

# THE UNITED STATES – PERU TRADE PROMOTION AGREEMENT

## Summary of the Agreement

This summary briefly describes key provisions of the United States - Peru Trade Promotion Agreement (“Agreement”) that the United States has concluded with Peru and represents an authoritative expression of Administration views regarding the interpretation of the Agreement both for purposes of U.S. international obligations and domestic law.

### Preamble

The Preamble to the Agreement provides the Parties’ underlying objectives in entering into the Agreement and provides context for the provisions that follow. It includes the following statement:

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

This statement would clarify that, as stated in the Bipartisan Trade Promotion Authority Act of 2002, foreign investors in the United States are not to be accorded greater substantive rights with respect to investment protections than United States investors in the United States.

### Chapter One: Initial Provisions and General Definitions

Section A of Chapter One sets out provisions establishing a free trade area and affirming the Parties’ existing rights and obligations with respect to each other under the Marrakesh Agreement Establishing the World Trade Organization (WTO) and other agreements to which they are party.

Section B defines certain terms that recur in various chapters of the Agreement.

### Chapter Two: National Treatment and Market Access for Goods

Chapter Two and its relevant annexes and appendices set out the Agreement’s principal rules governing trade in goods. It requires each Party to treat products from the other Party in a non-discriminatory manner, provides for the phase-out and elimination of tariffs on “originating” goods (as defined in Chapter Four) traded between the Parties, and requires the elimination of a wide variety of non-tariff trade barriers that restrict or distort trade flows.

*Tariff Elimination.* Chapter Two provides for the elimination of customs duties on originating goods traded between the Parties. Duties on most tariff lines covering industrial and consumer goods will be eliminated as soon as the Agreement enters into force. Duties on other goods will be phased out over periods of up to 10 years. Some agricultural goods will have longer periods

for elimination of duties or be subject to other provisions, including, in some cases, the application of preferential tariff-rate quotas (TRQs). The General Notes to the U.S. and Peru Schedules to Annex 2.3 include detailed provisions on staging of tariff reductions and application of TRQs for certain agricultural goods. The Chapter provides that the Parties may agree to speed up tariff phase-outs on a product-by-product basis after the Agreement takes effect.

*Waiver of Customs Duties.* The Parties may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement. Chapter Two defines the term “performance requirements” so as not to restrict a Party’s ability to provide duty drawback on goods imported from the other Party.

*Temporary Admission.* The Parties agreed to provide duty-free temporary admission for certain products. Such items include professional equipment, goods for display or demonstration, and commercial samples. The Chapter also includes specific provisions on transit of vehicles and containers used in international traffic.

*Import/Export Restrictions, Fees, and Formalities.* The Agreement clarifies that restrictions prohibited under the General Agreement on Tariffs and Trade (GATT) 1994 and this Agreement include export and import price requirements (except under antidumping and countervailing duty orders and undertakings) and import licensing conditioned on the fulfillment of a performance requirement. In addition, a Party must limit all fees and charges imposed on or in connection with importation or exportation to the approximate cost of services rendered. The United States agreed not to apply its merchandise processing fee on imports of originating goods. Peru agreed not to require a person of the United States to have or maintain a relationship with a “distributor” as a condition for allowing the importation of a good.

*Distinctive Products.* Peru agreed to recognize Bourbon Whiskey and Tennessee Whiskey as “distinctive products” of the United States, meaning Peru will not permit the sale of any product as Bourbon Whiskey or Tennessee Whiskey unless it was manufactured in the United States in accordance with applicable laws and regulations. The United States agreed to recognize *Pisco Perú* as a “distinctive product” of Peru.

*Committee on Trade in Goods.* Chapter Two also establishes a Committee on Trade in Goods to consider matters arising under Chapters Two, Four, and Five. The functions of the Committee are to promote and address barriers to trade in goods and to provide advice and recommendations on trade capacity building with respect to matters those chapters cover.

## ***Agriculture***

*TRQs.* Chapter Two requires each government to administer TRQs in a manner that is transparent, non-discriminatory, responsive to market conditions, and minimally burdensome on trade. In addition, the Parties will make every effort to administer TRQs in a manner that allows importers to fully utilize import quotas. In addition, the Chapter provides that Parties may not condition application for, or utilization of, import licenses or quota allocations on the re-export of an agricultural good.

*Export Subsidies.* Each Party will eliminate export subsidies on agricultural goods destined for the other Party. Under Article 2.16, no Party may introduce or maintain an export subsidy on agricultural goods destined for the other Party unless the exporting Party believes that a third country is subsidizing its exports to that other Party. In such a case, the exporting Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party.

*Safeguards.* Chapter Two sets out a transitional agricultural safeguard mechanism that allows a Party to impose a temporary additional duty on specified agricultural products if imports exceed an established volume “trigger.” The safeguard measure will remain in force until the end of the calendar year (or marketing year in the case of rice imported by Peru) in which the measure applies. A Party may not apply an agricultural safeguard on a good after the date that the good is subject to duty-free treatment under the Party’s Schedule to Annex 2.3 of the Agreement.

A Party may not apply a safeguard measure to a good that is already the subject of a safeguard measure under either Chapter Eight (Trade Remedies) of the Agreement or Article XIX of GATT 1994 and the WTO Safeguards Agreement. All agricultural safeguard measures must be applied and maintained in a transparent manner and the Party applying such a measure must, on request, consult with the other Party concerning the application of the measure.

Neither Party may impose safeguard duties pursuant to the WTO Agreement on Agriculture on originating goods.

*Sugar.* The Agreement contains several unique features applicable to imports of sugar into the United States. First, imports under the TRQs provided for in the Agreement will be limited to the lesser of (i) the quantity established in the TRQ, or (ii) Peru’s trade surplus in specific sugar goods. (“Peru’s trade surplus” is the amount by which Peru’s exports to all destinations exceed its imports from all sources in specified sugar and sweetener goods, except that Peru’s exports of sugar to the United States and its imports of high fructose corn syrup from the United States are not included in the calculation of its trade surplus.) The aggregate quantities established for the TRQ start at 9,000 metric tons in the first year and go up to 11,520 metric tons by year 15 of the Agreement. After year 15, the quantities increase by 180 metric tons per year. Second, in contrast to how it will treat other commodities subject to TRQs, the United States will not eliminate its over-quota duty on sugar imports under the Agreement. Lastly, the Agreement includes a mechanism that allows the United States, at its option, to provide some form of alternative compensation to Peruvian exporters in place of imports of sugar in any given year.

*Additional Provisions.* Chapter Two provides for the creation of a Committee on Agricultural Trade. The Committee will be established within 180 days after the date the Agreement enters into force and will provide a forum for promoting cooperation in the implementation and administration of the Agreement, as well as for consultations on matters related to the agricultural provisions of the Agreement. In addition, the Chapter provides that the Parties will

consult on and review the operation of the Agreement as it relates to trade in chicken nine years after the Agreement enters into force.

### **Chapter Three: Textiles and Apparel**

*Tariff Elimination.* Chapter Three provides for duties on all originating textile or apparel goods to be eliminated on the date the Agreement enters into force.

*Safeguards.* The Chapter also establishes a transitional safeguard procedure for textile and apparel goods, under which an importing Party may temporarily impose additional duties up to the level of the normal trade relations (most-favored-nation) (NTR(MFN)) duty rates on imports of textile or apparel goods that cause, or threaten to cause, serious damage to a domestic industry as a result of the elimination or reduction of duties under the Agreement. An importing Party may impose a textile safeguard measure only once on the same textile or apparel good. The measure may not be in place for more than two years, or three years if the measure is extended. The ability to impose or maintain textile safeguards lapses five years after the Agreement enters into force. A Party may not apply a textile safeguard measure to a good while the good is subject to a safeguard measure under (i) Chapter Eight (Trade Remedies), or (ii) Article XIX of the GATT 1994 and the WTO Agreement on Safeguards.

A Party imposing a safeguard measure under Chapter Three must provide the exporting Party with mutually agreed compensation in the form of trade concessions for textile or apparel goods that have a value substantially equivalent to the increased duties resulting from application of the safeguard measure. If the Parties cannot agree on compensation, the exporting Party may raise duties on any goods from the importing Party in an amount that has a value substantially equivalent to the increased duties resulting from application of the safeguard measure.

