grant and assure to the authors of literary and artistic works and to performers, producers of phonograms and broadcasting organisations, an adequate and effective protection of their works, performances, phonograms and broadcasts, respectively.

2. Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim, at least, authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation.

3. The rights granted to the author in accordance with paragraph 2 shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorised by the legislation of the country where protection is claimed.

4. Rights granted under paragraphs 2 and 3 shall be granted, *mutatis mutandis*, to performers as regards their live performances or fixed performances.

ARTICLE 6.9

Patents

1. Patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Subject to paragraph 3, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

2. Each Party may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its law.

3. Each Party may also exclude from patentability:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; and

(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Parties shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. Notwithstanding the foregoing, a Party that does not provide patent protection for plants, shall undertake reasonable efforts to make such patent protection available consistent with paragraph 1.

4. Each Party shall make best efforts to process patent applications and marketing approval applications expeditiously with a view to avoiding unreasonable delays. The Parties shall co-operate and provide assistance to one another to achieve this objective.

5. With respect to any pharmaceutical product that is covered by a patent, each Party may make available a restoration or compensation of the patent term or patent rights to compensate the patent owner for unreasonable curtailment of the effective patent term resulting from the marketing approval process related to the first commercial marketing of the product in that Party. Any restoration under this paragraph shall confer all exclusive rights of a patent subject to the same limitations and exceptions applicable to the original patent.

ARTICLE 6.10

Designs

The Parties shall ensure in their national laws adequate and effective protection of industrial designs by providing in particular, an adequate term of protection in accordance with internationally prevailing standards. Parties shall seek to harmonise their respective term of protection.

ARTICLE 6.11

Undisclosed Information and Measures Related to Certain Regulated Products

1. The Parties to this Agreement shall protect undisclosed information in accordance with Article 39 TRIPS Agreement.

2. Where a Party requires, as a condition for marketing approval of pharmaceutical products or agricultural chemical products which utilise new chemical entities[3], the submission of undisclosed test data related to safety and efficacy the origination of which involves a considerable effort, the Party shall not allow the marketing of a product which contains the same new chemical entity, based on the information provided by the first applicant without his consent, for a reasonable period, which, in the case of pharmaceutical products, means normally five years and, in the case of agricultural chemical products, ten years from the date of the marketing approval in the territory of the Party. Subject to this provision, there shall be no limitation on any Party to implement abbreviated approval procedures for such products on the basis of bioequivalence or bioavailability studies.

3. Reliance on or reference to data referred to in paragraph 2 may be permitted:

(a) where approval is sought for re-imported products that have already been approved before exportation; and

(b) in order to avoid unnecessary duplication of tests of agricultural chemical products involving vertebrate animals where the first applicant is adequately compensated.

[3] For the purposes of this paragraph, "new agricultural chemical product" means a product that contains a chemical entity that has not been previously approved in the territory of the Party. If a Party needs to define "new chemical entity" for pharmaceutical products in the domestic legislation in order to implement this Agreement, it shall take into consideration prevailing international standards and do so before the entry into force of this Agreement.

4. A Party may take measures to protect public health in accordance with:

(a) implementation of the Declaration of the TRIPS Agreement and Public Health[4] (in this paragraph referred to as the "Declaration");

(b) any waiver of any provision of the TRIPS Agreement adopted by WTO members in order to implement the Declaration; and

(c) any amendment to the TRIPS Agreement to implement the Declaration.

5. Where a Party relies on a marketing approval granted by another Party, and grants approval within six months of the filing of a complete application for marketing approval filed in the Party, the reasonable period of exclusive use of the data submitted in connection with obtaining the approval relied on shall begin on the date of the first marketing approval.

ARTICLE 6.12

Acquisition and Maintenance of Intellectual Property Rights

Where the acquisition of an intellectual property right is subject to the right being granted or registered, the Parties shall ensure that the procedures for grant or registration are of the same level as provided in the TRIPS Agreement, in particular Article 62.

ARTICLE 6.13

Enforcement of Intellectual Property Rights

The Parties shall establish provisions for the enforcement of intellectual property rights in their national laws that are of the same level as that provided in the TRIPS Agreement, in particular Articles 41 to 61.

[4] WT/MIN(01)/DEC/2.

ARTICLE 6.14

Right of Information in Civil and Administrative Procedures

The Parties may provide that, in civil and administrative procedures, the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.[5]

ARTICLE 6.15

Suspension of Release by Competent Authorities

1. The Parties shall adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of copyright or trademark infringing goods may take place, to lodge an application in writing with the competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. The Parties shall consider the application of these measures to other intellectual property rights.

2. It is understood that there shall be no obligation to apply procedures set forth in paragraph 1 to the suspension of the release into free circulation of goods put on the market in another country by or with the consent of the right holder.

ARTICLE 6.16

Right of Inspection

1. The competent authorities shall give the applicant for the suspension of the release of goods and the other persons involved in the suspension the opportunity to inspect goods whose release has been suspended or which have been detained.

[5] For greater certainty, this provision does not apply when it conflicts with constitutional or statutory guarantees.

2. When examining goods, the competent authorities may take samples and, according to the rules in force in the Party concerned and at the express request of the right holder, hand over or send such samples to the right holder, strictly for the purposes of analysis and facilitating the subsequent procedure. Where circumstances allow, samples must be returned on completion of the technical analysis and, where applicable, before goods are released or their detention is lifted. Any analysis of these samples shall be carried out under the sole responsibility of the right holder.

Article 6.17

Liability Declaration, Security or Equivalent Assurance

1. The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse, or in the cases provided in their domestic legislation to declare to accept liability for damages resulting from the suspension of release.

2. The security or equivalent assurance shall not unreasonably deter recourse to these procedures.

ARTICLE 6.18

Promotion of Research, Technological Development and Innovation

1. The Parties acknowledge the importance of promoting research, technological development and innovation, of disseminating technological information, and of building and strengthening their technological capacities, and they will seek to co-operate in such areas, taking into account their resources.

2. Co-operation in those fields, between Peru and Switzerland, may be based, in particular, on the respective Letters of Intent between the State Secretariat for Education and Research of the Federal Department of Home Affairs of the Swiss Confederation and the *Consejo Nacional de Ciencia, Tecnología e Innovación Tecnológica* (CONCYTEC) of 28 December 2006.

3. Accordingly, Peru and Switzerland may seek and encourage opportunities for co-operation pursuant to this Article and, as appropriate, engage in collaborative scientific research projects. The authorities referred to in paragraph 2 shall act as contact points to facilitate the development of collaborative projects and they shall periodically review the status of such collaboration through mutually agreed means.

4. Peru on one side and Iceland, Liechtenstein and Norway on the other side will seek opportunities for co-operation pursuant to this Article. Such co-operation shall be based on mutually agreed terms and will be formalised through appropriate means.

5. Any proposal or inquiry regarding scientific and technological collaboration between the Parties shall be directed to any of the Parties through the contact points set out in Annex XII (Contact Points for Scientific Collaboration).

