

PREAMBLE

The Government of the Republic of PERU on one side, and the Government of the People's Republic of CHINA on the other side, collectively referred to as the "Parties" and individually referred to as "Party", resolved to:

ACKNOWLEDGE and honor their strong and long standing cultural influence;

STRENGTHEN the special bonds of friendship and cooperation between the Parties;

RECOGNIZE that this agreement should be implemented with a view toward raising the standard of living, creating new employment opportunities, reducing poverty and promoting sustainable development in a manner consistent with environmental protection and conservation.

ESTABLISH clear and mutually advantageous rules governing their trade;

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

PROMOTE reciprocal trade through the establishment of clear and mutually advantageous trade rules and the avoidance of trade barriers, unjustified discrimination and distortions to their reciprocal trade;

PROMOTE AND PRESERVE their ability to safeguard public welfare;

SHARE the belief that a free trade agreement shall produce mutual benefits to each Party and contribute to the expansion and development of international trade; and

REAFFIRM their consent to strengthen and enhance the multilateral trading system as reflected by the World Trade Organization (WTO) and other multilateral, regional and bilateral instruments of cooperation regarding trade;

HAVE AGREED as follows:

CHAPTER XX

Initial Provisions

Article XX Objectives

The Parties conclude this Agreement, among others, for the purpose of:

- a) encouraging expansion and diversification of trade between the Parties.
- b) eliminating the barriers to trade in , and facilitate the cross-border movement of goods and services between the two parties;
- c) promoting fair competition in the parties market;
- d) creating new employment opportunities;
- e) creating framework for furthering bilateral, regional and multilateral cooperation to expand and enhance the benefits of the Agreement; and
- f) providing forum and approach for resolution of disputes amiably.

Article XX Establishment of a Free Trade Area

The Parties to this Agreement, consistent with Article XXIV of the *General Agreement on Tariffs and Trade 1994* and Article V of the *General Agreement on Trade in Services*, hereby establish a free trade area.

Article XX Relation to Other International Agreements

1. The Parties affirm their existing rights and obligations with respect to each other under the WTO Agreement and any other agreements related to trade to which both Parties are party.
2. In the event of any inconsistency between this Agreement and any other agreement to which the Parties are party, the Parties shall immediately consult with each other view to finding a mutually satisfactory solution in accordance with rules of interpretation of public international law.
3. If any provision of the WTO Agreement that the Parties have been incorporated to this Agreement is amended and accepted by both Parties at the WTO, such amendment shall be deemed incorporated automatically to this Agreement.

Article XX Extent of Obligations

The Parties shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement in their respective territories,

including ensuring that its respective regional and local governments and authorities, and non-governmental bodies in the exercise of governmental powers delegated to them by central, regional and local governments or authorities observe all obligations and commitments under this Agreement.

Article XX Definitions of General Application¹

For purposes of this Agreement, unless otherwise specified:

Agreement means the Free Trade Agreement between the Government of the Republic of Peru and the Government of the People's Republic of China

Commission means the Joint Commission established under Article XX (The Joint Commission);

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

customs duty includes any duty or a charge of any kind imposed on, or in connection with, the importation of goods, except:

- (a) A charge equivalent to an internal tax imposed consistently with Article III.2 of the GATT 1994;
- (b) An antidumping or countervailing duty that is applied pursuant to Article VI of the GATT 1994 WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, or the WTO Agreement on Subsidies and Countervailing Measures; or
- (c) A fee or other charge in connection with importation commensurate with the cost of services rendered.

Customs Valuation Agreement means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 *which is a part of the WTO Agreement including its interpretative notes²*;

days means calendar days;

existing means in effect on the date of entry into force of this Agreement;

GATS means the WTO General Agreement on Trade in Services which is a part of the WTO Agreement

GATT 1994 means the WTO General Agreement on Tariffs and Trade 1994 which is a part of the WTO Agreement;

¹ China and Peru will have their legal scrub teams evaluate the inclusion of these definitions in consultation with the experts on each field.

² If this term is only used in the Trade Facilitation Chapter, subject to final confirmation from Customs experts, it will be deleted from General Definitions.

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

Harmonized System (HS) means the Harmonized Commodity Description and Coding System adopted by the World Customs Organization including its General Rules of Interpretation, and its Section and Chapter Notes.

heading means the first four digits in the tariff classification number under the Harmonized System;³

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

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

national means:

- (a) for China, a natural person who has the nationality of China according to the laws of China;
- (b) for Peru, a Peruvians by birth, naturalization or option in accordance with Articles 52 and 53 of the *Constitución Política del Perú* (Political Constitution of Peru) has the nationality of Peru or a permanent resident of Peru;

originating means qualifying pursuant to the rules of origin established under Chapter XX (Rules of Origin and Procedures of Origin);⁴

person means a national or a juridical person⁵;

person of a Party means a national or a juridical person of a Party;

Safeguards Agreement means the Agreement on Safeguards which is a part of the WTO Agreement⁶;

sanitary and phitosanitary measure means any measure referred to in Annex A, paragraph 1 of the SPS Agreement;⁷

SPS Agreement means the Agreement on the Application of Sanitary and Phytosanitary Measures which is a part of the WTO Agreement;

³ Depends on the definitions of other chapters.