*Rules of Origin and Related Matters.* A textile or apparel good will generally qualify as an “originating good” eligible to receive trade preferences under the Agreement only if all processing from the yarn stage to the final product (*e.g.*, yarn-spinning, fabric production, cutting, and assembly) takes place in the United States, Peru, or both, or if there is an applicable change in tariff classification under the specific rules of origin contained in Annex 3-A of the Agreement.

Chapter Three sets out special rules for determining whether a textile or apparel good is an “originating good,” including a *de minimis* exception for non-originating yarns or fibers, a process for designating inputs not available in commercial quantities, a rule for treatment of sets, an exception for use of certain nylon filament yarn, and consultation provisions.

The *de minimis* rule applies to goods that ordinarily would not be considered originating goods because certain of their fibers or yarns do not undergo an applicable change in tariff classification. Under the rule, the Parties will consider a good to be “originating” if those fibers or yarns constitute ten percent or less of the total weight of the component of the good that determines origin. This special rule does not apply to goods containing elastomeric yarns.

Annex 3-B of the Agreement sets out a list of fabrics, yarns, and fibers that the Parties have determined are not available in commercial quantities in a timely manner from producers in the United States and Peru. A textile or apparel good that includes the fabrics, yarns, or fibers included in this list will be treated as if it is “originating” for purposes of the specific rules of origin in Annex 3-A of the Agreement, regardless of the actual origin of those inputs. Chapter Three establishes procedures under which the United States will determine whether additional fabrics, yarns, or fibers are not available in commercial quantities in the United States and Peru. The United States may also remove a fabric, yarn, or fiber from the list if it determines that the fabric, yarn, or fiber has become available in commercial quantities.

*Customs Cooperation.* Chapter Three commits the Parties to cooperate in enforcing their laws related to trade in textile and apparel goods, to ensure the accuracy of claims of origin, and to prevent circumvention of the Parties’ laws or agreements relating to trade in textile and apparel goods. The Chapter also provides that, under certain circumstances, the exporting Party must conduct a verification to determine that a claim of origin is accurate, or to determine compliance with relevant laws. A verification may include visits to the premises of the exporter or producer of the goods in question. If there is insufficient information to make the relevant determination, or if an enterprise provides incorrect information, the importing Party may take appropriate action, which may include denying application of preferential tariff treatment or denying entry to the goods in question. Further, either Party may convene consultations to resolve technical or interpretive issues arising with respect to customs cooperation or may request technical assistance from the other Party in implementing the Chapter’s customs cooperation provisions.

*Duty Free Treatment for Certain Goods.* Chapter Three provides for duty-free treatment for goods that the United States and Peru agree qualify as handmade, hand-loomed, or traditional folklore goods.

#### **Chapter Four: Rules of Origin and Origin Procedures**

To benefit from various trade preferences provided under the Agreement, including reduced duties, a good must qualify as an “originating good” under the rules of origin set out in Chapter Four and Annex 4.1. These rules ensure that the special tariff and other benefits of the Agreement accrue primarily to firms or individuals that produce or manufacture goods in the Parties’ territories.

*Key Concepts.* Chapter Four provides general criteria under which a good may qualify as an “originating good:”

- When the good is wholly obtained or produced in Peru, the United States, or both (*e.g.*, crops grown or minerals extracted in the United States); or
- When the good: (1) is manufactured or assembled from non-originating materials that undergo a specified change in tariff classification in Peru, the United States, or both; or (2) meets any applicable “regional value content” requirement (see below); and (3) satisfies all other requirements of Chapter Four, including Annex 4.1; or

- When the good is produced in Peru, the United States, or both, entirely from “originating” materials.

*De Minimis.* Even if a good does not undergo a specified change in tariff classification, it will be treated as an originating good if the value of non-originating materials that do not undergo the required tariff shift does not exceed 10 percent of the adjusted value of the good, and the good otherwise meets the criteria of the Chapter. This *de minimis* exception does not apply to certain agricultural and textile goods.

*Regional Value Content.* Some origin rules under the Agreement require that certain goods meet a regional value content test in order to qualify as “originating,” meaning that a specified percentage of the value of the good must be attributable to originating materials. In general, the Agreement provides two methods for calculating that percentage: (1) the “build-down method” (based on the value of non-originating materials used); and (2) the “build-up method” (based on the value of originating materials used). The regional value content of certain automotive goods, however, may be calculated on the basis of the net cost of the good. Finally, accessories, spare parts, and tools delivered with a good are considered part of the material making up the good so long as these items are not separately classified or invoiced and their quantities and values are customary. The *de minimis* rule does not apply in calculating regional value content.

*Claims for Preferential Treatment.* Under the Chapter, importers who wish to claim preferential tariff treatment for particular goods must be prepared to submit, on the request of the importing Party’s customs authority, a statement explaining why the good qualifies as an originating good. A Party may only deny preferential treatment in writing, and must provide legal and factual findings. The Chapter establishes a procedure for filing claims for preferential treatment for up to one year after a good is imported and for seeking a refund of any excess duties paid. Chapter Four also provides that a Party will not penalize an importer if the importer promptly and voluntarily corrects an incorrect claim and pays any duties owed.

*Verification.* Each Party must ensure that its customs authority is empowered to conduct verifications for purposes of determining whether a good is an originating good. Where an importing Party determines through a verification that an importer, exporter, or producer has engaged in a pattern of conduct in providing false or unsupported statements, declarations, or certifications that a good is an originating good, the Party may suspend preferential tariff treatment to identical goods from that importer, exporter, or producer until the importing Party determines that the importer, exporter, or producer is in compliance with the rules set out in the Chapter.

*Additional Rules.* Chapter Four provides specific rules with respect to the treatment of (1) packing materials and containers; (2) indirect materials; (3) fungible goods; and (4) sets of goods for purposes of determining origin. The Chapter provides that a Party may not treat a good as originating if the good undergoes production outside the territories of the Parties or if, while being unloaded, reloaded, or preserved in or simply being shipped through a third country, the good does not remain under the control of customs authorities in the territory of that third country. Chapter Four also calls for the Parties to publish guidelines for interpreting, applying, and administering Chapter Four and the relevant provisions of Chapter Two.

## **Chapter Five: Customs Administration and Trade Facilitation**

Chapter Five establishes rules designed to encourage transparency, predictability, and efficiency in the operation of each Party's customs procedures and to provide for cooperation between the Parties on customs matters.

*General Principles.* Chapter Five commits each Party to observe certain transparency obligations. Each Party must promptly publish its customs measures, including on the Internet, and, where possible, solicit public comments before amending its customs regulations. Each Party must also provide written advance rulings, on request, to its importers and to exporters and producers of the other Party, regarding whether a product qualifies as an "originating" good under the Agreement, as well as on other customs matters. In addition, each Party must guarantee importers access to both administrative and judicial review of customs decisions. The Parties must release goods from customs promptly and expeditiously clear express shipments. After the Agreement enters into force Peru will have one year to comply with the Chapter's rules on release of goods; two years to comply with the Chapter's express shipments obligations and certain of its transparency obligations; and three years to comply with the Chapter's requirement to provide advance rulings.

*Cooperation.* Chapter Five also is designed to enhance customs cooperation. It encourages the Parties to give each other advance notice of customs developments likely to affect the Agreement. The Chapter calls for the Parties to cooperate in securing compliance with each other's customs measures related to the implementation and operation of the provisions of the Agreement governing importations and exportations. It includes specific provisions requiring the Parties to share customs information where a Party has a reasonable suspicion of unlawful activity relating to its laws and regulations governing importations.

## **Chapter Six: Sanitary and Phytosanitary Measures**

Chapter Six defines the Parties' obligations to each other regarding sanitary and phytosanitary (SPS) measures. It reflects the Parties' understanding that implementation of existing obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) is a shared objective. Nothing in the Agreement imposes new limitations on the United States in terms of maintaining high safety and inspection standards.