CHAPTER 7

GOVERNMENT PROCUREMENT

ARTICLE 7.1

Scope and Coverage

1. This Chapter applies to any measure of a Party regarding covered procurement. For the purposes of this Chapter, "covered procurement" means procurement for governmental purposes:

(a) of goods, services, or any combination thereof:

(i) as specified in each Party's specific commitments set out in Annex XIII (Covered Entities); and

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

(b) by any contractual means, including purchase, lease, rental or hire purchase, with or without an option to buy;

(c) for which the value, as estimated in accordance with paragraphs 3 and 4, as appropriate, equals or exceeds the relevant threshold specified in Appendices 1 to 3 to Annex XIII (Covered Entities);

(d) that is conducted by a procuring entity; and

(e) subject to the conditions specified in Annex XIII (Covered Entities) and XIV (General Notes).

2. This Chapter does not apply to:

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

(b) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt[1], including loans and government bonds, notes and other securities;

(c) procurement funded by international grants, loans, or other assistance where the applicable procedure or condition would be inconsistent with this Chapter;

(d) contracts awarded pursuant to:

(i) an international agreement and intended for the joint implementation or exploitation of a project by the contracting parties; or

(ii) an international agreement relating to the stationing of troops;

(e) public employment contracts and related employment measures; or

(f) the acquisition or rental of land, existing buildings, or other immovable property or the rights thereon.

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

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

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

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

[1] For greater certainty, this Chapter does not apply to procurement of banking, financial, or specialised services related to the incurring of public indebtedness or public debt management.

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

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

ARTICLE 7.2

Exceptions to the Chapter

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition, or war materials, or to procurement indispensable for national security or for national defense purposes.

2. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction to trade between the Parties, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures:

(a) necessary to protect public morals, order or safety;

(b) necessary to protect human, animal or plant life or health;

(c) necessary to protect intellectual property; or

(d) relating to goods or services of persons with disabilities, philanthropic institutions, or prison labour.

3. The Parties understand that subparagraph 2 (b) includes environmental measures necessary to protect human, animal or plant life or health.

ARTICLE 7.3

Definitions

For the purposes of this Chapter:

(a) "conditions for participation" means any registration, qualification or other pre-requisites for participation in a procurement;

(b) "construction service" means a service that has as its objective the realisation by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification (CPC);

(c) "in writing or written" means any worded, numbered expression, or other symbols that can be read, reproduced and later communicated. It may include, electronically transmitted and stored information;

(d) "measure" means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;

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

(f) "procuring entity" means an entity covered under Appendices 1 to 3 to Annex XIII (Covered Entities);

(g) "qualified supplier" means a supplier that a procuring entity recognises as having satisfied the conditions for participation;

(h) "services" including construction services, unless otherwise specified;

(i) "standard" means a document approved by a recognised body, that provides, for common and repeated use, rules, guidelines, or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking, or labelling requirements as they apply to goods, services, processes, or production methods;

(j) "supplier" means a person or group of persons that provides or could provide goods or services to a procuring entity; and

(k) "technical specification" means a tendering requirement that:

(i) lays down the characteristics of goods or services to be procured, including quality, performance, safety, and dimensions, or the processes and methods for their production or provision; or

(ii) addresses terminology, symbols, packaging, marking, or labelling requirements, as they apply to goods or services.

ARTICLE 7.4

National Treatment and Non-Discrimination

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of another Party and to the suppliers of any other Party offering such goods or services, treatment no less favourable than the treatment accorded to domestic goods, services and suppliers.

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

(a) treat a locally established supplier less favourably than another locally established supplier on the basis of degree of foreign affiliation or ownership; nor

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

3. The provisions of paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on, or in connection with, importation, the method of levying such duties and charges, other import regulations or formalities, and measures affecting trade in services other than measures governing covered procurement.

ARTICLE 7.5

Information Technology

1. The Parties shall, to the extent possible, endeavour to use electronic means of communication to permit efficient dissemination of information on government procurement, particularly as regards tender opportunities offered by entities, while respecting the principles of transparency and non-discrimination.

2. When conducting covered procurement by electronic means, a procuring entity shall:

(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and inter-operable with other generally available information technology systems and software; and

(b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

ARTICLE 7.6

Conduct of Procurement

A procuring entity shall conduct covered procurement in a transparent and impartial manner that:

(a) is consistent with this Chapter, using methods such as open tendering, selective tendering, and limited tendering as specified in Articles 7.18 (Tendering Procedures) to 7.20 (Limited Tendering);

(b) avoids conflicts of interest; and

(c) prevents corrupt practices.

ARTICLE 7.7

Rules of Origin

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

ARTICLE 7.8

Offsets

1. With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose, or enforce offsets at any stage of a procurement.

2. For the purposes of this Chapter, “offsets” means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar actions or requirements.

ARTICLE 7.9

Publication of Procurement Information

1. Each Party shall promptly publish any measure of general application regarding covered procurement and any modification to this information, in the appropriate publications referred to in Appendix 2 to Annex XIV (General Notes), including officially designated electronic media.

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

ARTICLE 7.10

Publication of Notices

1. For each covered procurement, a procuring entity shall publish a notice inviting suppliers to submit tenders, or where appropriate, applications for participation for that procurement (hereinafter referred to as “the notice of intended procurement”), except in the circumstances referred to in paragraph 2 of Article 7.20 (Limited Tendering). The notice shall be published in the electronic or paper media listed in Appendix 2 to Annex XIV (General Notes), and each such notice shall be accessible during the entire period established for tendering for the relevant procurement.

2. Except as otherwise provided in this Chapter, each notice of intended procurement shall include:

(a) a description of the intended procurement;

(b) the procurement method;

(c) any conditions that suppliers must fulfil to participate in the procurement;

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

(e) the address and contact where suppliers may obtain all documents relating to the procurement;

(f) where applicable, the address and any final date for the submission of requests for participation in the procurement;

(g) the address and the final date for the submission of tenders;

(h) the dates for delivery of the goods or services to be procured or the duration of the contract; and

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

3. Procuring entities shall publish the notices in a timely manner through means which offer the widest possible and non-discriminatory access to the interested suppliers of the Parties. These means shall be accessible free of charge through a single point of access specified in Appendix 2 to Annex XIV (General Notes).

4. Each Party shall encourage its procuring entities to publish in an electronic medium listed in Appendix 2 to Annex XIV (General Notes), as early as possible in the fiscal year, information regarding the entities' future procurement plans. Such notices should include the subject matter of the procurement and the planned date of the publication of the notice of intended procurement.

ARTICLE 7.11

Conditions for Participation

1. In assessing whether a supplier satisfies the conditions for participation, a Party, including its procuring entities:

(a) shall limit such conditions to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement and evaluate those capacities and abilities on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity;

(b) shall base its determination solely on the conditions that the procuring entity has specified in advance in notices or tender documentation;

(c) may not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of the given Party;

(d) may require relevant prior experience where essential to meet the requirements of the procurement; and

(e) allow all domestic suppliers and suppliers of another Party that satisfy the conditions for participation to be recognised as qualified suppliers and to participate in the procurement.

2. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:

(a) bankruptcy;

(b) false declarations;

(c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;

(d) final judgments in respect of serious crimes or other serious offences;

(e) professional misconduct or acts or omissions that adversely reflect upon the commercial integrity of the supplier; or

(f) failure to pay taxes.

ARTICLE 7.12

Registration Systems and Qualification Procedures

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.

2. Procuring entities shall not adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of another Party in its procurement.

