CHAPTER 2

NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Section I: Definitions and Scope of Application

Article 2.1: Definitions

For the purposes of this Chapter:

AD Agreement means the WTO *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, set out in Annex 1A to the WTO Agreement;

agricultural goods means those goods referred to in Article 2 of the *Agreement on Agriculture*, set out in Annex 1A to the WTO Agreement;

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

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

(a) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994;

(b) anti-dumping, countervailing, or safeguard duty that is applied in accordance with Article VI of GATT 1994, the AD Agreement, the SCM Agreement, Article XIX of GATT 1994, the Safeguards Agreement, and Article 5 of the Agreement on Agriculture; or

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

duty-free means free of customs duty;

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

import licensing means an administrative procedure requiring the submission of an application or other documentation (other than that generally required for customs clearance purposes) to

the relevant administrative body as a prior condition for importation into the territory of the importing Party;

Import Licensing Agreement means the *Agreement on Import Licensing Procedures*, set out in Annex 1A to the WTO Agreement; and

SCM Agreement means the WTO *Agreement on Subsidies and Countervailing Measures*, set out in Annex 1A to the WTO Agreement**.**

Article 2.2: Scope

Except as otherwise provided in this Agreement, this Chapter shall apply to trade in goods between the Parties.

Section II: National Treatment

Article 2.3: National Treatment

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

2. Paragraph 1 shall not apply to the measures set out in Annex 2-A (Exceptions to National Treatment and Import and Export Restrictions).

Section III: Elimination of Customs Duties

Article 2.4: Elimination of Customs Duties

1. Except as otherwise provided in this Agreement, neither Party shall increase any existing customs duty or adopt any new customs duty on an originating good covered by Annex 2-B (Schedules of Tariff Commitments).

2. Except as otherwise provided in this Agreement, each Party shall eliminate its customs duties on originating goods in accordance with its Schedule set out in Annex 2-B (Schedules of Tariff Commitments).

3. The Tariff Elimination Program shall not be applicable to used goods identified under the same HS code of new goods and those identified in Annex 2-C (Used Goods).

4. For goods that are included in category "R" after five years following the calendar year in which this Agreement enters into force and upon request of either Party, the Parties shall hold consultations to consider broadening the scope of the elimination of customs duties set out in their Schedules in Annex 2-B (Schedules of Tariff Commitments).

5. For greater certainty, a Party may:

(a) raise a customs duty to the level established in its Schedule set out in Annex 2-B (Schedules of Tariff Commitments) following a unilateral reduction for the respective year; or

(b) maintain or increase a customs duty as authorised by the Dispute Settlement Body of the WTO or in accordance with Chapter 15 (Dispute Settlement).

Article 2.5 Accelerated Tariff Elimination

1. On the request of a Party, the Parties shall consult to consider accelerating the elimination of customs duties on originating goods as set out in Annex 2-B (Schedules of Tariff Commitments).

2. An agreement by the Parties to accelerate the elimination of a customs duty on originating goods shall enter into force after the Parties have exchanged written notification advising that they have completed necessary internal legal procedures and on such date or dates as may be agreed between them.

3. A Party may at any time accelerate unilaterally the elimination of customs duties on originating goods of the other Party set out in its Schedule. A Party considering doing so shall inform the other Party as early as practicable.

Section IV: Non-Tariff Measures

Article 2.6: Import and Export Restrictions

1. Except as otherwise provided in this Agreement, neither Party shall adopt or maintain any non-tariff measures that prohibit or restrict the importation of any good of the other Party or the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994 and its interpretative notes, and to this end, Article XI of GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis.*

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

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

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

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

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 2-A (Exceptions to National Treatment and Import and Export Restrictions).

4. Neither Party shall, as a condition for engaging in importation or for the importation of a good, require a person of the other Party to establish or maintain a contractual or other relationship with a distributor in its territory.

5. Nothing in paragraph 4 prevents a Party from requiring the designation of an agent for purposes of facilitating communications between regulatory authorities of the Party and a person of the other Party.

6. For the purposes of paragraph 4, **distributor** means a person of a Party who is responsible for the commercial distribution, agency, concession, or representation in the territory of that Party of goods of the other Party.

Article 2.7: Import Licensing

1. Neither Party shall adopt or maintain a measure that is inconsistent with the Import Licensing Agreement, and to this end, the Import Licensing Agreement is incorporated into and made part of this Agreement, *mutatis mutandis.*

2. Promptly after the entry into force of this Agreement, each Party shall notify the other Party of its existing import licensing procedures, if any. The notification shall:

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

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

3. Before applying any new or modified import licensing procedure, a Party shall publish the new procedure or modification on an official government website or in a single official journal. The Party shall do so, whenever practicable, 21 days before it takes effect, but in any case no later than the new procedure or modification takes effect.

4. Each Party shall notify the other Party of any new import licensing procedures and any modification to its existing import licensing procedures to the extent possible 10 days before it takes effect, but in any case no later than the effective date of the licensing procedure.

Article 2.8: Administrative Fees and Formalities

1. Each Party shall ensure that all fees and charges of whatever character imposed on or in connection with the importation or exportation of goods are consistent with Article VIII:1 of GATT 1994 and its interpretive notes. To this end, Article VIII:1 of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Neither Party shall require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.

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

Article 2.9: State Trading Enterprises

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

Article 2.10: Customs Valuation

1. The Customs Valuation Agreement and any successor Agreement shall govern the customs valuation rules applied by the Parties to their trade. To this end, the Customs Valuation Agreement and any successor Agreement, as well as the WTO Decisions of Committee on Customs Valuation, are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. The custom laws of the Parties shall comply with Article VII of GATT 1994 and the Customs Valuation Agreement.

Section V: Other Measures

Article 2.11: Agricultural Export Subsidies

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

2. At the date of entry into force of this Agreement, no Party shall maintain, introduce or reintroduce export subsidies on agricultural goods that are destined to the territory of the other Party.

Article 2.12: Price Band System

The Republic of Peru may maintain its price band system established in its *Supreme Decree N° 115-2001-EF* and its amendments, with respect to the agricultural goods specified with one asterisk (*) in Column (Price Band System) of its Schedule.

Section VI: Institutional Provisions

Article 2.13: Sub-Committee on Trade in Goods

1. The Parties hereby establish a Sub-Committee on Trade in Goods (hereinafter referred to as "Sub-Committee") comprising officials of each Party. The meetings of the Sub-Committee and any *ad-hoc* working group shall be coordinated by the Ministry of Foreign Trade and Tourism of Peru (*Ministerio de Comercio Exterior y Turismo - MINCETUR*) and the Ministry of Commerce of Thailand, or their respective successors.

2. The functions of the Sub-Committee shall include, *inter alia*:

(a) reviewing and monitoring the administration and operation of this Chapter;

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

(c) reviewing the future amendments to the HS to ensure that obligations of each Party under this Agreement are not altered, and consulting to resolve any conflicts between:

(i) subsequent amendments to HS and Annex 2-B (Schedules of Tariff Commitments); or

(ii) Annex 2-B (Schedules of Tariff Commitments) and national nomenclatures;

(d) consulting on and endeavouring to resolve any difference that may arise between the Parties on matters related to the classification of goods under the HS;

(e) consulting on matters related to this Chapter as the Parties may agree;

(f) establishing *ad-hoc* working groups with specific commands;

(g) reporting its findings to the Joint Commission; and

(h) carrying out other tasks assigned by the Joint Commission.

3. The Sub-Committee shall meet at least once a year unless otherwise agreed by the Parties. When special circumstances arise, the Sub-Committee shall meet at any time upon request of a Party.