*Key Concepts.* SPS measures are laws or regulations that protect human, animal, or plant life or health from certain risks, including plant- and animal-borne pests and diseases, additives, contaminants, toxins, or disease-causing organisms in food and beverages.

*Cooperation.* Under Chapter Six, the Parties will establish an SPS Committee consisting of relevant trade and regulatory officials. The objectives of the Committee are to (i) help each Party to implement the WTO SPS Agreement; (ii) assist each Party to protect human, animal, or plant life or health; (iii) enhance consultation and cooperation between the Parties on SPS matters; and (iv) address SPS measures affecting trade between the Parties. The Committee will also provide a forum for enhancing mutual understanding of each Party's SPS measures and the

regulatory processes that relate to those measures; consulting on SPS matters that may affect trade between the Parties; and consulting on issues, agendas, and positions for meetings of certain international organizations that address SPS matters.

*Dispute Settlement.* No Party may invoke the Agreement’s dispute settlement procedures for a matter arising under Chapter Six. Instead, any dispute between the Parties involving an SPS measure must be resolved through the WTO.

## **Chapter Seven: Technical Barriers to Trade**

Chapter Seven builds on WTO rules related to technical barriers to trade to promote transparency, accountability, and cooperation between the Parties on regulatory issues.

*Key Concepts.* The term “technical barriers to trade” (TBT) refers to barriers that may arise in preparing, adopting, or applying voluntary product standards, mandatory product standards (“technical regulations”), and procedures used to determine whether a particular good meets such standards, *i.e.*, “conformity assessment” procedures.

*International Standards.* The principles articulated in the WTO TBT Committee Decision on Principles for the Development of International Standards, Guides and Recommendations emphasize the need for openness and consensus in the development of international standards. Under Chapter Seven, the Parties will apply these principles and consult on pertinent matters under consideration by relevant international or regional bodies.

*Cooperation.* Chapter Seven establishes a Committee on Technical Barriers to Trade through which the Parties will cooperate to reduce technical barriers and improve market access. The Committee’s specific functions will include: (i) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures; (ii) facilitating sectoral cooperation between governmental and non-governmental conformity assessment bodies; (iii) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standards, technical regulations, and conformity assessment procedures; and (iv) consulting, at a Party’s request, on any matter arising under the Chapter.

*Conformity Assessment.* Chapter Seven provides for a dialogue between the Parties on ways to facilitate the acceptance of conformity assessment results. Each Party will recognize conformity assessment bodies in the territory of the other Party on terms no less favorable than it accords conformity assessment bodies in its own territory.

*Transparency.* Chapter Seven contains various transparency obligations, such as requiring each Party to: (i) allow persons of the other Party to participate in the development of technical regulations, standards, and conformity assessment procedures on a non-discriminatory basis; (ii) transmit regulatory proposals notified under the WTO TBT Agreement directly to the other Party; (iii) describe in writing the objectives of and reasons for the proposed technical regulations or conformity assessment procedure; and (iv) consider comments on such proposals and respond in writing to significant comments it receives. Each Party must implement the



Chapter's transparency provisions as soon as practicable, and no later than three years after the Agreement enters into force.

## **Chapter Eight: Trade Remedies**

*Safeguards.* Chapter Eight establishes a safeguard procedure that will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from tariff reduction or elimination under the Agreement. The Chapter does not affect the Parties' rights or obligations under the WTO's safeguard provisions (global safeguards) or under other WTO trade remedy rules.

Chapter Eight authorizes each Party to impose temporary duties on an imported originating good if, as a result of the reduction or elimination of a duty under the Agreement, the good is being imported in such increased quantities and under such conditions as to constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry producing a "like" or "directly competitive" good.

A safeguard measure may be applied on a good only during the Agreement's "transition period" for phasing out duties on the good. A safeguard measure may take one of two forms – a temporary increase in duties to NTR (MFN) levels or a temporary suspension of duty reductions called for under the Agreement. A Party may not impose a safeguard measure under Chapter Eight more than once on any good. A safeguard measure may be in place for an initial period of up to two years. A Party may extend a measure for up to an additional two years, if it determines that the industry is adjusting and the measure remains necessary to facilitate adjustment and prevent or remedy serious injury. If a measure lasts more than one year, the Party must scale it back at regular intervals.

If a Party imposes a safeguard measure, Chapter Eight requires it to provide offsetting trade compensation to the other Party whose goods are subject to the measure. If the Parties cannot agree on the amount or nature of the compensation, a Party entitled to compensation may unilaterally suspend "substantially equivalent" trade concessions that it has made to the importing Party.

*Global Safeguards.* Chapter Eight maintains each Party's right to take action against imports from all sources under Article XIX of GATT 1994 and the WTO Agreement on Safeguards. A Party may exclude imports of an originating good from another Party from a global safeguard measure if those imports are not a substantial cause of serious injury or do not create a threat of serious injury. A Party may not apply a safeguard measure under Chapter Eight at the same time that it applies a safeguard measure on the same good under the WTO Agreement on Safeguards.

*Antidumping and Countervailing Duties.* Chapter Eight confirms that the Parties retain their rights and obligations under the WTO agreements relating to the application of antidumping and countervailing duties. Antidumping and countervailing duty measures may not be challenged under the Agreement's dispute settlement procedures.

## **Chapter Nine: Government Procurement**

Chapter Nine provides comprehensive obligations requiring each Party to apply fair and transparent procurement procedures and rules and prohibiting each government and its procuring entities from discriminating in purchasing practices against goods, services, and suppliers from the other Party. The rules of Chapter Nine are broadly based on the rules of the WTO Agreement on Government Procurement.

*General Principles.* Chapter Nine establishes a basic rule of “national treatment,” meaning that each Party’s procurement rules and the entities applying those rules must treat goods, services, and suppliers of such goods and services from the other Party in a manner that is “no less favorable” than their domestic counterparts. The Chapter also bars discrimination against locally established suppliers on the basis of foreign affiliation or ownership. Chapter Nine also provides rules aimed at ensuring a fair and transparent procurement process.

*Coverage and Thresholds.* Chapter Nine applies to purchases and other means of obtaining goods and services valued above certain dollar thresholds by those government departments, agencies, and enterprises listed in each Party’s schedule. Specifically, the Chapter applies to procurements by listed agencies of the “central government,” which for the United States is the federal government, of goods and services valued at \$193,000 or more and construction services valued at \$7,407,000 or more. The equivalent thresholds for purchases by listed “sub-central” government entities (*i.e.*, “Gobiernos Regionales” for Peru and U.S. state government agencies) are \$526,000 and \$7,407,000, for goods and services and construction services, respectively. The Chapter’s thresholds for other covered entities are either \$250,000 or \$593,000 for goods and services, and \$7,407,000 for construction services. All thresholds are subject to adjustment every two years for inflation.

*Transparency.* Chapter Nine establishes rules designed to ensure transparency in procurement procedures. Each Party must publish its laws, regulations, and other measures governing procurement, along with any changes to those measures. Procuring entities must publish notices of procurement opportunities in advance. The Chapter also lists minimum information that such notices must include.

*Tendering Rules.* Chapter Nine provides rules for setting deadlines on “tendering” (bidding on government contracts). It requires procuring entities to give suppliers all the information they need to prepare tenders, including the criteria that procuring entities will use to evaluate tenders. Entities must also, where appropriate, base their technical specifications (*i.e.*, detailed descriptions of the goods or services to be procured) on performance-oriented criteria and international standards. Chapter Nine provides that procuring entities may not write technical specifications with the purpose or effect of creating an unnecessary obstacle to trade between the Parties while clarifying that an entity may adopt technical specifications to promote environmental conservation. The Chapter also clarifies that an entity may adopt technical specifications that require suppliers to comply with generally applicable laws regarding fundamental principles and rights at work and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health in the territory where they make the product or perform the service that the entity will purchase. It also sets out the

circumstances under which procuring entities are allowed to use limited tendering, *i.e.*, award a contract to a supplier without opening the procurement to all interested suppliers.