⁴ Depend on the definitions of other chapters.

⁵ The legal scrubbers will confirm with their experts the deletion of this definition.

⁶ Deletion of this definition will be referred to SPS experts. They shall define if this term needs to be a General Definition or only a definition in the SPS Chapter. If this definition is only used in SPS Chapter, it will be moved to that Chapter.

⁷ Deletion of this definition will be referred to SPS experts. They shall define if this term needs to be a General Definition or only a definition in the SPS Chapter. If this definition is only used in SPS Chapter, it will be moved to that Chapter.

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

territory means,

- (a) with respect to the Republic of Peru, the mainland territory, the islands, the maritime zones and the air space above them, over which Peru exercises sovereignty or sovereign rights and jurisdiction, in accordance with its domestic law and international law
- (b) with respect to CHINA, the entire customs territory of People's Republic of China, including land, maritime and air space, and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law⁸.

TRIPS Agreement means the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights which is a part of the WTO Agreement;

WTO means the World Trade Organization, created by the Marrakesh Agreement done on 15 April 1994; and

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

⁸ China and Peru will refer the clarification on that Chinese Taipei, Hong Kong China and Macao China are not included in China's Customs Territory for purposes of this Agreement, to the heads of delegations.

CHAPTER XX

Administration of the Agreement

Article XX Trade & Economic Mixed Commission

1. The Parties hereby incorporate the Trade and Economic Mixed Commission (Mixed Commission) into this Agreement.
2. The Mixed Commission was established according to the *Trade Agreement between the Government of the People's Republic of China and the Government of the Republic of Peru*, signed in Lima, on November 2nd 1988.
3. The Mixed Commission is composed of officials as follows:
 - (a) in the case of China, the high ranking official of Ministry of Commerce; and
 - (b) in the case of Peru, the high ranking officer of the Ministry of Foreign Affairs, or its appointee.
4. The Mixed Commission shall:
 - (a) hear the reports of the Free Trade Commission;
 - (b) provide guidance to the work of the Free Trade Commission;
 - (c) consider any other matter that may affect the operation of this Agreement; and
 - (d) deal with any other issues related to bilateral cooperation in the area of economy, trade and investment.

Article XX Joint Commission

1. The Parties hereby establish the Joint Commission, comprised of Ministerial level officials of the Parties or their appointees with the same decision ability, as set out in Annex XX.
2. The Commission shall:
 - a) oversee the fulfillment 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;
 - d) seek to resolve disputes that may arise regarding the interpretation or application of this Agreement, in accordance with Chapter XX (Dispute Settlement);

- e) supervise the work of all committees and working groups established under this Agreement and recommend appropriate actions;
- f) consider and make decisions on issues referred to it by the Committees and working groups established under this Agreement or by either Party;
- g) establish the amount of remuneration and expenses that will be paid to panelists;
- h) consider and make decisions on any other matter that may affect the operation of this Agreement, or that is entrusted to it by the Parties.

3. The Commission may:

- a) establish and delegate responsibilities to committees and working groups for each chapter;
- b) consider and adopt any amendments or modification of the rights and obligations under this Agreement, subject to the fulfillment of the internal legal procedures of each Party, pursuant to Article XX (Amendments);
- c) convene the Parties to future negotiations to examine deepening the already reached liberalization in the different sectors covered by this Agreement;
- d) issue interpretations of the provisions of this Agreement;
- e) take any other action agreed by the Parties.

4. The Commission shall establish its rules and procedures.

5. All decisions of the Commission shall be taken by consensus.

6. The Joint Commission shall convene in regular session once per year and at other times at the request of either Party. Regular sessions of the Joint Commission shall be chaired successively by each Party. Other sessions of the Joint Commission shall be chaired by the Party hosting the meeting. The sessions may be held by any technological means available to the Parties.

Article XX Committees

The Parties agree on establishing Committees in the following matters:

- a) trade in goods,

⁹ List of Committees shall reflect all Committees agreed in the FTA Chapters.

- b) trade in services,
- c) investment,
- d) sanitary and phytosanitary issues,
- e) technical barriers to trade,
- f) trade facilitation,
- g) rules of origin, and
- h) cooperation including intellectual property.

