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**Draft 6 January 2006**

**Chapter Two**

**National Treatment and Market Access for Goods**

**Article 2.1: Scope and Coverage**

1. Except as otherwise provided in this Agreement, this Chapter applies to trade in goods of a Party.

**Section A: National Treatment**

**Article 2.2: National Treatment**

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

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment that regional level of government accords to any like, directly competitive, or substitutable goods, as the case may be, of the Party of which it forms a part.

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 2.2.

**Section B: Tariff Elimination**

**Article 2.3: Tariff Elimination**

1. Except as otherwise provided in this Agreement, no Party may increase any existing customs duty, or adopt any new customs duty, on an originating good.

2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods, in accordance with Annex 2.3.

3. For greater certainty, paragraph 2 shall not prevent Peru from granting identical or more favorable tariff treatment to a good as provided for under the legal instruments of the Andean integration, provided that the goods meet the rules of origin under those instruments.

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4. On the request of any Party, the requesting Party and one or more other Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules to Annex 2.3. The consulting Parties shall notify the other Parties of the goods that will be subject to the consultations, and shall afford the other Parties an opportunity to participate in the consultations. Notwithstanding Article 20.1 (The Free Trade Commission), an agreement between two or more Parties to accelerate the elimination of a customs duty on a good shall supercede any duty rate or staging category determined pursuant to their Schedules to Annex 2.3 for such good when approved by each involved Party in accordance with its applicable legal procedures. Within 30 days after two or more Parties conclude an agreement under this paragraph, they shall notify the other Parties of the terms of the agreement.

5. For greater certainty, a Party may:

- (a) raise a customs duty back to the level established in its Schedule to Annex 2.3 for the respective year following a unilateral reduction; or
- (b) maintain or increase a customs duty as authorized by the Dispute Settlement Body of the WTO.

**Section C: Special Regimes**

**Article 2.4: Waiver of Customs Duties**

1. No Party may adopt any new waiver of customs duties, or expand with respect to existing recipients or extend to any new recipient the application of an existing waiver of customs duties, where the waiver is conditioned, explicitly or implicitly, on the fulfillment of a performance requirement.

2. No Party may, explicitly or implicitly, condition on the fulfillment of a performance requirement the continuation of any existing waiver of customs duties.

**Article 2.5: Temporary Admission of Goods**

1. Each Party shall grant duty-free temporary admission for the following goods, regardless of their origin:

- (a) professional equipment, including equipment for the press or television, software, and broadcasting and cinematographic equipment, necessary for carrying out the business activity, trade, or profession of a person who qualifies for temporary entry pursuant to the laws of the importing Party;
- (b) goods intended for display or demonstration;

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- (c) commercial samples and advertising films and recordings; and
  - (d) goods admitted for sports purposes.
2. Each Party, at the request of the person concerned and for reasons its customs authority considers valid, shall extend the time limit for temporary admission beyond the period initially fixed.
3. No Party may condition the duty-free temporary admission of a good referred to in paragraph 1, other than to require that such good:
- (a) be used solely by or under the personal supervision of a national or resident of another Party in the exercise of the business activity, trade, profession, or sport of that person;
  - (b) not be sold or leased while in its territory;
  - (c) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable on exportation of the good;
  - (d) be capable of identification when exported;
  - (e) be exported on the departure of the person referenced in subparagraph (a), or within such other period, related to the purpose of the temporary admission, as the Party may establish, or within one year, unless extended;
  - (f) be admitted in no greater quantity than is reasonable for its intended use; and
  - (g) be otherwise admissible into the Party's territory under its law.
4. If any condition that a Party imposes under paragraph 3 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on the good plus any other charges or penalties provided for under its law.
5. Each Party, through its customs authority, shall adopt procedures providing for the expeditious release of goods admitted under this Article. To the extent possible, such procedures shall provide that when such a good accompanies a national or resident of the other Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that national or resident.
6. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs port other than that through which it was admitted.
7. Each Party shall provide that its customs authority or other competent authority shall relieve the importer or other person responsible for a good admitted under this Article from any

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liability for failure to export the good on presentation of satisfactory proof to the importing Party's customs authority that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.

8. Subject to Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services):
- (a) each Party shall allow a vehicle or container used in international traffic that enters its territory from the territory of another Party to exit its territory on any route that is reasonably related to the economic and prompt departure of such vehicle or container;
  - (b) no Party may require any security or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a vehicle or container;
  - (c) no Party may condition the release of any obligation, including any security, that it imposes in respect of the entry of a vehicle or container into its territory on its exit through any particular port of departure; and
  - (d) no Party may require that the vehicle or carrier bringing a container from the territory of another Party into its territory be the same vehicle or carrier that takes such container to the territory of another Party.
9. For purposes of paragraph 8, **vehicle** means a truck, a truck tractor, tractor, trailer unit or trailer, a locomotive, or a railway car or other railroad equipment.