*Award Rules.* Chapter Nine provides that to be considered for an award, a tender must be submitted by a qualified supplier. The tender must meet the criteria set out in the tender documentation, and procuring entities must base their award of contracts on those criteria. Procuring entities must publish information on awards, including the name of the supplier, a description of the goods or services procured, and the value of the contract. Chapter Nine also calls for each Party to ensure that suppliers may bring challenges against procurement decisions before independent reviewers.

*Additional Provisions.* Chapter Nine builds on the anti-corruption provisions of Chapter Nineteen, including by requiring each Party to maintain procedures to declare suppliers that have engaged in fraudulent or other illegal actions in relation to procurement ineligible for participation in the Party's procurement. It establishes procedures under which a Party may modify its coverage under the Chapter, such as when a Party privatizes an entity whose purchases are covered under the Chapter. It also provides that Parties may adopt or maintain measures necessary to protect: (1) public morals, order, or safety; (2) human, animal, or plant life or health, including environmental measures necessary to protect human, animal, or plant life or health; or (3) intellectual property. Parties may also adopt measures relating to goods or services of handicapped persons, philanthropic institutions, or prison labor.

## **Chapter Ten: Investment**

Chapter Ten establishes rules to protect investors from one Party against unfair or discriminatory government actions when they invest or attempt to invest in the other Party's territory. The Chapter's provisions reflect traditional standards incorporated in earlier U.S. bilateral investment treaties, previous free trade agreements, and customary international law.

*Key Concepts.* Under Chapter Ten, the term "investment" covers all forms of investment, including enterprises, securities, debt, intellectual property rights, licenses, and contracts. It includes both investments existing when the Agreement enters into force and future investments. The term "investor of a Party" encompasses U.S. and Peruvian nationals as well as firms (including branches) established in one of the Parties.

*General Principles.* Investors enjoy six basic protections: (1) right to non-discriminatory treatment relative both to domestic investors and investors of non-Parties; (2) limits on imposition by the host Party of "performance requirements;" (3) right to free transfer of funds related to an investment; (4) protection from expropriation in conformity with customary international law; (5) right to the minimum standard of treatment of aliens required by customary international law; and (6) the right to hire key managerial personnel without regard to nationality. (As to this last protection, a Party may require that a majority of the board of directors be of a particular nationality, as long as this does not prevent the investor from controlling its investment.)

*Sectoral Coverage and Non-Conforming Measures.* With the exception of investments in or by regulated financial institutions (which are treated in Chapter Twelve), Chapter Ten generally applies to all sectors, including service sectors. However, each Party has listed in Annexes I and II particular sectors or measures for which it negotiated an exemption from the Chapter's obligations relating to national treatment, NTR (MFN), performance requirements, or senior management and boards of directors ("non-conforming measures"). Annex I contains each Party's list of existing non-conforming measures at the central and regional levels of government. The United States has scheduled an exemption from all aforementioned obligations for all existing state measures. All existing local measures are exempted for both Parties without the need to be listed. If a Party liberalizes any of these non-conforming Annex I measures, it must thereafter maintain the measure at least at that level of openness. In Annex II, each Party has listed sectors or activities in which it reserves the right to adopt or maintain future non-conforming measures. (Annexes I and II also include exemptions from Chapter Eleven. See below).

*Investor-State Disputes.* Chapter Ten provides a mechanism for an investor of a Party to submit to binding international arbitration a claim for damages against another Party. The investor may assert that the Party has breached a substantive obligation under the Chapter or that the Party has breached an "investment agreement" with, or an "investment authorization" granted to, the investor or a covered investment that the investor owns or controls. "Investment agreements" and "investment authorizations" are arrangements between an investor and a host government based on contracts and authorizations, respectively. These terms are defined in Chapter Ten.

Chapter Ten affords public access to information on investor-State arbitrations conducted pursuant to the Agreement. For example, Chapter Ten requires that hearings will generally be open to the public and that key documents will be publicly available, with exceptions for confidential business information. The Chapter also authorizes tribunals to accept *amicus* submissions from the public. In addition, the Chapter includes provisions similar to those used in U.S. courts to dispose quickly of claims a tribunal finds to be frivolous. Finally, within three years after the Agreement enters into force the Parties will consider whether to establish an appellate body, or similar mechanism, to review arbitral awards rendered by tribunals under the Chapter.

Chapter Ten provides that, "except in rare circumstances," nondiscriminatory regulatory actions designed and applied to meet legitimate public welfare objectives, such as public health, safety, and the environment, are not indirect expropriations.

### **Chapter Eleven: Cross-Border Trade in Services**

Chapter Eleven governs measures affecting cross-border trade in services between the Parties. Certain provisions also apply to measures affecting investments to supply services.

*Key Concepts.* Under the Agreement, cross-border trade in services covers supply of a service:

- from the territory of one Party into the territory of another Party (*e.g.*, electronic delivery of services from the United States to Peru);

- in the territory of a Party by a person of that Party to a person of another Party (*e.g.*, a Peruvian company provides services to U.S. visitors in Peru); and
- by a national of a Party in the territory of another Party (*e.g.*, a U.S. lawyer provides legal services in Peru).

Chapter Eleven should be read together with Chapter Ten (Investment), which establishes rules pertaining to the treatment of service firms that choose to provide their services through a local presence, rather than cross-border. Chapter Eleven applies where, for example, a service supplier is temporarily present in a territory of a Party and does not operate through a local investment.

*General Principles.* Among Chapter Eleven's core obligations are requirements to provide national treatment and NTR (MFN) treatment to service suppliers of the other Party. Thus, each Party must treat service suppliers of the other Party no less favorably than its own suppliers or those of any other country. This commitment applies to state and local governments as well as the federal government. The Chapter's provisions apply to existing service suppliers as well as those who seek to supply services. The Chapter also includes a provision prohibiting the Parties from requiring firms to establish a local presence as a condition for supplying a service on a cross-border basis. In addition, certain types of market access restrictions on the supply of services (*e.g.*, that limit the number of firms that may offer a particular service or that restrict or require specific types of legal structures or joint ventures with local companies in order to supply a service) are also barred. The Chapter's market access rules apply both to services supplied on a cross-border basis and through a local investment.

*Sectoral Coverage and Non-Conforming Measures.* Chapter Eleven applies across virtually all services sectors. The Chapter excludes financial services (which are addressed in Chapter Twelve), except that certain provisions of Chapter Eleven apply to investments in financial services that are not regulated as financial institutions and are covered by Chapter Ten (Investment). In addition, Chapter Eleven does not cover air transportation, although it does apply to specialty air services and aircraft repair and maintenance.

Each Party has listed in Annexes I and II, measures or sectors for which it negotiated exemptions from Chapter Eleven's core obligations (national treatment, NTR (MFN), local presence, and market access). Annex I contains the list of existing non-conforming measures at the central and regional level of government. The United States has scheduled an exemption from all aforementioned obligations for all existing state measures. All existing local measures are exempted for both Parties without the need to be listed. However, once a Party liberalizes any of these non-conforming Annex I measures, it must thereafter maintain the measure at least at that level of openness. Each Party has listed in Annex II sectors or activities in which it reserves the right to adopt or maintain future non-conforming measures.

*Specific Commitments.* Chapter Eleven includes a comprehensive definition of express delivery services that requires each Party to provide national treatment, NTR (MFN) treatment, and additional benefits to express delivery services of the other Party. The Chapter provides that the

Parties will try to maintain the level of market openness for express delivery services they provided on the date the Agreement was signed, and a Party may request consultations with the other if it believes the other Party is not maintaining that level of access. The Chapter also addresses the issue of postal monopolies directing revenues derived from monopoly postal services to confer an advantage on express delivery services. In addition, Peru has committed to eliminate a requirement that has prevented U.S.-owned companies in Peru from hiring the managers, professionals, and specialists of their choice for their operations in Peru.

*Transparency and Domestic Regulation.* Provisions on transparency and domestic regulation complement the core rules of Chapter Eleven. The transparency rules apply to the development and application of regulations governing services. The Chapter's rules on domestic regulation govern the operation of approval and licensing systems for service suppliers. Like the Chapter's market access rules, its provisions on transparency and domestic regulation cover services supplied both on a cross-border basis and through a local investment.