The Joint Commission may create additional Committees, if needed. The Committees on sanitary and phytosanitary, technical barriers to trade and rules of origin shall coordinate their tasks with those of the Committee on trade in goods.

Except as otherwise provided in this Agreement, the Committees shall convene in regular session once a year at the same time the Commission convenes. When special circumstances arise, the two Parties shall meet at any time upon agreement at the request of one Party.] Regular sessions of the Committees shall be chaired successively by each Party. Other sessions of the Committee shall be chaired by the Party hosting the meeting. The sessions may be held by any technological means available to the Parties.

When necessary, the Committees created hereby shall consult with such other committees as needed to address the issues they handle.

Article XX Contact Points

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement.

2. Upon request of the other Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party. Contact Points shall work jointly to develop agendas and make other preparations for Commission meetings and follow-up on Commission decisions as appropriate; provide administrative support to the panels established under Chapter XX (Dispute Settlement) and address any other matter entrusted by the Joint Commission

ANNEX XX

The Joint Commission

The Joint Commission shall be composed of:

- (a) in the case of Peru, the *Ministry of Foreign Trade and Tourism* and;
- (b) in the case of China, the *Ministry of Commerce*.

or their successors;

CHAPTER XX

Transparency

Article XX Transparency

1. The Parties shall publish their laws, or otherwise make publicly available their laws, regulations and administrative rulings of general application as well as their respective international agreements regarding trade entering into force after this Agreement that may affect the operation of this Agreement.
2. The Parties shall respond to specific questions and provide, upon request, information to each other on matters referred to in paragraph 1 within sixty (60) days following the request, to the extent possible.
3. Any information, request or notification to the other Party referred to in this Chapter shall be carried out through the contact point, unless otherwise agreed by the Parties.

Article XX Confidential Information

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

CHAPTER XX

Exceptions

Article XX General Exceptions

1. For purposes of Chapter XX (Market Access), Chapter XX (Trade Facilitation), Chapter XX (Rules of Origin), Chapter XX (Technical Barriers to Trade), Chapter XX (Sanitary and Phytosanitary Measures), Chapter XX (Trade Remedies), Article XX of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XX(b) of the GATT 1994, as incorporated into this Agreement, can include any measure necessary to protect human, animal, or plant life or health, and that Article XX(g) of the GATT 1994 applies to measures relating to the conservation of any exhaustible natural resource.

2. For purposes of Chapter XX (Services), Article XIV of the GATS (including its footnotes) is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XIV(b) of the GATS, as incorporated into this Agreement, can include any measure necessary to protect human, animal, or plant life or health.

Article XX Security Exceptions

Nothing in this Agreement shall be construed:

- (a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or
- (b) Prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) relating to fissionable materials or the materials from which they are derived;
 - (ii) relating to the supply of services as carried out directly for the purpose of provisioning a military establishment;
 - (iii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
 - (iv) taken in time of war or other emergency in international relations; or
- (c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for maintenance of international peace and security.

Article XX Disclosure of Information

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to confidential information, the disclosure of which would impede enforcement of its Constitution, laws, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article XX Measures to safeguard the balance of payments

Where the Party is in serious balance of payments and external financial difficulties or threat thereof, in accordance with the WTO Agreement and consistent with the articles of the Agreement of the International Monetary Fund, adopt measures deemed necessary.

Article XX Prudential Measures

1. Notwithstanding any other provisions of this Agreement, a Party shall not be prevented from taking measures relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise supplying financial services, or to ensure the integrity and stability of its financial system.

2. Where measures mentioned in paragraph 1 do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

CHAPTER XX

Final Provisions

Article XX Annexes, Appendices, and Footnotes

The Annexes, Appendices, and footnotes to this Agreement constitute an integral part of this Agreement.¹⁰

Article XX Amendments

1. The Parties may agree on any amendment to this Agreement.
2. When so agreed and entered into force according to Article XX (Entry into Force) such amendment shall constitute an integral part of this Agreement.

Article XX Entry into Force and Termination

1. This Agreement and its amendments shall enter into force sixty (60) days after the date the Parties exchange written notifications certifying that they have completed their respective legal requirements for its entry into force or after such other period as the Parties may agree in written notification. Except as otherwise provided in this Agreement, it does not apply retroactively.
2. Either Party may terminate this Agreement by written notification to the other Party. This Agreement shall expire 180 days after the date of such notification.

Article XX Authentic Texts

This Agreement shall be done in Chinese, Spanish and English, the three texts are equally valid and authentic. In the event of divergence, the English text shall prevail.

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

DONE AT, (city), (country), in duplicate, this (day) day of (month) of two thousand and () 200.

¹⁰The reference to appendices depends on what is agreed in other groups.