**Article 2.6: Goods Re-entered after Repair or Alteration**

1. No Party may apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily exported from its territory to the territory of another Party for repair or alteration, regardless of whether such repair or alteration could be performed in the territory of the Party from which the good was exported for repair or alteration.
2. No Party may apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of another Party for repair or alteration.
3. For purposes of this Article, **repair or alteration** does not include an operation or process that:
  - (a) destroys a good's essential characteristics or creates a new or commercially different good; or
  - (b) transforms an unfinished good into a finished good.

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**Article 2.7: Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials**

Each Party shall grant duty-free entry to commercial samples of negligible value, and to printed advertising materials, imported from the territory of another Party, regardless of their origin, but may require that:

- (a) such samples be imported solely for the solicitation of orders for goods, or services provided from the territory, of another Party or a non-Party; or
- (b) such advertising materials be imported in packets that each contain no more than one copy of each such material and that neither such materials nor packets form part of a larger consignment.

**Section D: Non-Tariff measures**

**Article 2.8: Import and Export Restrictions**

1. Except as otherwise provided in this Agreement, no Party may adopt or maintain any prohibition or restriction on the importation of any good of another Party or on the exportation or sale for export of any good destined for the territory of another Party, except in accordance with Article XI of the GATT 1994 and its interpretative notes, and to this end Article XI of the GATT 1994 and its interpretive notes are incorporated into and made a part of this Agreement, *mutatis mutandis*.<sup>1</sup>

2. The Parties understand that the GATT 1994 rights and obligations 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 antidumping duty orders and undertakings;
- (b) import licensing conditioned on the fulfillment of a performance requirement, except as provided in a Party's Schedule to Annex 2.3; or
- (c) voluntary export restraints inconsistent with Article VI of the GATT 1994, as implemented under Article 18 of the SCM Agreement and Article 8.1 of the AD Agreement.

3. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, nothing in this Agreement shall be construed to prevent the Party from:

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<sup>1</sup>For greater certainty, this paragraph applies, *inter alia*, to prohibitions or restrictions on the importation of remanufactured goods.

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- (a) limiting or prohibiting the importation from the territory of another Party of such good of that non-Party; or
  - (b) requiring as a condition of export of such good of the Party to the territory of another Party, that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.
4. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, on the request of any Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing, or distribution arrangements in another Party.
5. Paragraphs 1 and 2 of this Article shall not be applied to measures established in Annex 2.2.
6. No Party may, as a condition for engaging in importation or for the import of a good, require a person of another Party to establish or maintain a contractual or other relationship with a distributor in its territory.
7. Nothing in paragraph 6 prevents a Party from requiring the designation of an agent for the purpose of facilitating communications between regulatory authorities of the Party and a person of another Party.
8. For purposes of paragraph 6:

**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 another Party;

**Article 2.9: Import Licensing**

1. No Party may adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.
2. Promptly after entry into force of this Agreement, each Party shall notify the other Parties of any existing import licensing procedures, and thereafter shall notify the other Parties of any new import licensing procedure and any modification to its existing import licensing procedures, within 60 days before it takes effect. A notification provided under this article 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.

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3. No Party may apply an import licensing procedure to a good of another Party unless it has provided notification in accordance with paragraph 2.

**Article 2.10: Administrative Fees and Formalities**

1. Each Party shall ensure, in accordance with Article VIII:1 of the GATT 1994 and its interpretive notes, that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III:2 of the GATT 1994, and antidumping and countervailing duties) imposed on or in connection with importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.

2. No Party may require consular transactions, including related fees and charges, in connection with the importation of any good of another 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.

4. The United States shall eliminate its Merchandise Processing Fee on originating goods imported from Peru upon the entry into force of this Agreement.

**Article 2.11: Export Taxes**

No Party may adopt or maintain any duty, tax, or other charge on the export of any good to the territory of another Party, unless such duty, tax, or charge is adopted or maintained on any such good:

- (a) when exported to the territory of another Party; and
- (b) when destined for domestic consumption.

**Section E: Other Measures**

**Article 2.12: Distinctive Products**

1. Peru shall recognize Bourbon Whiskey and Tennessee Whiskey, which is a straight Bourbon Whiskey authorized to be produced only in the State of Tennessee, as distinctive products of the United States. Accordingly, Peru shall not permit the sale of any product as Bourbon Whiskey or Tennessee Whiskey, unless it has been manufactured in the United States

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in accordance with the laws and regulations of the United States governing the manufacture of Bourbon Whiskey and Tennessee Whiskey.

2. The United States shall recognize “*Pisco Perú*” as a distinctive product of Peru. Accordingly, the United States shall not permit sale of any product as “*Pisco Perú*,” unless it has been manufactured in Peru, in accordance with the laws and regulations of Peru governing Pisco.<sup>3</sup>

3. At the request of a Party, the Committee on Trade in Goods shall consider whether to recommend that the Parties amend the Agreement to designate a good as a distinctive product for the purposes of this Article.

**Section F: Institutional Provisions**

**Article 2.13: Committee on Trade in Goods**

1. The Parties hereby establish a Committee on Trade in Goods, comprising representatives of each Party.

2. The Committee shall meet on the request of a Party or the Commission to consider matters arising under this Chapter, Chapter Four (Rules of Origin and Origin Procedures), or Chapter Five (Customs Administration and Trade Facilitation).