*Exclusions.* Chapter Eleven excludes any service supplied "in the exercise of governmental authority" – that is, a service that is provided on a non-commercial and non-competitive basis. Chapter Eleven also does not apply to government subsidies. In addition, the Chapter makes clear that the Agreement does not impose any obligation on a Party with respect to its immigration measures, including admission or conditions of admission for temporary entry.

## **Chapter Twelve: Financial Services**

Chapter Twelve provides rules governing each Party's treatment of: (1) financial institutions of the other Party; (2) investors of the other Party, and their investments, in financial institutions; and (3) cross-border trade in financial services.

*Key Concepts.* The Chapter defines a "financial institution" as any financial intermediary or other institution authorized to do business and regulated or supervised as a financial institution under the law of the Party where it is located. A "financial service" is any service of a financial nature, including, for example, insurance, banking, securities, asset management, financial information and data processing services, and financial advisory services.

*General Principles.* Chapter Twelve's core obligations parallel those in Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services). Specifically, Chapter Twelve imposes rules requiring national treatment and NTR (MFN) treatment, prohibits certain quantitative restrictions on market access of financial institutions, and bars restrictions on the nationality of senior management. As appropriate, these rules apply to measures affecting financial institutions, investors and investments in financial institutions of another Party, and services companies that are currently supplying and that seek to supply financial services on a cross-border basis. The rules do not apply to measures adopted or maintained by a Party relating to certain specified services and activities – for example, activities or services forming part of a public retirement plan or statutory system of social security – unless a Party allows its financial institutions to compete with a public entity or a financial institution to supply such services and activities.

*Non-Conforming Measures.* Similar to Chapters Ten and Eleven, each Party has listed in an annex (Annex III) particular measures for which it negotiated exemptions from the Chapter's core obligations. Existing non-conforming U.S. state and local laws and regulations are exempted from these obligations. Once a Party, including a state or local government, liberalizes one of these non-conforming measures, however, it must, in most cases, maintain the measure at least at that new level of openness.

*Other Provisions.* Chapter Twelve also includes provisions on regulatory transparency, "new" financial services, self-regulatory organizations, and the expedited availability of insurance products.

*Relationship to Other Chapters.* Measures that a Party applies to financial services suppliers of the other Party, other than regulated financial institutions, that make or operate investments in the Party's territory are covered principally by Chapter Ten (Investment) and certain provisions of Chapter Eleven (Cross-Border Trade in Services). In particular, the core obligations of Chapter Ten apply to such measures, as do the market access, transparency, and domestic regulation provisions of Chapter Eleven. Chapter Twelve incorporates by reference certain provisions of Chapter Ten, such as those relating to transfers and expropriation.

### **Chapter Thirteen: Competition Policy, Designated Monopolies, and State Enterprises**

Recognizing that anticompetitive business conduct has the potential to restrict bilateral trade and investment, Chapter Thirteen calls for each government to proscribe such conduct. The Chapter also sets out basic procedural safeguards and rules ensuring against harmful conduct by government-designated monopolies and state enterprises.

*Competition Laws.* Chapter Thirteen requires each Party to adopt or maintain laws prohibiting anticompetitive business conduct and to take appropriate action with respect to such conduct. It also requires each Party to maintain authorities responsible for enforcing their national competition laws. Chapter Thirteen affirms that the enforcement policy of each Party's national competition authority is not to discriminate on the basis of nationality. It also obligates each Party to provide certain procedural protections for persons facing enforcement actions. Each Party will ensure that persons subject to sanctions or remedies for competition law violations will be provided a right to be heard and to present evidence, and to seek review by a court or independent tribunal.

*Designated Monopolies.* There are specific rules governing instances in which a Party gives a private or national government-owned entity a monopoly to provide or purchase a good or service. In particular, the Party must ensure that the entity: (1) abides by the Party's obligations under the Agreement wherever it exercises authority delegated to it by the government in connection with the monopoly good or service; (2) purchases or sells the monopoly product in a manner consistent with commercial considerations; (3) does not discriminate against the other Party's investments, goods, or service suppliers in the purchase or sale of the monopoly product; and (4) does not engage in anticompetitive practices in markets outside its monopoly mandate that harm the other Party's investments.

*State Enterprises.* Chapter Thirteen sets forth obligations regarding the Parties' responsibilities for "state enterprises," *i.e.*, enterprises owned or controlled by a Party. Each Party must ensure that its state enterprises accord non-discriminatory treatment in the sale of their products to the other Party's investments.

*Cooperation and Working Group.* Chapter Thirteen provides for bilateral cooperation in relation to the enforcement of competition laws. In addition, the Parties will establish a working group to promote greater understanding and cooperation between the Parties with respect to the matters covered under the Chapter.

*Dispute Settlement.* Many of the Chapter's provisions are not subject to the Agreement's dispute settlement procedures, including the provisions requiring a Party to adopt and enforce laws prohibiting anticompetitive business conduct and the provisions governing cooperation and consultations. The Chapter's rules addressing designated monopolies and state enterprises, however, may be enforced through the Agreement's State-to-State dispute settlement mechanism.

## **Chapter Fourteen: Telecommunications**

Chapter Fourteen includes disciplines beyond those imposed under Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) on regulatory measures affecting telecommunications trade and investment between the Parties. It is designed to ensure that service suppliers of each Party have non-discriminatory access to public telecommunications networks in the territory of the other Party. In addition, the Chapter requires each Party to regulate its major telecommunications suppliers in ways that will ensure a level playing field for new entrants. Chapter Fourteen also seeks to ensure that telecommunications regulations are set by independent regulators applying transparent procedures, and is designed to encourage adherence to principles of deregulation and technological neutrality.

*Key Concepts.* Under Chapter Fourteen, a "public telecommunications service" is any telecommunications service that a Party requires to be offered to the public generally. The term includes voice and data transmission services. It does not include the offering of "information services" (*e.g.*, services that enable users to create, store, or process information over a network). A "major supplier" is a company that, by virtue of its market position or control over certain facilities, can materially affect the terms of participation in the market.

*Competition.* Chapter Fourteen establishes rules promoting effective competition in telecommunications services. It also provides flexibility to account for changes that may occur through new legislation or regulatory decisions. The Chapter includes commitments by each Party to:

- ensure that all service suppliers of the other Party that seek to access or use a public telecommunications network in the Party's territory can do so on reasonable and non-discriminatory terms (*e.g.*, Peru must ensure that its public phone companies do not provide preferential access to Peruvian banks or Internet service providers, to the detriment of U.S. competitors);



- give the other Party’s telecommunications suppliers, in particular, the right to interconnect their networks with public networks in the Party’s territory;
- ensure that telecommunications suppliers of the other Party enjoy the right to lease lines to supplement their own networks or, alternatively, purchase telecommunications services from domestic suppliers and resell them in order to build a customer base; and
- impose disciplines on the behavior of “major suppliers.”

*Regulation.* The Chapter addresses key regulatory concerns that may create barriers to trade and investment in telecommunications services. In particular, the Parties:

- will adopt procedures that will help ensure that they maintain open and transparent telecommunications regulatory regimes, including requirements to publish interconnection agreements and service tariffs;
- will require their telecommunications regulators to resolve disputes between suppliers and provide foreign suppliers the right to seek judicial review of those decisions;
- may elect to deregulate telecommunications services when competition emerges and certain standards are met; and
- will avoid impeding telecommunications suppliers from choosing technologies they consider appropriate for supplying their services.

## **Chapter Fifteen: Electronic Commerce**

Chapter Fifteen establishes rules designed to prohibit discriminatory regulation of electronic trade in digitally encoded products such as computer programs, video, images, and sound recordings. The provisions in this and other recent U.S. free trade agreements represent a major advance over previous international understandings on this subject.

*Customs Duties.* Chapter Fifteen provides that a Party may not impose customs duties on digital products of another Party transmitted electronically and will determine the customs value of an imported carrier medium bearing a digital product based on the value of the carrier medium alone, without regard to the value of the digital product stored on the carrier medium.

