CHAPTER 16

EXCEPTIONS AND GENERAL PROVISIONS

Article 16.1: General Exceptions

1. For the purposes of Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Rules of Origin), Chapter 4 (Customs Procedures), Chapter 5 (Sanitary and Phytosanitary Measures) and Chapter 6 (Technical Barriers to Trade), 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 include environmental measures 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 living and non-living exhaustible natural resources.

2. For the purposes of Chapter 8 (Trade in Services) and Chapter 9 (Temporary Entry for Business Persons), 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 include environmental measures necessary to protect human, animal, or plant life or health.

Article 16.2: Essential Security

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;

(b) to prevent a 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 traffic in arms, ammunition and implements of war and to such traffic in other goods and materials, or relating to the supply of services, as is carried on directly or indirectly for the purpose of supplying a military establishment; or

  (iii) taken in time of war or other emergency in international relations; or

(c) to preclude a Party from taking any action in pursuance of its obligations under the *Charter of the United Nations* for the maintenance of international peace and security.

Article 16.3: Confidentiality and Disclosure of Information

1. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of information designated as confidential by the other Party pursuant to this Agreement.

2. 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 law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 16.4: Temporary Safeguard Measures

1. If a Party is in serious balance-of-payments and external financial difficulties and under threat thereof, it may:

(a) in the case of trade in goods, in accordance with GATT 1994 and the *Understanding on the Balance-of-Payments Provisions* of the GATT 1994, adopt or maintain restrictive import measures; and

(b) in the case of trade in services, adopt or maintain restrictions on payments or transfers related to trade in services on which it has undertaken commitments.

2. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining restrictive measures with regard to payments or transfers relating to the movements of capital as well as exchange rate and financial stability:

(a) in the event of serious balance of payments and external financial difficulties and under threat thereof; or

(b) where, in exceptional circumstances, payments or transfers relating to capital movements cause or threaten to cause serious difficulties for macroeconomic management, in particular, the operation of monetary policy or exchange rate policy in either Party.

3. Measures referred to in paragraph 1(b) or 2 shall:

(a) be consistent with the *Articles of Agreement of the International Monetary Fund*, done at Washington on 22 July 1944;

(b) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;

(c) not exceed those necessary to deal with the circumstances set out in paragraph 1(b) or 2;

(d) be temporary and shall be phased out or eliminated as soon as situation specified in paragraph 1(b) or 2 improves;

(e) promptly be notified to the other Party, including any changes therein, to the extent that it does not duplicate the process under WTO or International Monetary Fund; and

(f) be applied on a non-discriminatory basis such that the other Party is treated no less favourably than any non-party.

4. Any restrictions adopted or maintained by a Party under paragraph 1 or paragraph 2, or any changes therein, shall be notified promptly to the other Party.

5. The Party adopting or maintaining any restrictions under paragraph 1 or paragraph 2 shall, on request, promptly commence consultations with the other Party in order to review the restrictions adopted or maintained by it, provided that such consultations are not otherwise taking place outside of this Agreement.

6. Nothing in this Agreement shall be regarded to affect the rights enjoyed and obligations undertaken by a Party as a party to the *Articles of Agreement of the International Monetary Fund,* done at Washington on 22 July 1944.

Article 16.5: Taxation Measures

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

2. Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention. In the event of any inconsistency relating to a taxation measure between this Agreement and any such convention, the latter shall prevail to the extent of the inconsistency.

3. Any consultations between the Parties about whether an inconsistency relates to a taxation measure shall be referred to the designated authorities of the Parties. The designated authorities shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention. During the period the issue is under consideration by the designated authorities, no procedures concerning that measure may be initiated under Chapter 15 (Dispute Settlement).

4. Article 2.3 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT 1994.

5. Article 8.4 (National Treatment) shall apply to taxation measures, subject to the exceptions established in Article XIV of GATS.

6. For the purposes of this Article:

(a) **designated authority** means:

(i) in the case of Peru, the Ministry of Economy and Finance (*Ministerio de Economía y Finanzas – MEF*), or its successor; and

(ii) in the case of Thailand, the Fiscal Policy Office, Ministry of Finance, or authorised representatives of the Ministry of Finance, or its successor;

(b) **tax convention** means a convention or agreement for the avoidance of double taxation or other international taxation agreement or arrangement; and

(c) **taxation measures** do not include:

(i) a customs duty as defined in Article 2.1 (Definitions); or

(ii) the measures listed in subparagraphs (b) and (c) of the definition of customs duty in Article 2.1 (Definitions).