3. A procuring entity shall promptly communicate to any supplier that has applied for qualification its decision on whether that supplier is qualified. Where an entity rejects an application for qualification or ceases to recognise a supplier as qualified, that entity shall, on request of the supplier, promptly provide it a written explanation.

ARTICLE 7.13

Multi-Use Lists

1. A procuring entity may establish or maintain a list of suppliers that satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once (hereinafter referred to as "the multi-use list"), provided that a notice inviting interested suppliers to apply for inclusion in the list is published in the appropriate medium listed in Appendix 2 to Annex XIV (General Notes).

2. The notice provided for in paragraph 1 shall include:

(a) a description of the goods or services, or categories thereof, for which the multi-use list may be used;

(b) any deadlines for submission of applications for inclusion in the list;

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

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

(e) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list; and

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

3. A procuring entity shall allow suppliers to apply at any time for inclusion in its multi-use list and shall include in that list all qualified suppliers within a reasonably short time.

ARTICLE 7.14

Tender Documentation

1. A procuring entity shall provide to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided for in the notice of intended procurement pursuant to Article 7.10 (Publication of Notices), such documentation shall include a complete description of:

(a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings, or instructional materials;

(b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection therewith;

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

(d) where the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the receipt of information by electronic means;

(e) where the procuring entity will hold an electronic auction pursuant to Article 7.21 (Electronic Auctions), the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;

(f) where there will be a public opening of tenders, the date, time, and place for the opening and, where appropriate, the persons authorised to be present;

(g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, e.g., paper or electronic means; and

(h) any dates for the delivery of goods or the supply of services or the duration of the contract.

2. Where contracting entities do not offer free direct access to the entire tender documents and any supporting documents by electronic means, entities shall make promptly available the tender documentation at the request of any interested supplier of the Parties.

ARTICLE 7.15

Technical Specifications

1. A procuring entity shall not prepare, adopt, or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to international trade among the Parties.

2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

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

(b) base the technical specification on international standards, where such exist or otherwise, on national technical regulations, recognised national standards or building codes.

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

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

5. For greater certainty, the Parties understand that a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt, or apply technical specifications to promote the conservation of natural resources or protect the environment.

ARTICLE 7.16

Modifications of the Tender Documentation and Technical Specifications

Where, prior to the award of a contract, a procuring entity modifies the criteria or technical requirements set out in a notice or tender documentation provided to participating suppliers, or amends or re-issues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation:

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

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

ARTICLE 7.17

Time Limits

A procuring entity shall provide suppliers sufficient time to submit applications to participate in a procurement, and prepare and submit responsive tenders, taking into account the nature and complexity of the procurement. Each Party shall apply time limits according to the conditions specified in Appendix 3 to Annex XIV (General Notes).

ARTICLE 7.18

Tendering Procedures

1. Procuring entities shall award their public contracts by open, selective or limited tendering procedures according to their national legislation in compliance with this Chapter and in a non-discriminatory manner.

2. For the purposes of this Chapter:

(a) "open tendering" means a procurement method whereby all interested suppliers may submit a tender. The Parties understand that open tendering procedures include modalities such as framework agreement and reverse auction according to their respective legislation;

(b) "selective tendering" means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender; and

(c) "limited tendering" means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice.

ARTICLE 7.19

Selective Tendering

1. Where a procuring entity intends to use selective tendering, the entity shall:

(a) include in the notice of intended procurement at least the information specified in subparagraphs 2 (a), (b), (c), (d), (e), (f) and (i) of Article 7.10 (Publication of Notices) and invite suppliers to submit a request for participation; and

(b) provide, by the commencement of the time-period for tendering, at least the information in subparagraphs 2 (g) and (h) of Article 7.10 (Publication of Notices) to the qualified suppliers that it notifies as specified in paragraph 2 of Appendix 3 to Annex XIV (General Notes).

2. A procuring entity shall recognise as qualified suppliers such domestic suppliers and suppliers of another Party that meet the conditions for participation in a particular procurement, unless the procuring entity states in the notice of intended procurement or, where publicly available, in the tender documentation, any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.

3. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 1, procuring entities shall ensure that those documents are made available at the same time to all selected qualified suppliers.

4. Procuring entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed, under the conditions set out in Article 7.10 (Publication of Notices).

ARTICLE 7.20

Limited Tendering

1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of another Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles 7.10 (Publication of Notices), 7.11 (Conditions for Participation), 7.14 (Tender Documentation), 7.15 (Technical Specifications), 7.16 (Modifications of the Tender Documentation and Technical Specifications), 7.17 (Time Limits), 7.21 (Electronic Auctions), 7.22 (Negotiations), 7.23 (Opening of Tenders) and 7.24 (Contract Awards) only under the following circumstances:

(a) provided that the requirements of the tender documentation are not substantially modified where:

(i) no tenders were submitted, or no supplier requested participation;

(ii) no tenders that conform to the essential requirements of the tender documentation were submitted;

(iii) no suppliers satisfied the conditions for participation; or

(iv) the tenders submitted have been collusive;

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

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

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

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

(c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement where a change of supplier for such additional goods or services:

(i) cannot be made for economic or technical reasons such as requirements of inter-changeability or inter-operability with existing equipment, software, services or installations procured under the initial procurement; and

(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services cannot be obtained in time using an open or selective tendering procedure;

(e) for purchases made on a commodity market;

(f) where a procuring entity procures prototypes or a first good or service which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development;

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership, public auction or bankruptcy, but not for routine purchases from regular suppliers; or

(h) where a contract is awarded to a winner of a design contest provided that:

(i) the contest has been organised in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement pursuant to Article 7.10 (Publication of Notices); and

(ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1. The report shall include the name of the procuring entity, the value and kind of goods or services procured, and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

ARTICLE 7.21

Electronic Auctions

1. Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

(a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;

(b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and

(c) any other relevant information relating to the conduct of the auction.

2. For the purposes of this Chapter, "electronic auction" means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders.

ARTICLE 7.22

Negotiations

1. A Party may provide for its procuring entities to conduct negotiations:

(a) in the context of procurements in which they have indicated such intent in the notice of intended procurement pursuant to Article 7.10 (Publication of Notices); or

(b) where it appears from the evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation.

2. Procuring entities shall not, in the course of negotiations, discriminate between participating suppliers.

3. An entity shall:

(a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notices or tender documentation; and

(b) where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

ARTICLE 7.23

Opening of Tenders

1. A procuring entity shall receive and open all tenders under procedures that guarantee the fairness and impartiality of the procurement process and the confidentiality of tenders. It also shall treat tenders in confidence until at least the opening of the tenders.

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

ARTICLE 7.24

Contract Awards

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

(a) in writing and shall, at the time of opening, comply with the essential requirements specified in the notices and tender documentation; and

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

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

3. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it can comply with the conditions of participation and is capable of fulfilling the terms of the contract.

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

ARTICLE 7.25

Transparency in Procurement Information

1. A procuring entity shall promptly inform suppliers that have submitted tenders of its contract award decisions and, on request, shall do so in writing. Subject to Article 7.26 (Disclosure of Information), a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons for not selecting that supplier's tender and the relative advantages of the successful supplier's tender.