*Non-Discrimination.* The Parties will apply the principles of national treatment and NTR (MFN) treatment to trade in electronically-transmitted digital products. Thus, a Party may not discriminate against electronically-transmitted digital products on the grounds that they have a nexus to another country, either because they have undergone certain specific activities (*e.g.*, creation, production, first sale) there or are associated with certain categories of persons of the other Party or a non-Party (*e.g.*, authors, performers, producers). Nor may a Party provide less favorable treatment to digital products that have a nexus to the other Party than it gives to like products that have a nexus to a third country. The non-discrimination rules do not apply to non-

conforming measures adopted under Chapters Ten (Investment), Eleven (Cross-Border Trade in Services), or Twelve (Financial Services).

*Additional Provisions.* Chapter Fifteen contains additional provisions relating to authentication, online consumer protection, and paperless trade administration.

## **Chapter Sixteen: Intellectual Property Rights**

Chapter Sixteen complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights, consistent with U.S. law.

*General Provisions.* Chapter Sixteen commits the Parties to ratify or accede to several agreements on intellectual property rights, including, by the date the Agreement enters into force, the WIPO Copyright Treaty, the Brussels Convention Relating to the Distribution of Programme-Carrying Satellite Signals, and the WIPO Performances and Phonograms Treaty, and, within specified periods, the International Convention for the Protection of New Varieties of Plants, the Trademark Law Treaty, and the Patent Cooperation Treaty. The United States is already a party to these Agreements. With very limited exceptions, Chapter Sixteen commits each Party to provide national treatment to the other Party's nationals with respect to the enjoyment and protection of the intellectual property rights covered by the Chapter.

*Trademarks and Geographical Indications.* Chapter Sixteen requires each Party to protect trademarks and geographical indications, including by refusing protection or recognition of a geographical indication that is likely to cause confusion with a preexisting trademark. The Chapter calls for trademarks to include collective marks and certification marks, and for geographical indications to be eligible for protection as marks. The Chapter also requires each Party to establish a system for registering trademarks that provides efficient and transparent procedures governing applications to protect trademarks and geographical indications. Furthermore, the Chapter requires each Party's Internet domain name management system to include a dispute resolution procedure to address trademark cyber-piracy.

*Copyright and Related Rights.* Chapter Sixteen obligates the Parties to provide broad protection for copyright and related rights, affirming and building on rights set out in several international agreements. For instance, each Party must provide copyright protection for the life of the author plus 70 years (for works measured by a person's life), or 70 years (for corporate works). The Chapter clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies, an important principle in the digital realm. It also calls for each Party to provide a right of communication to the public, which will further ensure that the right holder has the exclusive right to authorize making protected works available online. The Chapter specifically requires each Party to protect the rights of performers and producers of phonograms.

To curb copyright piracy, the Chapter requires government agencies of the Parties to use only legitimate computer software, setting an example for the private sector. The Chapter also includes provisions on anti-circumvention, under which the Parties commit to prohibit tampering with technology used to protect copyrighted works. In addition, Chapter Sixteen sets out

obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. Finally, recognizing the importance of satellite broadcasts, Chapter Sixteen provides that each Party will protect encrypted program-carrying satellite signals. It obligates the Parties to extend protection to the signals themselves, as well as to the content contained in the signals.

*Patents.* Chapter Sixteen also includes a variety of provisions for the protection of patents. The Parties agree to make patents available for any invention, subject to limited exclusions, and confirm the availability of patents for new uses or methods of using a known product. To guard against arbitrary revocation of patents, each Party must limit the grounds for revoking a patent to the grounds that would have justified a refusal to grant the patent. Under Chapter Sixteen, each Party must make best efforts to process patent applications and marketing approval applications expeditiously. With respect to most products, a Party must adjust the patent term to compensate for unreasonable delays that occur while granting a patent. For pharmaceutical products, a Party may provide for such adjustments if there is an unreasonable delay in granting a patent or providing marketing approval for a product.

*Certain Regulated Products.* Chapter Sixteen includes additional specific provisions relating to pharmaceuticals and agricultural chemicals. Among other things, the Chapter protects test data that a company submits in seeking marketing approval for such products by precluding other firms from relying on the data. It provides specific periods for such protection – normally five years for pharmaceuticals and ten years for agricultural chemicals. This means, for example, that during the period of protection, test data that a company submits for approval of a new agricultural chemical product cannot be used without that company’s consent in granting approval to market a combination product. If a Party bases its decision to approve a pharmaceutical product for marketing in its territory on a marketing approval the other Party has granted for that product, and it approves the product within six months after the company applies for the approval in the Party, the period of test data protection will be counted from the date the other Party approved the product. The Chapter’s rules governing test data protection for pharmaceutical products are subject to a public health exception. The Chapter also requires the Parties to implement procedures for the expeditious adjudication of disputes concerning the validity or infringement of a patent, a transparent system to provide notice to a patent holder that another person is seeking to market an approved pharmaceutical product during the term of a patent, and sufficient time and opportunity for a patent holder to seek, prior to the marketing of an allegedly infringing product, available remedies for an infringing product..

*Public Health.* Chapter Sixteen expresses the Parties’ understanding that its obligations do not and should not prevent a Party from taking measures to protect public health by promoting access to medicines for all.

*Enforcement Provisions.* Chapter Sixteen also creates obligations with respect to the enforcement of intellectual property rights in civil proceedings, in criminal proceedings, and at the border. For example, the Parties, in determining damages in civil proceedings involving copyright infringement or trademark counterfeiting, must take into account the value of the legitimate goods as well as the infringer’s profits, and must also provide for damages based on a

fixed range (*i.e.*, “statutory damages”), as an option that the right holder can elect instead of actual damages.

Chapter Sixteen further provides that the Parties’ law enforcement agencies must have authority to seize suspected pirated and counterfeit goods, the equipment used to make or transmit them, and documentary evidence. Each Party must give its courts authority to order the forfeiture and/or destruction of such items. Chapter Sixteen also provides that each Party must apply criminal penalties against counterfeiting and piracy, including end-user piracy.

Chapter Sixteen also requires each Party to empower its law enforcement agencies to take enforcement action at the border against pirated or counterfeit goods without waiting for a formal complaint.

*Transition Periods.* Most obligations in the Chapter take effect on the date the Agreement enters into force. However, Peru may delay giving effect to certain specified obligations for periods ranging from one year to three years after that date.

## **Chapter Seventeen: Labor**

Chapter Seventeen sets out the Parties’ commitments and undertakings regarding trade-related labor rights.

*Fundamental Labor Rights.* Each Party commits to adopt and maintain in its statutes, regulations, and practice certain enumerated labor rights, as stated in the 1998 ILO *Declaration on Fundamental Principles and Rights at Work and Its Follow Up*. Specifically, these are (1) freedom of association; (2) the effective recognition of the right to collective bargaining; (3) the elimination of all forms of forced or compulsory labor; (4) the effective abolition of child labor and, for purposes of the Agreement, a prohibition on the worst forms of child labor; and (5) the elimination of discrimination in respect of employment and occupation. In order to establish a violation of this obligation, a Party must demonstrate that the other Party has failed to comply in a manner affecting trade or investment between the Parties. Neither Party may waive or otherwise derogate from its statutes or regulations implementing this obligation in a manner affecting bilateral trade or investment where the waiver or derogation would be inconsistent with one of the enumerated rights. For the United States, the Chapter’s provisions regarding fundamental labor rights apply to federal law only.

*Effective Enforcement.* Each Party commits not to fail to effectively enforce its labor laws on a sustained or recurring basis in a manner affecting trade or investment between the Parties. The Chapter defines “labor laws” to include the ILO fundamental labor rights, laws providing for acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health, and laws providing labor protections for children and minors. For the United States, “labor laws” includes federal statutes and regulations addressing these areas, but it does not cover state or local labor laws.

*Procedural Guarantees.* The Parties commit to afford procedural guarantees that ensure workers and employers have access to fair, equitable, and transparent access to labor tribunals or courts.