3. The Committee’s functions shall include, *inter alia*:

- (a) promoting trade in goods between the Parties, including through consultations on accelerating tariff elimination under this Agreement and other issues as appropriate;
- (b) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures, and, if appropriate, referring such matters to the Commission for its consideration;
- (c) providing to the Committee on Trade Capacity Building advice and recommendations on technical assistance needs regarding matters relating to this

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<sup>3</sup> Peruvian laws and regulations provide that Pisco is the product exclusively obtained from the distillation of fresh musts of “Pisco grapes,” recently fermented, utilizing methods that maintain traditional principles of quality, in accordance with the Peruvian Standard.



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Chapter, Chapter Four (Rules of Origin and Origin Procedures), or Chapter Five (Customs Administration and Trade Facilitation);

- (d) reviewing conversion to the Harmonized System 2007 nomenclature and its subsequent revisions to ensure that each Party's obligations under this Agreement are not altered, and consulting to resolve any conflicts between:
  - i) the Harmonized System 2007 or subsequent nomenclature and Annex 2.3; and
  - ii) Annex 2.3 and national nomenclatures; and
- (e) consulting on and endeavoring to resolve any difference that may arise among the Parties on matters related to the classification of goods under the Harmonized System.

**Section I: Definitions**

**Article 2.14: Definitions**

For purposes of this Chapter:

**AD Agreement** means the *WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*;

**advertising films and recordings** means recorded visual media or audio materials, consisting essentially of images and/or sound, showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of a Party, provided that such materials are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public;

**commercial samples of negligible value** means commercial samples having a value, individually or in the aggregate as shipped, of not more than one U.S. dollar, or the equivalent amount in the currency of another Party, or so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or for use except as commercial samples;

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

**consumed** means

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- (a) actually consumed; or
- (b) further processed or manufactured so as to result in a substantial change in the value, form, or use of the good or in the production of another good;

**duty-free** means free of customs duty;

**goods intended for display or demonstration** includes their component parts, ancillary apparatus, and accessories;

**goods temporarily admitted for sports purposes** means sports requisites for use in sports contests, demonstrations, or training in the territory of the Party into whose territory such goods are admitted;

**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 *WTO Agreement on Import Licensing Procedures*;

**performance requirement** means a requirement that:

- (a) a given level or percentage of goods or services be exported;
- (b) domestic goods or services of the Party granting a waiver of customs duties or an import license be substituted for imported goods;
- (c) a person benefiting from a waiver of customs duties or an import license purchase other goods or services in the territory of the Party granting the waiver of customs duties or the import license, or accord a preference to domestically produced goods;
- (d) a person benefiting from a waiver of customs duties or an import license produce goods or supply services, in the territory of the Party granting the waiver of customs duties or the import license, with a given level or percentage of domestic content; or
- (e) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows;

but does not include a requirement that an imported good be:

- (b) subsequently exported;

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- (c) used as a material in the production of another good that is subsequently exported;
- (d) substituted by an identical good or similar good used as a material in the production of another good that is subsequently exported; or
- (e) substituted by an identical or similar good that is subsequently exported.

**printed advertising materials** means those goods classified in Chapter 49 of the Harmonized System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials, and posters, that are used to promote, publicize, or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge; and

**SCM Agreement** means the WTO *Agreement on Subsidies and Countervailing Measures*.

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**Annex 2.2**  
**National Treatment and Import and Export Restrictions**

**Section A: Measures of Peru**

Articles 2.2 and 2.8 shall not apply to:

- (a) measures of Peru governing the importation of used clothing and footwear, used vehicles and automotive motors, parts and replacements, and used goods, machinery, and equipment which utilize radioactive sources implementing Law No. 28514, Legislative Decree No. 843, Urgent Decree No. 079-2000, Supreme Decree No. 003-97-SA, and Law No. 27757 and any amendment to these laws or decrees, provided that the amendment does not decrease the conformity of the law or decree with the Agreement;<sup>3</sup> and
- (b) actions authorized by the Dispute Settlement Body of the WTO.

**Section B: Measures of the United States**

Articles 2.2 and 2.8 shall not apply to:

- (a) controls on the export of logs of all species;
- (b)
  - (i) measures under existing provisions of the *Merchant Marine Act of 1920*, 46 App. U.S.C. § 883; the *Passenger Vessel Act*, 46 App. U.S.C. §§ 289, 292, and 316; and 46 U.S.C. § 12108, to the extent that such measures were mandatory legislation at the time of the accession of the United States to the General Agreement on Tariffs and Trade 1947 (GATT 1947) and have not been amended so as to decrease their conformity with Part II of the GATT 1947;
  - (ii) the continuation or prompt renewal of a non-conforming provision of any statute referred to in clause (i); and
  - (iii) the amendment to a non-conforming provision of any statute referred to in clause (i) to the extent that the amendment does not decrease the conformity of the provision with Articles 2.2 and 2.8; and
- (c) actions authorized by the Dispute Settlement Body of the WTO.

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<sup>3</sup> The controls identified in this subparagraph do not apply to remanufactured goods..