2. No later than 72 days after an award, a procuring entity shall publish in a paper or electronic medium listed in Annex XIV (General Notes), a notice that includes at least the following information about the contract:

(a) name and address of the procuring entity;

(b) description of the goods or services procured;

(c) date of award;

(d) name and address of the successful supplier;

(e) contract value; and

(f) procurement method used and, in cases where a procedure has been used pursuant to Article 7.20 (Limited Tendering), a description of the circumstances justifying the use of such procedure.

3. A procuring entity shall maintain reports and records of tendering procedures relating to covered procurement, including the reports provided for in paragraph 2 of Article 7.20 (Limited Tendering), and shall retain such reports and records for a period of at least three years after the award of a contract.

ARTICLE 7.26

Disclosure of Information

1. On request of another Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter. The information shall include information on the characteristics and relative advantages of the successful tender.

2. No Party, procuring entity or review authority may disclose information that the person providing it has designated as confidential in accordance with domestic law, except with the authorisation of such person.

3. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, may not provide information to a particular supplier that might prejudice fair competition between suppliers.

4. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities, and review bodies, to release confidential information under this Chapter where release:

(a) would impede law enforcement;

(b) might prejudice fair competition between suppliers;

(c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or

(d) would otherwise be contrary to the public interest.

ARTICLE 7.27

Domestic Review Procedures for Supplier Challenges

1. In the event of a complaint by a supplier of a Party regarding an alleged breach of this Chapter in the context of covered procurement, each Party shall encourage suppliers to seek clarification from its entities through consultations with a view to facilitating the resolution of any such complaints.

2. Each Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure according to the due process principle through which a supplier may challenge alleged breaches of this Chapter arising in the context of covered procurements in which the supplier has, or has had, an interest.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

4. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a supplier arising in the context of a covered procurement, and to make appropriate findings and recommendations.

5. Where a body other than an authority referred to in paragraph 4 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

6. A review body that is not a court shall either be subject to judicial review or have procedures that provide that:

(a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;

(b) the participants to the proceedings (hereinafter referred as "participants") shall have the right to be heard prior to a decision of the review body being made on the challenge;

(c) the participants shall have the right to be represented and accompanied;

(d) the participants shall have access to all proceedings;

(e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and

(f) decisions or recommendations relating to supplier challenges shall be provided, in a timely fashion, in writing, with an explanation of the basis for each decision or recommendation.

7. Each Party shall adopt or maintain procedures that provide for:

(a) rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing; and

(b) where a review body has determined that there has been a breach of this Chapter or, where the supplier does not have a right to challenge directly a breach of this Chapter under the domestic law of a Party, a failure by a procuring entity to comply with a Party's measures implementing this Chapter, corrective action or compensation for the loss or damages suffered, which may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both.

ARTICLE 7.28

Modifications and Rectifications to Coverage

1. A Party may make rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to its Schedules in Annex XIII (Covered Entities), provided that it notifies the other Parties in writing and no other Party objects in writing within 30 days following the date of the notification. A Party that makes such a rectification or minor amendment need not provide compensatory adjustments to the other Parties.

2. A Party may otherwise modify its coverage under this Chapter provided that:

(a) it notifies the other Parties in writing and offers at the same time acceptable compensatory adjustments to maintain a level of coverage comparable to that existing prior to the modification, except where provided for in paragraph 3; and

(b) no Party objects in writing within 30 days following the date of the notification.

3. A Party need not provide compensatory adjustments when the Parties agree that the proposed modification covers a procuring entity over which a Party has effectively eliminated its control or influence. When a Party objects to the assertion that such government control or influence has been effectively eliminated, the objecting Party may request further information or consultations with a view to clarifying the nature of any government control or influence and reaching agreement on the procuring entity's continued coverage under this Chapter.

ARTICLE 7.29

Small and Medium Enterprises Participation

1. The Parties recognise the importance of the participation of small and medium enterprises (hereinafter referred to as "SMEs") in government procurement. The Parties also recognise the importance of business alliances between suppliers of each Party, and in particular of SMEs.

2. The Parties agree to work jointly towards exchanging information and facilitating SMEs access to government procurement procedures, methods and contracting requirements, focused on SMEs special needs.

ARTICLE 7.30

Co-operation

1. The Parties recognise the importance of co-operation with a view to achieving a better understanding of their respective government procurement systems, as well as a better access to their respective markets, in particular for SMEs.

2. According to Chapter 10 (Co-operation) the Parties shall endeavour to co-operate in matters such as:

(a) development and use of electronic communications in government procurement systems; and

(b) exchange of experiences and information, such as regulatory frameworks, best practices and statistics.

ARTICLE 7.31

Further Negotiations

In case a Party offers, in the future, a third party additional advantages with regard to its respective government procurement market access coverage agreed under this Chapter, it shall agree, upon request of another Party, to enter into negotiations with a view to extending coverage under this Chapter on a reciprocal basis.

CHAPTER 8

COMPETITION POLICY

ARTICLE 8.1

Objectives

1. The Parties recognise that anti-competitive practices have the potential to undermine the benefits of liberalisation arising from this Agreement. These practices are incompatible with the proper functioning of this Agreement, in so far as they may affect trade between Peru and an EFTA State.

2. The Parties undertake to apply their respective competition laws with a view to proscribing such practices and to co-operate in matters covered by this Chapter. This co-operation includes notification, exchange of information, technical assistance and consultation.

ARTICLE 8.2

Anti-competitive Practices

1. For the purposes of this Chapter, "anti-competitive practices" refer to:

   (a) horizontal or vertical agreements between enterprises, concerted practices between enterprises, or decisions by associations of enterprises which have as their object or effect the prevention, restriction or distortion of competition; and

   (b) the abuse of a dominant position in a market.

2. The enforcement policy of the Parties' national authorities shall be consistent with the principles of transparency, non-discrimination and procedural fairness.

3. When applicable, Peru may implement its obligations under this Article through the Andean Community competition laws and the competent authority of the Andean Community. Rights and obligations under this Chapter will only apply between Peru and the EFTA States.

ARTICLE 8.3

Co-operation

1. The Parties shall make best efforts to co-operate, subject to their national laws and through their competent authorities, on issues concerning competition law enforcement.

2. Each Party shall notify another Party of competition enforcement activities that may affect important interests of that Party. Notifications shall be sufficiently detailed to enable the notified Party to make an initial evaluation of the effect of the competition enforcement activity within its territory.

3. Each Party should, in accordance with its laws, take into consideration the important interests of the other Parties in the course of its enforcement activities on anti-competitive practices. If a Party considers that an anti-competitive practice may adversely affect such Party's important interests, it may transmit its views on the matter to the other Party through its competent authority. Without prejudice to any action under its competition laws and to its full freedom of ultimate decision, the Party so addressed should give appropriate consideration to the views expressed by the requesting Party.

4. If a Party considers that an anti-competitive practice carried out within the territory of another Party has a substantially adverse effect within its territory or on trade relations between the Parties, it may request that the other Party initiate appropriate enforcement activities. The request shall be as specific as possible about the nature and the effect of the anti-competitive practice. The requested Party shall consider whether to initiate an enforcement activity with respect to the anti-competitive practice identified in the request, and shall advise the requesting Party of its decision and of the outcome of such activity.