To this end, each Party must ensure that workers and employers have access to tribunals for the enforcement of its labor laws that comply with due process of law and that decisions of such tribunals are in writing, made publicly available, and based on information or evidence in respect of which the parties were offered the opportunity to be heard. In addition, hearings in such proceedings must be open to the public, except where the administration of justice otherwise requires. Each Party also commits to make remedies available to ensure the enforcement of its labor laws. Such remedies might include orders, fines, penalties, or temporary workplace closures.

*Dispute Settlement.* Chapter Seventeen provides for cooperative consultations as a first step if a Party considers that the other Party is not complying with its obligations under the Chapter. The complaining Party may, after an initial 60-day consultation period under Chapter Seventeen, invoke the Agreement's general dispute settlement mechanism by requesting additional consultations or a meeting of the Agreement's cabinet-level Free Trade Commission under the provisions of Chapter Twenty-One (Dispute Settlement). If the Commission is unable to resolve the dispute, the matter may be referred to a dispute settlement panel.

*Institutional Arrangements, Cooperation and Capacity Building.* Chapter Seventeen establishes a cabinet-level Labor Affairs Council to oversee the Chapter's implementation and to provide a forum for consultations and cooperation on labor matters. The Chapter requires each Party to designate a contact point for communications with the other Party and the public regarding the Chapter. Each Party's contact point must provide transparent procedures for the submission, receipt, and consideration of communications from persons of a Party relating to the Chapter.

The Chapter also creates a labor cooperation and capacity building mechanism through which the Parties will work together to address labor matters of common interest. In particular, the mechanism will assist the Parties to establish priorities for, and carry out, cooperation and capacity building activities relating to such topics as: the effective application of fundamental labor rights; legislation and practice relating to compliance with ILO Convention 182 on the worst forms of child labor; strengthening labor inspection systems and the institutional capacity of labor administrations and tribunals; mechanisms for supervising compliance with laws and regulations pertaining to working conditions; and the elimination of gender discrimination in employment.

## **Chapter Eighteen: Environment**

Chapter Eighteen sets out the Parties' commitments and undertakings regarding environmental protection. Chapter Eighteen builds on the environmental provisions of other recent U.S. free trade agreements, including the Dominican Republic-Central America-United States Free Trade Agreement.

*General Principles.* Each Party must strive to ensure that its environmental laws provide for high levels of environmental protection and continue to improve its respective levels of environmental protection. Each Party also commits not to waive or otherwise derogate from its environmental laws to weaken or reduce the levels of environmental protection in a manner affecting trade or investment between the Parties other than pursuant to a provision in its

environmental law providing for waivers or derogations. Chapter Eighteen further includes commitments to enhance cooperation between the Parties in environmental matters and encourages the Parties to develop voluntary, market-based mechanisms as one means for achieving and sustaining high levels of environmental protection.

*Multilateral Environmental Agreements.* The Parties recognize that multilateral environment agreements (MEAs) to which they are parties play an important role globally and domestically in protecting the environment and that their respective implementation of these agreements is critical to achieve each Party's environmental objectives. Accordingly, the Chapter includes a provision requiring each Party to adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under certain multilateral environmental agreements ("covered agreements") to which both governments are parties. To establish a violation of this obligation a Party must demonstrate that the other Party has failed to comply in a manner affecting bilateral trade or investment.

Chapter Eighteen provides that in the event of any inconsistency between a Party's obligations under the Agreement and a covered agreement, the Party must seek to balance its obligation under both agreements, but this will not preclude a Party from taking measures to comply with the MEA as long as the measure's primary purpose is not to impose a disguised restriction on trade.

*Effective Enforcement.* Each Party commits not to fail to effectively enforce its environmental laws, and its laws, regulations, and other measures to fulfill its obligations under the covered agreements, on a sustained or recurring basis in a manner affecting trade or investment between the Parties. For the United States, "environmental laws" comprise environmental statutes and regulations enforceable by the federal government.

*Procedural Matters.* Each Party commits to make judicial, quasi-judicial, or administrative proceedings available to sanction or remedy violations of its environmental laws. Each Party must ensure that such proceedings are fair, equitable, and transparent, and, to this end, comply with due process of law and are open to the public, except where the administration of justice otherwise requires. The Chapter requires each Party to ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws and that each Party's competent authorities give such requests due consideration. Each Party also commits to make appropriate and effective remedies available for violations of its environmental laws. Such remedies may include, for example, fines, injunctions, or requirements to take remedial action or pay for the cost of containing or cleaning up pollution.

*Environmental Performance:* Each Party agrees to encourage the development and use of flexible, voluntary, and incentive-based mechanisms for environmental protection, and to encourage the development and improvement of performance goals and indicators for measuring environmental performance as well as flexible means for achieving such goals, as appropriate and in accordance with its law.

*Institutional Arrangements and Cooperation.* Chapter Eighteen establishes a senior-level Environment Affairs Council. The Council will oversee and provide periodic reports to the Free

Trade Commission on the Chapter's implementation. The Council will provide for the public to participate in its work, including by providing an opportunity at each Council meeting, unless the Parties otherwise agree, for the public to express views on how the Chapter is being implemented. Each Party must also take into account public views on environmental cooperation activities. In addition, to facilitate cooperation efforts, the Parties have signed a separate environmental cooperation agreement.

*Public Participation and Submissions.* Each Party commits to provide for the receipt and consideration of submissions from persons of a Party on matters related to implementation of the Chapter and to convene a national advisory committee to provide views on matters related to the implementation of the Chapter. In addition, the Chapter provides that any person of a Party may file a submission with a secretariat asserting that a Party has failed to effectively enforce its environmental laws. The secretariat will review the submission according to specified criteria and in appropriate cases recommend to the Environmental Affairs Council that a factual record concerning the matter be developed. The secretariat will prepare a factual record if a member of the Environmental Affairs Council instructs it to do so. The Council will consider the record and, where appropriate, provide recommendations to an environmental cooperation commission that will be created under a related environmental cooperation agreement. U.S. persons who consider that the United States is failing to effectively enforce its environmental laws may invoke the comparable public submissions process under the North American Agreement on Environmental Cooperation. The Parties will designate the secretariat and make related arrangements through a separate understanding.

*Biological Diversity.* The Parties recognize the importance of biological diversity, restate their commitment to encouraging and promoting its protection, and agree to enhance their cooperative efforts with respect to biological diversity. A specific article on biological diversity has been included in the Environment Chapter.

*Dispute Settlement.* Chapter Eighteen provides for cooperative consultations as a first step if a Party considers that the other Party is not complying with its obligations under the Chapter. The complaining Party may, after an initial 60-day consultation period under the Chapter, invoke the Agreement's general dispute settlement mechanism by requesting additional consultations or a meeting of the Agreement's cabinet-level Free Trade Commission under Chapter Twenty-One (Dispute Settlement). If the Commission is unable to resolve the dispute, the matter may be referred to a dispute settlement panel. In addition, Chapter Eighteen provides that when an issue relating to a Party's obligations under a covered agreement arises in a dispute settlement proceeding, the panel hearing the matter must consult with any entity authorized under the covered agreement to address the issue and defer to the extent appropriate in light of its nature and status to any interpretive guidance under the covered agreement regarding the issue.

*Forest Sector Governance.* Chapter Eighteen includes an annex that provides for concrete steps that the Parties will take to enhance forest sector governance in Peru and promote legal trade in timber products, including commitments that Peru must implement within 18 months from the date the Agreement enters into force. The annex sets forth audit and verification procedures for purposes of ensuring that exports of timber products from Peru to the United States are in compliance with Peru's applicable laws, regulations, and other measures governing the harvest

of, and trade in, timber products. The annex also authorizes the United States to bar or temporarily hold imports of Peruvian timber products in certain circumstances, such as when Peruvian and U.S. officials develop information indicating that a Peruvian producer may not have complied with Peruvian law. The annex establishes a Sub-Committee on Forest Sector Governance under both the Committee on Trade in Goods and the Environmental Affairs Council.