5. The Parties are encouraged to exchange information, including information that is not publicly available, provided that this does not affect any ongoing investigation. Any exchange of information shall be subject to the rules and standards of confidentiality applicable in the territory of each Party. No Party shall be required to provide information when this is contrary to its laws regarding disclosure of information. Each Party shall maintain the confidentiality of any information provided to it subject to the limitations that the submitting Party requests for the use of such information.

6. To further strengthen co-operation, the Parties may sign co-operation agreements.

ARTICLE 8.4

Consultations

To foster understanding between the Parties, or to address any matter arising under this Chapter and without prejudice to the autonomy of each Party to develop, maintain and enforce its competition policy and legislation, a Party may request consultations within the Joint Committee. This request shall indicate the reasons for the consultations. Consultations shall be held promptly with a view to reaching a conclusion consistent with the objectives set forth in this Chapter. The Parties concerned shall give to the Joint Committee all the support and information needed, subject to the criteria and standards set out in paragraph 5 of Article 8.3 (Co-operation).

ARTICLE 8.5

State Enterprises and Designated Monopolies

1. Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining a state enterprise or designated monopolies.

2. The Parties shall ensure that state enterprises and designated monopolies do not adopt or maintain anti-competitive practices affecting trade between the Parties, insofar as the application of this provision does not obstruct the performance, in law or in fact, of the particular public tasks assigned to them.

3. This Article does not apply to government procurement.

ARTICLE 8.6

Dispute Settlement

No Party may have recourse to dispute settlement under Chapter 12 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 9

TRANSPARENCY

ARTICLE 9.1

Publication and Disclosure of Information

1. Each Party shall ensure that its laws, regulations, administrative rulings of general application and its respective international agreements, which may affect the operation of this Agreement, are published or otherwise made available in such a manner as to enable persons and other interested parties to become acquainted with them.

2. The Parties shall endeavour to publish or otherwise make available judicial decisions that may affect the operation of this Agreement.

3. The Parties shall promptly respond to specific questions and provide, upon request, information to each other on matters referred to in paragraph 1.

4. Nothing in this Agreement shall require any Party to disclose confidential information, which would impede law enforcement, or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of any economic operator.

5. Where a Party providing information to another Party in accordance with this Agreement designates the information as confidential, the other Party shall maintain the confidentiality of the information.

6. In case of any inconsistency between the provisions of this Article and provisions relating to transparency in other Chapters, the latter shall prevail to the extent of the inconsistency.

Article 9.2

Notifications

1. A notification or any other written communication that either sets in motion a period of time specified in this Agreement or needs to be made during such a period shall be deemed received, unless otherwise provided for, when it has been delivered against receipt, registered post, courier or any other means of communication providing a record of receipt thereof.

2. Without prejudice to Article 11.2 (Agreement Co-ordinators and Contact Points), each Party to this Agreement shall designate a responsible authority for the purpose of receiving notifications or written communications mentioned in paragraph 1 and shall communicate such designation to the other Parties within 90 days following the date of the entry into force of this Agreement.

CHAPTER 10

CO-OPERATION

ARTICLE 10.1

Scope and Objectives

1. The Parties decide to foster co-operation that allows support of trade capacity building (hereinafter referred to as "TCB") initiatives in order to expand and improve the benefits of this Agreement, on mutually agreed terms, in accordance with national strategies and policy objectives.

2. The co-operation under this Chapter shall pursue the following objectives:

   (a) strengthening and developing the existing relations with regard to TCB between the Parties;

   (b) enhancing and creating new trade and investment opportunities, fostering competitiveness and innovation; and

   (c) implementing this Agreement and optimising its results, in order to provide an impulse for economic growth and development and to contribute to the reduction of poverty.

ARTICLE 10.2

Methods and Means

1. The Parties shall co-operate with the objective of identifying and employing the most effective methods and means for the implementation of this Chapter. To this end they shall co-ordinate efforts with relevant international organisations and develop, where applicable, synergies with other forms of bilateral co-operation between the Parties.

2. Co-operation under this Chapter shall be carried out through EFTA activities, bilaterally or through a combination of the two.

3. The Parties will use, among others, the following instruments for the implementation of this Chapter:

   (a) exchange of information and experience;

(b) joint identification, development and implementation of projects and innovating activities of co-operation, including seminars and workshops; and

(c) technical and administrative co-operation.

4. The Parties may initiate and implement projects and activities related to TCB with the participation of national and international experts and institutions.

ARTICLE 10.3

Joint Committee and Contact Points

1. For the implementation of this Chapter, the following contact points are designated:

(a) for the EFTA-States: the EFTA Secretariat; and

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

2. The contact points shall be responsible for the channelling of project proposals. In addition they are responsible for managing and developing of joint EFTA co-operation projects and are the links to the Joint Committee. For this purpose they shall establish rules and procedures in order to facilitate this work.

3. For co-operation on a bilateral basis taking place under this Chapter, EFTA States providing such co-operation shall designate a Contact point.

4. The Joint Committee shall periodically review the implementation of this Chapter and act as a co-ordinating body as appropriate.

CHAPTER 11

ADMINISTRATION OF THE AGREEMENT

ARTICLE 11.1

Joint Committee

1. The Parties hereby establish the Joint Committee EFTA-Peru comprising of representatives of each Party. The Parties shall be represented by cabinet-level representatives of the Parties or senior officials delegated by them for this purpose.

2. The Joint Committee shall:

(a) supervise the fulfilment and correct application of the provisions of this Agreement;

(b) evaluate the achieved results in the application of this Agreement;

(c) oversee the further elaboration of this Agreement, including the possibility of removing remaining barriers to trade and other restrictive measures concerning commerce between Peru and the EFTA States;

(d) supervise the work of the sub-committees and working groups established under this Agreement and recommend appropriate actions to them;

(e) adopt its own rules of procedure;

(f) upon request of any Party, provide its opinion regarding the interpretation or application of this Agreement;

(g) seek to resolve disputes that may arise regarding the interpretation or application of this Agreement, in accordance with Chapter 12 (Dispute Settlement);

(h) decide on the amount of remuneration and expenses that will be paid to panelists;

(i) prepare and adopt the Model Rules of Procedure for panels which shall include the standards of conduct for panelists; and

(j) consider any other matter that may affect the operation of this Agreement, or that is entrusted to it by the Parties.

3. The Joint Committee may:

(a) set up sub-committees and working groups as it considers necessary to assist it in accomplishing its tasks and delegate responsibilities to them. Except where specifically provided for in this Agreement, sub-committees and working groups shall work under a mandate established by the Joint Committee;

(b) decide to amend the Annexes and Appendices to this Agreement. Subject to paragraph 4, it may set a date for the entry into force of such decisions; and

(c) convene the Parties for future negotiations to examine deepening the already reached liberalisation in the different sectors covered by this Agreement.

4. If a representative of a Party in the Joint Committee has accepted a decision subject to the fulfilment of its internal legal requirements, the decision shall enter into force on the date when the last Party notifies the Depositary that its internal legal requirements have been fulfilled, unless the decision itself specifies a later date. The Joint Committee may decide that the decision shall enter into force for those Parties that have fulfilled their internal requirements, provided that Peru and at least one EFTA State are among those Parties. A Party may apply a decision of the Joint Committee provisionally until such decision enters into force for it, subject to its legal requirements.

5. The Joint Committee shall meet whenever necessary but normally every two years in regular session and in special session by written request of any Party to the other Parties. The special session shall take place within 30 days following the date of the receipt of the request, unless the Parties agree otherwise.

6. Unless otherwise agreed by the Parties, sessions of the Joint Committee shall be held alternately in Lima and Geneva or by any technological means available. Such sessions shall be chaired jointly by Peru and one of the EFTA States.

7. The Joint Committee may take decisions as provided for in this Agreement and on all other matters it may make recommendations.

8. The Joint Committee shall take decisions and make recommendations by consensus.

ARTICLE 11.2

Agreement Co-ordinators and Contact Points

1. Each Party shall designate an Agreement Co-ordinator and communicate such designation to the other Parties within 90 days following the date of the entry into force of this Agreement.

2. Unless otherwise provided for in this Agreement, the Agreement Co-ordinators shall:

(a) work jointly to develop agendas and make other preparations for Joint Committee meetings and follow up on Joint Committee decisions as appropriate;

(b) act as a contact point to facilitate communications between the Parties on any matter covered by this Agreement;

(c) on the request of a Party, identify the office or official responsible for a given matter and assist in facilitating communication as necessary; and

(d) address any other matter entrusted to it by the Joint Committee.

3. Each Party shall be responsible for the operation and expenses of its designated Agreement Co-ordinator.

CHAPTER 12

DISPUTE SETTLEMENT

ARTICLE 12.1

Co-operation

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through co-operation, consultations or other means to reach a mutually satisfactory resolution of any matter that might affect its operation.

ARTICLE 12.2

Scope of Application

Except as otherwise provided in this Agreement, the provisions of this Chapter shall apply with respect to the settlement of all disputes between the Parties regarding the interpretation or application of this Agreement, in particular when a Party considers that a measure of another Party is inconsistent with the obligations of this Agreement.

ARTICLE 12.3

Choice of Forum

1. Disputes regarding the same matter arising under this Agreement and the WTO Agreement may be settled in either forum at the discretion of the complaining Party.

2. Unless the disputing Parties agree otherwise, once the complaining Party has requested a WTO panel under Article 6 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes or a panel under this Agreement pursuant to paragraph 1 of Article 12.6 (Request for a Panel), the forum selected shall be used to the exclusion of the other in respect of that matter.

3. Before a Party initiates a dispute settlement procedure against another Party under the WTO Agreement, that Party shall notify the other Parties of its intention.

ARTICLE 12.4

Good Offices, Conciliation or Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the Parties so agree. They may begin and be terminated at any time. They may continue while procedures of a panel established in accordance with this Chapter are in progress.

2. Proceedings involving good offices, conciliation and mediation shall be confidential and without prejudice to the Parties' rights in any other proceedings.

ARTICLE 12.5

Consultations

1. A Party may request in writing consultations with any other Party with respect to any matter referred to in Article 12.2 (Scope of Application). The requesting Party shall notify the other Parties in writing thereof.

2. Consultations shall take place in the Joint Committee if the Parties making and receiving the request for consultations so agree.

3. The request for consultations shall set out the reasons for the complaint, including an identification of the measure concerned and an indication of the legal basis of the complaint.

4. Consultations shall be held within:

(a) 30 days following the date of the receipt of the request for consultations regarding urgent matters[1];

(b) 45 days following the date of the receipt of the request for consultations for all other matters; or

(c) such other period as the consulting Parties may agree.

[1] Urgent matters include goods (agriculture, fish, and industrial) and services that lose their quality or current condition in a short period of time. Urgent matters include such perishable goods or services which lose their trade value when a certain date is passed.

5. Consultations may be held in person or by any technological means available to the consulting Parties. If in person, consultations shall be held in the place agreed by the consulting Parties. If no agreement has been reached by them, consultations shall be held in Lima.

6. The consulting Parties shall provide sufficient information to enable a full examination of how the measure in force might affect the operation and application of this Agreement and treat any confidential or proprietary information exchanged in the course of consultations in the same manner as the Party providing the information.

7. The consultations shall be confidential and without prejudice to the rights of the consulting Parties in any further proceedings.

8. The consulting Parties shall inform the other Parties of any mutually agreed resolution of the matter.

ARTICLE 12.6

Request for the Establishment of a Panel

1. A consulting Party may request in writing the establishment of a panel:

   (a) if the requested Party has not responded to the request for consultations within 15 days following the date of receipt of such request;

   (b) if consultations are not held within the periods established in Article 12.5 (Consultations) or within any other periods as the consulting Parties may have agreed; or

   (c) in the event that the consulting Parties fail to resolve a matter within 60 days following the date of the receipt of the request for consultations or as regards urgent matters within 45 days, or within any other period as they may agree.

2. The complaining Party shall deliver the request for the establishment of a panel to the Party complained against. The request shall contain the reason for the request, the identification of the specific measures, and a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

3. A copy of the request shall be communicated to the other Parties to this Agreement so that they may determine whether to participate in the dispute.

4. Unless otherwise agreed by the disputing Parties, the panel shall be selected and perform its functions in a manner consistent with the provisions of this Chapter and the Model Rules of Procedure.

ARTICLE 12.7

Third Party Participation

A Party which is not a party to the dispute shall be entitled, on delivery of a written notice to the disputing Parties, to make written submissions to the panel, receive written submissions including annexes of the disputing Parties, attend hearings and make oral statements.

ARTICLE 12.8

Panel Selection

1. The panel shall comprise three members. The date of establishment of the panel shall be the date on which the chair is appointed.

2. Each disputing Party shall, within 20 days following the date of receipt of the request for the establishment of the panel by the Party complained against, appoint a panelist, who may be a national of that Party, propose up to four candidates to serve as the chair of the panel, and notify the other disputing Party in writing of the name of the appointed panelist and its proposed candidates to serve as the chair, including their relevant background information.

3. Within ten days following the date of the receipt of the request for the establishment of the panel by the Party complained against, the disputing Parties shall endeavour to agree on and appoint the chair from among the candidates proposed by both Parties.

4. If any of the three members have not been designated or appointed within 30 days following the date of the receipt of the request for the establishment of the panel by the Party complained against, the designations shall be made at the request of any disputing Party by the Director-General of the WTO, after having consulted with the disputing Parties. The designation should be made within 30 days following the date of the receipt of that request.

5. If an appointed panelist withdraws, is removed, or becomes unable to serve, a replacement shall be appointed in the following manner:

(a) in the case of a panelist appointed by a Party, that Party shall designate a new panelist within 15 days, failing which the replacement shall be appointed in accordance with paragraph 4; and

(b) in the case of the chair of the panel, the Parties shall agree on the appointment of a replacement within 30 days, failing which the replacement shall be appointed in accordance with paragraph 4.

6. Any time period applicable to the proceedings shall be suspended for a period beginning on the date the panelist or chair withdraws, is removed, or becomes unable to serve and ending on the date the replacement is appointed.

7. If the Director-General of the WTO is unable to make the designations as set forth in this Chapter or is a national of a disputing Party, the designations shall be made by any Deputy Director-General of the WTO

ARTICLE 12.9

Qualifications of Panelists

1. Panelists shall:

   (a) have expertise or experience in law, international trade, other matters covered by this Agreement, or in the resolution of disputes arising under international trade agreements;

   (b) be chosen strictly on the basis of objectivity, impartiality, reliability, and sound judgment;

   (c) be independent of and not be affiliated with or take instructions from, any Party; and

   (d) comply with the standards of conduct established by the Model Rules of Procedure.