## **Chapter Nineteen: Transparency**

Section A of Chapter Nineteen sets out requirements designed to foster openness, transparency, and fairness in the adoption and application of measures on matters covered by the Agreement. It requires that each Party must promptly publish all laws, regulations, procedures, and administrative rulings of general application concerning subjects covered by the Agreement, or otherwise make them available. It requires that, to the extent possible, Parties publish proposed regulations in advance and give interested persons a reasonable opportunity to comment. Wherever possible, each Party must provide reasonable notice to the other Party's nationals and enterprises that are directly affected by an agency process, including an adjudication, rulemaking, licensing, determination, and approval process. A Party is to afford such persons a reasonable opportunity to present facts and arguments prior to any final administrative action, when time, the nature of the process, and the public interest permit.

Chapter Nineteen also provides for independent review and appeal of final administrative actions. Appeal rights must include a reasonable opportunity to present arguments and to obtain a decision based on evidence in the administrative record.

In Section B of Chapter Nineteen, the Parties affirm their commitment to prevent and combat corruption, including bribery in international trade and investment. To this end, each Party is obligated to make it a criminal offense to offer or accept a bribe in exchange for favorable government action in matters affecting international trade or investment. The Parties must also endeavor to protect persons who, in good faith, report acts of bribery or corruption and to work together to encourage and support initiatives in relevant international fora to prevent bribery and corruption.

## **Chapter Twenty: Administration of the Agreement and Trade Capacity Building**

Chapter Twenty creates a Free Trade Commission to supervise the implementation and overall operation of the Agreement. The Commission comprises the Parties' trade ministers and will meet annually. The Commission will assist in the resolution of any disputes that may arise under the Agreement. The Commission may issue interpretations of the Agreement and agree to accelerate duty elimination on particular products and adjust the Agreement's product-specific rules of origin.

Each Party must designate an office to provide administrative assistance to dispute settlement panels and perform such other functions as the Commission may direct.



Chapter Twenty also establishes a Committee on Trade Capacity Building comprising representatives of each Party. The overall objective of the Committee is to assist Peru to implement the Agreement and adjust to liberalized bilateral trade. Particular functions of the Committee include: prioritizing trade capacity building projects; inviting international donor institutions, private sector entities, and non-governmental organizations to assist in the development and implementation of trade capacity building projects; and monitoring and assessing progress in implementing those projects.

### **Chapter Twenty-One: Dispute Settlement**

Chapter Twenty-One sets out detailed procedures for the resolution of disputes between the Parties over compliance with the Agreement. Those procedures emphasize amicable settlements, relying wherever possible on bilateral cooperation and consultations. When disputes arise under provisions common to the Agreement and other agreements (*e.g.*, the WTO agreements), the complaining government may choose a forum for resolving the matter that is set forth in any valid agreement between the Parties. The selected forum will be the exclusive venue for resolving that dispute.

*Consultations.* A Party may request consultations with the other Party on any actual or proposed measure that it believes might affect the operation of the Agreement. If the Parties cannot resolve the matter through consultations within a specified period (normally 60 days), any consulting Party may refer the matter to the Free Trade Commission, which will attempt to resolve the dispute.

*Panel Procedures.* If the Commission cannot resolve the dispute within a specified period (normally 30 days), any consulting Party may refer the matter, if it involves an actual measure, to a panel comprising independent experts that the Parties select. The Parties will set rules to protect confidential information, provide for open hearings and public release of submissions, and allow an opportunity for the panel to accept submissions from non-governmental entities in the Parties' territories.

Unless the Parties agree otherwise, a panel is to present its initial report within 120 days after the last panelist is selected. Once the panel presents its initial report containing findings of fact and a determination on whether a Party has met its obligations, the Parties will have the opportunity to provide written comments to the panel. When the panel receives these comments, it may reconsider its report and make any further examination that it considers appropriate. Within 30 days after it presents its initial report, the panel will submit its final report. The Parties will then seek to agree on how to resolve the dispute, normally in a way that conforms to the panel's determinations and recommendations. Subject to protection of confidential information, the panel's final report will be made available to the public 15 days after the Parties receive it.

*Suspension of Benefits.* If the Parties cannot resolve the dispute after they receive the panel's final report, the Parties will seek to agree on acceptable trade compensation. If they cannot agree on compensation, or if the complaining Party believes the defending Party has failed to implement an agreed resolution, the complaining Party may provide notice that it intends to

suspend trade benefits equivalent in effect to those it considers were impaired, or may be impaired, as a result of the disputed measure.

If the defending Party considers that the proposed level of benefits to be suspended is “manifestly excessive,” or believes that it has modified the disputed measure to make it conform to the Agreement, it may request the panel to reconvene and decide the matter. The panel must issue its determination no later than 90 days after the request is made (or 120 days if the panel is reviewing both the level of the proposed suspension and a modification of the measure).

The complaining Party may suspend trade benefits up to the level that the panel sets or, if the panel has not been asked to determine the level, up to the amount that the complaining Party has proposed. The complaining Party cannot suspend benefits, however, if the defending Party provides notice that it will pay an annual monetary assessment to the other Party. The amount of the assessment will be established by agreement of the Parties or, failing that, will be set at 50 percent of the level of trade concessions the complaining Party was authorized to suspend.

*Compliance Review Mechanism.* If, at any time, the defending Party believes it has made changes in its laws or regulations sufficient to comply with its obligations under the Agreement, it may refer the matter to the panel. If the panel agrees, the dispute ends and the complaining Party must withdraw any offsetting measures it has put in place. Concurrently, the defending government will be relieved of any obligation to pay a monetary assessment.

The Parties will review the operation of the compliance procedures either five years after the Agreement enters into force or within six months after benefits have been suspended or assessments paid in five proceedings initiated under this Agreement, whichever ever occurs first.

*Settlement of Private Disputes.* The Parties will encourage the use of arbitration and other alternative dispute resolution mechanisms to settle international commercial disputes between private parties. Each Party must provide appropriate procedures for the recognition and enforcement of arbitral awards, for example by complying with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the 1975 Inter-American Convention on International Commercial Arbitration.

## **Chapter Twenty-Two: Exceptions**

Chapter Twenty-Two sets out provisions that generally apply to the entire Agreement. Article XX of the GATT 1994 and its interpretive notes are incorporated into and made part of the Agreement, *mutatis mutandis*, and apply to those Chapters related to treatment of goods. Likewise, for the purposes of Chapters Eleven (Cross-Border Trade in Services), Fourteen (Telecommunications), and Fifteen (Electronic Commerce), GATS Article XIV (including its footnotes) is incorporated into and made part of the Agreement. For both goods and services, the Parties understand that these exceptions include certain environmental measures.

*Essential Security.* Chapter Twenty-Two makes clear that nothing in the Agreement prevents a Party from taking actions it considers necessary to protect its essential security interests, and specifically provides that an arbitration panel must apply the essential security exception if a

Party invokes it. With respect to non-conforming measures relating to port activities listed by Peru and the United States in Annex I and II, respectively, each Party has clarified that the landside aspects of port activities are subject to the Agreement's essential security exception.

*Taxation.* An exception for taxation limits the field of tax measures subject to the Agreement. For example, the exception generally provides that the Agreement does not affect a Party's rights or obligations under any tax convention. The exception sets out certain circumstances under which tax measures are subject to the Agreement's: (1) national treatment obligation for goods; (2) national treatment and NTR (MFN) obligations for services; (3) prohibitions on performance requirements; and (4) expropriation rules.

*Disclosure of Information.* The Chapter also provides that a Party may withhold information from the other Party where such disclosure would impede domestic law enforcement, otherwise be contrary to the public interest, or prejudice the legitimate commercial interests of particular enterprises.

### **Chapter Twenty-Three: Final Provisions**

Chapter Twenty-Three provides that (i) the annexes, appendices, and footnotes are part of the Agreement, (ii) the Parties may amend the Agreement subject to the legal requirements of each Party, and (iii) the English and Spanish texts are both authentic. It also provides for consultations if any provision of the WTO Agreement that the Parties have incorporated into the Agreement is amended.

Chapter Twenty-Three establishes the procedures for the Agreement to enter into force and terminate. The Chapter provides that any other country or group of countries may accede to the Agreement on terms and conditions that are agreed with the Parties and approved according to each Party's legal requirements.