2. If a disputing Party has justifiable doubts as to a panelist's compliance with the standards of conduct established in the Model Rules of Procedure, it may propose to the other disputing Party the removal of that panelist. If the other disputing Party does not agree, or the panelist does not withdraw, the decision shall be made by the Director-General of the WTO.

ARTICLE 12.10

Role of the Panel

1. The panel shall make an objective assessment of the matter under its consideration, in light of the relevant provisions of this Agreement interpreted in accordance with rules of interpretation of public international law and in light of the submissions and arguments of the disputing Parties as well as other information received during the proceedings, and formulate the necessary findings for settling the dispute in accordance with the request for the establishment of the panel and its terms of reference.

2. Unless otherwise agreed by the disputing Parties, within 20 days following the date of the receipt of the request for the establishment of the panel, its terms of reference shall be:

> "To examine, in light of the relevant provisions of this Agreement, the matter referred to it in the panel request and to make findings, determinations and recommendations on the matters referred to in paragraph 3 of Article 12.13 (Report of the Panel)."

3. The decisions of the panel, including the adoption of the report, shall normally be taken by consensus. If the panel is not able to reach consensus, it may adopt its decisions by majority. No panel may disclose which panelists are associated with majority or minority opinions.

4. The reports, as well as any other decision of the panel, shall be communicated to the Parties. The reports shall be made public, unless the disputing Parties agree otherwise.

ARTICLE 12.11

Model Rules of Procedure

1. The procedure before the panel shall be conducted in accordance with the Model Rules of Procedure, unless otherwise provided for in this Agreement. The disputing Parties may agree on different rules to be applied by the panel.

2. Within six months following the date of entry into force of this Agreement, the Joint Committee shall approve the Model Rules of Procedure, which shall ensure at least the fulfilment of the following:

(a) each disputing Party shall have the right to at least one hearing before the panel, as well as the opportunity to provide initial and rebuttal written submissions;

(b) the hearings before the panel will be open to the public unless otherwise agreed by the disputing Parties;

(c) the protection of information designated as confidential by any of the Parties;

(d) the hearings shall be held in Washington DC, unless otherwise agreed by the disputing Parties;

(e) in presenting oral arguments the disputing Parties have the right to use either their own language or English. Written submissions must be submitted in Spanish with an English translation or in English with a Spanish translation;

(f) at the request of a disputing Party, or on its own initiative, the panel may seek information and technical advice from experts it deems appropriate;

(g) each disputing Party's individual costs, including costs for the translation of the written submissions, the disputing Party´s administration costs and other costs related to the preparation and the carrying out of the proceedings, shall be borne by each disputing Party; and

(h) costs for the panelists and the administrative costs for the oral hearings, including interpretation, shall be borne by the disputing Parties in equal parts. However, the panel may decide that the costs be distributed differently, taking into account, *inter alia*, the particulars of the case and other circumstances that may be deemed relevant.

ARTICLE 12.12

Consolidation of Proceedings

Where more than one Party requests the establishment of a panel relating to the same matter or measure, and whenever feasible, a single panel should be established to examine complaints relating to the same matter.

ARTICLE 12.13

Report of the Panel

1. Unless the disputing Parties agree otherwise, the panel shall submit an initial report within 90 days, or 50 days in the event of urgent matters, following the date of its establishment.

2. A disputing Party may submit written comments to the panel on its initial report within 14 days following its presentation. The panel shall present to the disputing Parties a final report within 30 days following the presentation of the initial report.

3. The reports shall contain:

(a) the findings of fact and law together with the reasons therefor, including the determination as to whether a disputing Party has not conformed with its obligations under this Agreement or any other determination requested in the terms of reference;

(b) its recommendations for the resolution of the dispute and the implementation of the final report;

(c) if requested, the findings about the level of adverse trade effects caused to the complaining Party by the Party complained against's failure to conform with the obligations of this Agreement; and

(d) if requested, a reasonable period to comply with the final report.

ARTICLE 12.14

Request for Clarification of the Report

1. Within ten days following the presentation of the final report, a disputing Party may submit a written request to the panel for clarification of any determination or recommendation in the report that the Party considers ambiguous. The panel shall respond to the request within ten days following the date of its receipt.

2. The submission of a request pursuant to paragraph 1 shall not affect the time periods referred to in Article 12.16 (Implementation of the Final Report and Compensation) and Article 12.17 (Non-Implementation and Suspension of Benefits), unless the panel decides otherwise.

ARTICLE 12.15

Suspension and Termination of Procedure

1. The disputing Parties may agree to suspend the work of the panel at any time for a period not exceeding 12 months following the date of such agreement. If the work of the panel has been suspended for more than 12 months, the authority of the panel to consider the dispute shall lapse, unless the disputing Parties agree otherwise.

2. If the authority of the panel lapses and the disputing Parties have not reached an agreement on the settlement of the dispute, nothing in this provision shall prevent a Party from introducing a new complaint regarding the same matter.

3. The disputing Parties may agree to terminate the proceedings before a panel at any time by jointly notifying the chairperson of the panel.

4. A complaining Party may withdraw its complaint at any time before the final report has been issued. Such withdrawal is without prejudice to its right to introduce a new complaint regarding the same issue at a later point in time.

5. A panel may, at any stage of the proceedings prior to release of the final report, propose that the disputing Parties seek to settle the dispute amicably.

ARTICLE 12.16

Implementation of the Final Report and Compensation

1. The rulings of the panel on the matters referred to in subparagraphs 3 (a) and (d) of Article 12.13 (Report of the Panel) shall be final and binding for the disputing Parties.

2. The Party complained against shall within 30 days following the issuance of the final report notify the other Party when and how it will comply with the ruling. The Party complained against shall comply with the ruling immediately or, if impracticable, within a reasonable period of time, unless the panel report sets a period of time for the implementation of the ruling pursuant to subparagraph 3 (d) of Article 12.13 (Report of the Panel) or the disputing Parties agree on a different period of time. The Party complained against shall take into account any recommendation of the panel for the resolution of the dispute and the implementation of the ruling.

3. The Party complained against may also notify the complaining Party within 30 days following the issuance of the final report that it considers it impracticable to comply with the ruling and offer compensation. If the complaining Party considers the proposed compensation to be unacceptable or not sufficiently detailed to asses properly, it may request consultation with the aim of reaching an agreement on compensation. If there is no agreement on compensation within 30 days following the date of the receipt of the request, the Party complained against must comply with the ruling of the original panel pursuant to paragraph 2.

ARTICLE 12.17

Non-Implementation and Suspension of Benefits

1. If the Party complained against fails to comply:

   (a) with the ruling in the final report within the time period defined in accordance with paragraph 2 of Article 12.16 (Implementation of the Final Report and Compensation); or

(b) with an agreement on compensation pursuant to paragraph 3 of Article 12.16 (Implementation of the Final Report and Compensation) within the time period agreed by the disputing Parties, the complaining Party may suspend benefits granted under this Agreement equivalent to those affected by the measure that the panel has found to violate this Agreement, taking into account findings about the level of adverse trade effects pursuant to subparagraph 3 (c) of Article 12.13 (Report of the Panel).

2. In considering which benefits to suspend pursuant to paragraph 1, the complaining Party should first seek to suspend the application of benefits in the same sector or sectors affected by the measure that the panel has found to be inconsistent with the obligations of this Agreement. If the complaining Party considers that it is not practicable or effective to suspend benefits in the same sector or sectors, it may suspend benefits in other sectors.

3. The suspension of benefits shall be temporary and shall only be applied by the complaining Party until the measure found to violate this Agreement has been brought into conformity with the rulings of the panel or until the disputing Parties have otherwise settled the dispute.

4. The complaining Party shall notify the Party complained against of the benefits which it intends to suspend, the grounds for such suspension and when suspension will commence no later than 30 days before the date on which the suspension is due to take effect. Within 15 days following the date of that notification, the Party complained against may request the original panel to rule on any disagreement regarding the notified suspension, including whether the suspension of benefits is justified and whether the benefits which the complaining party intends to suspend are excessive. The ruling of the panel shall be given within 45 days following the date of that request and shall be final and binding. Benefits shall not be suspended until the panel has issued its ruling.

5. In case of disagreement as to whether the Party complained against has complied with the report within the time periods set out in paragraph 2 of Article 12.16 (Implementation of the Report and Compensation), either disputing Party may refer the dispute to the original panel. The report of the panel shall normally be rendered within 45 days following the date of the request and shall be final and binding. Benefits shall not be suspended until the panel has issued its ruling.

6. At the request of a disputing Party, the original panel shall determine the conformity with the rulings of the panel in this Chapter of any implementing measures adopted after the suspension of benefits by the complaining Party and whether the suspension of benefits should be terminated or modified. The ruling of the panel in this case shall be given within 30 days following the date of that request.

7. A panel under this Article shall, whenever possible, be composed by members of the original panel. If a panelist dies, withdraws, is removed or is otherwise unavailable, that panelist shall be replaced by a panelist appointed pursuant to paragraph 5 of Article 12.8 (Panel Selection).

CHAPTER 13

FINAL PROVISIONS

ARTICLE 13.1

Annexes, Appendices and Footnotes

The Annexes, Appendices and footnotes to this Agreement constitute an integral part of this Agreement.

ARTICLE 13.2

Entry into Force

1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective legal and constitutional requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. This Agreement shall enter into force on 1 June 2011, provided that Peru and at least one EFTA State have deposited their instruments of ratification, acceptance or approval with, or notified provisional application to the Depositary at least two months prior to that date.

3. In case the Agreement does not enter into force on 1 June 2011, it shall enter into force on the first day of the third month following the latter date on which Peru and at least one EFTA State have deposited their instruments of ratification, acceptance or approval with, or notified provisional application to the Depositary.

4. If an EFTA State deposits its instrument of ratification, acceptance or approval after this Agreement has entered into force, the Agreement shall enter into force on the first day of the third month following the deposit of its instrument.

5. Where Peru has ratified this Agreement, an EFTA State may, if its legal and constitutional requirements so permit, apply this Agreement provisionally pending ratification, acceptance or approval by that State. Provisional application of this Agreement shall be notified to the Depositary, and shall apply from the first day of the third month following the notification.

6. If the Agreement is not ratified, accepted or approved by a Party, and it had been provisionally applied by that Party, paragraph 1 of Article 13.5 (Withdrawal) shall apply *mutatis mutandis*. Provisional application shall continue for a period of six months following the date of the receipt of the Party's notification by the Depositary regarding the non-ratification, non-acceptance or non-approval of the Agreement.

ARTICLE 13.3

Amendments

1. Any Party may submit proposals for amendments to this Agreement to the Joint Committee for consideration and approval.

2. Without prejudice to subparagraph 3 (b) of Article 11.1 (Joint Committee), amendments to this Agreement shall, after approval by the Joint Committee, be submitted to the Parties for ratification, acceptance or approval in accordance with their respective legal and constitutional requirements.

3. Amendments shall enter into force on the first day of the third month following the deposit of the last instrument of ratification, acceptance or approval, unless the Parties agree otherwise.

4. The Parties may agree that an amendment shall enter into force for those Parties that have fulfilled their internal legal requirements, provided that Peru and at least one EFTA State are among those Parties. A Party may apply, subject to its internal legal requirements and upon notification to the Depositary, the amendment provisionally, pending its ratification, acceptance or approval.

5. The text of the amendments and the instruments or ratification, acceptance or approval shall be deposited with the Depositary.

ARTICLE 13.4

Accession

1. Any State becoming a member of European Free Trade Association (EFTA), may accede to this Agreement, provided that the Joint Committee decides to approve its accession, on such terms and conditions as may be agreed between that State and the Parties.

2. In relation to an acceding State, this Agreement shall enter into force on the first day of the third month following the last deposit of the instrument of approval of the Parties and of the instrument of accession of the acceding State.

ARTICLE 13.5

Withdrawal

1. Any Party may withdraw from this Agreement after it provides written notification to the other Parties. Such withdrawal shall be effective six months after the date on which the notification is received by the Depositary, except otherwise agreed by the Parties.

2. If Peru withdraws, this Agreement shall expire when the withdrawal becomes effective.

3. In case any EFTA State withdraws from the Convention establishing the European Free Trade Association, it shall withdraw at the same time from this Agreement in accordance with paragraph 1.

ARTICLE 13.6

Relation to the Complementary Agreements

1. This Agreement shall not enter into force or be applied provisionally between Peru and an EFTA State unless the complementary Agreement on Agriculture between Peru and that EFTA State referred to in Article 1.1 (Establishment of a Free Trade Area) enters into force or is applied provisionally simultaneously. It shall remain in force as long as the complimentary agreement remains in force between those Parties.

2. If Peru or an individual EFTA State withdraws from the complementary Agreement on Agriculture between Peru and that EFTA State, it is understood that it is also withdrawing from this Agreement. Both withdrawals shall become effective on the date the first withdrawal becomes effective pursuant to Article 13.5 (Withdrawal).

ARTICLE 13.7

Authentic Texts

1. Except as provided in paragraph 2, the English and Spanish texts of this Agreement are equally valid and authentic. In case of divergence, the English version shall prevail.

2. The following texts are only valid and authentic in English or Spanish respectively:

(a) in English:

(i) Table in Annex II (Excluded Products);

(ii) Appendix 1 to Annex III (Processed Agricultural Products); and

(iii) Tables 1 and 2 in Annex IV (Fish and Other Marine Products).

(b) in Spanish:

(i) Appendixes 2 and 3 to Annex III (Processed Agricultural Products);

(ii) Table 3 in Annex IV (Fish and Other Marine Products); and

(iii) Table in Annex VIII (Industrial Goods).

ARTICLE 13.8

Depositary

The Government of Norway shall act as Depositary.

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

Done at Reykjavik, this 24 day of June 2010, in one original text in the English and the Spanish languages, which shall be deposited with the Government of Norway (Depositary). The Depositary shall transmit certified copies to the Parties.

For Iceland

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For the Republic of Peru

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For the Principality of Liechtenstein

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For the Kingdom of Norway

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For the Swiss Confederation

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